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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	
	)	
-VS-	)	Criminal No. 15-10347-PBS
	)	Pages 1 - 78
VINCENT C. ANZALONE,	)	
	)	
Defendant	)	

**MOTION HEARING**

BEFORE THE HONORABLE PATTI B. SARIS  
UNITED STATES CHIEF DISTRICT JUDGE

A P P E A R A N C E S:

DAVID C. TOBIN, ESQ., Assistant United States Attorney,  
Office of the United States Attorney, 1 Courthouse Way,  
Room 9200, Boston, Massachusetts, 02210, for the Plaintiff.

TIMOTHY G. WATKINS, ESQ., Federal Public Defender Office,  
District of Massachusetts, 51 Sleeper Street, 5th Floor, 02210,  
for the Defendant.

United States District Court  
1 Courthouse Way, Courtroom 19  
Boston, Massachusetts 02210  
October 14, 2016, 10:12 a.m.

LEE A. MARZILLI  
OFFICIAL COURT REPORTER  
United States District Court  
1 Courthouse Way, Room 7200  
Boston, MA 02210  
(617)345-6787

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I N D E X

WITNESS

DIRECT

CROSS

REDIRECT

RECROSS

DANIEL ALFIN

By Mr. Tobin:

6

By Mr. Watkins:

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By Mr. Tobin:

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P R O C E E D I N G S

1  
2 THE CLERK: Court calls Criminal Action 15-10347,  
3 United States v. Anzalone. Could counsel please identify  
4 themselves.

5 MR. TOBIN: Good morning, your Honor. David Tobin on  
6 behalf of the United States.

7 THE COURT: Thank you.

8 MR. WATKINS: Good afternoon, your Honor. Tim  
9 Watkins, Federal Defender Office, on behalf of Vincent  
10 Anzalone.

11 THE COURT: Thank you. Do we have a witness here?

12 MR. TOBIN: We do, your Honor.

13 THE COURT: Okay. Let me just say my time  
14 limitations, I have to be at a program at 12:30, so I am  
15 hoping -- what is your sense as to how long you're going to  
16 need?

17 MR. TOBIN: I will not be particularly lengthy. I  
18 have no exhibits and one witness, and he's more of a summary  
19 witness because he's already provided now two declaration.

20 THE COURT: So say half an hour?

21 MR. TOBIN: I'd say about a half an hour.

22 THE COURT: And we'll take the declarations as  
23 exhibits.

24 MR. TOBIN: Of course.

25 THE COURT: How long do you think you're going to be?

1 MR. WATKINS: I think we'll be done by noon.

2 THE COURT: All right, if we need another day for oral  
3 argument, but I just don't want to make him come back again.

4 MR. TOBIN: One preliminary matter, if I might, your  
5 Honor?

6 THE COURT: Yes.

7 MR. TOBIN: I just want to make sure that I'm on the  
8 same sheet of music as the Court and that we're all on the same  
9 sheet. My understanding is, the purpose of this --

10 THE COURT: Are you singing?

11 MR. TOBIN: Well, you know, if I could carry a tune in  
12 a bucket, I might, but I can't. My understanding is, the sole  
13 purpose of this hearing deals with the allegation of outrageous  
14 government misconduct.

15 THE COURT: Yes.

16 MR. TOBIN: And specifically the representations made  
17 by Special Agent Alfin in various instances that the number of  
18 users on the Playpen website did not essentially increase  
19 during the time the government operated it.

20 THE COURT: I don't view it as that narrow.

21 MR. TOBIN: You don't?

22 THE COURT: About the case generally. That for sure  
23 is true. It's about the allegation with respect -- I mean,  
24 that's a focus, but he wrote certain things in his declaration  
25 that I think are fair game to ask questions about.

1 MR. TOBIN: Okay, beyond the number of users?

2 THE COURT: Yes.

3 MR. TOBIN: Okay.

4 THE COURT: So, for example, one thing I'm interested  
5 in because I'm supposed to balance this -- I've now looked at  
6 the case law -- is he said that he saved 38 children or 36  
7 children. It says 30 plus children were saved because of this  
8 operation. That's a relevant statement that could be probed.  
9 There was another issue that had to do with, that I'm  
10 interested in, that he closed down a certain function that  
11 allowed you to post produced pornography. So, I mean, there  
12 were things that were said.

13 You have another question, I guess, about whether or  
14 not there was a specific protocol that he was supposed to go  
15 through under the regulations. I mean, that's relevant, yes.  
16 But it's not about -- it's not about the whole case. It's not  
17 about NIT technology. It's not about the whole case. It's  
18 just about his motion and the balancing I'm supposed to do.

19 MR. TOBIN: Of course. Well, that's why I asked. I  
20 just wanted to know the parameters. Now, more than I had  
21 anticipated, so I hope that this witness can address everything  
22 the Court is interested in. If not, we can live another day.

23 THE COURT: Yes. Where is he from?

24 MR. TOBIN: He's in Maryland. I mean, he's here  
25 today, but he works in Maryland. We have planes. He can

1 always come back, or I can bring somebody else in if --

2 THE COURT: I know, take it from one who's on that  
3 corridor, it's not a big deal, okay?

4 All right, so let's pull him up. Come on up. Thank  
5 you so much for coming. You have a beautiful fall day up here.

6 MR. TOBIN: So for the record, the United States calls  
7 Special Agent Daniel Alfin.

8 DANIEL ALFIN  
9 having been first duly sworn, was examined and testified as  
10 follows:

11 DIRECT EXAMINATION BY MR. TOBIN:

12 Q. Good morning, sir.

13 A. Good morning.

14 Q. Would you kindly tell the Judge your full name and spell  
15 your first and last name for our Court Reporter.

16 A. My name is Daniel Alfin, D-a-n-i-e-l A-l-f-i-n.

17 Q. Sir, how are you employed?

18 A. I am a special agent with the FBI.

19 Q. How long have you served in that capacity?

20 A. I have been a special agent with the FBI since 2009.

21 Q. And which unit are you currently assigned?

22 A. I'm currently assigned to FBI headquarters Criminal  
23 Investigative Division, Violent Crimes Against Children  
24 Section, Major Case Coordination Unit.

25 Q. And what are your primary duties and responsibilities in

1 that position?

2 A. The Major Case Coordination Unit, I investigate  
3 individuals who use various types of technology to facilitate  
4 the production, distribution, and advertisement of child  
5 pornography.

6 Q. And what was your employment prior to becoming a special  
7 agent with the Federal Bureau of Investigation?

8 A. Prior to being employed by the FBI, I was employed by  
9 Raytheon Integrated Defense Systems as a field engineer at the  
10 Naval Undersea Warfare Center in Keyport, Washington, where I  
11 was responsible for managing computer networks and computer  
12 servers utilized by the Navy and Marine Corps.

13 Q. Sir, in your capacity as a special agent within the FBI,  
14 in the unit that you've described, have you participated in the  
15 investigation sometimes referred to as Playpen or Pacifier?

16 A. I have.

17 Q. And what has your role been in that investigation?

18 A. I am the primary case agent for that investigation.

19 Q. Have you testified in courts around the country in that  
20 capacity?

21 A. I have.

22 Q. And have you provided various declarations and/or  
23 affidavits in that capacity?

24 A. I have.

25 Q. And you recently provided the government with a

1 declaration for this case, *United States v. Anzalone*; isn't  
2 that accurate?

3 A. Yes, I did.

4 Q. And at some point you had provided a declaration and gave  
5 testimony in *United States v. Michaud* in the Western District  
6 of Washington?

7 A. Yes, that's correct.

8 Q. Are you aware that there has been some suggestion --

9 THE COURT: Excuse me. Is that the only other time  
10 you've testified about it in person?

11 THE WITNESS: No, your Honor. I have provided  
12 testimony in the Western District of Washington, the Western  
13 District of Arkansas, the Middle District of Florida, the  
14 Eastern District of Virginia.

15 Q. And that's all, just so it's clear, all in the Playpen or  
16 Pacifier investigation and your role in it?

17 A. Yes, that's correct, and I believe those are all of the  
18 jurisdictions where I have testified thus far.

19 THE COURT: Do you remember one more?

20 MR. WATKINS: Western District of North Carolina?

21 THE WITNESS: Western District of North Carolina was  
22 for the trial of the individual who created the Playpen  
23 website, so I consider that to be a somewhat different manner  
24 because he was identified in a different manner than the other  
25 defendants in the investigation, but, yes, I did testify in a



1 trial in the Western District of North Carolina.

2 Q. And in either testimony or in declarations, have you  
3 addressed the issue as to whether or not the number of users  
4 logging into Playpen increased during the period of time that  
5 the government -- I'll use the term "controlled" but maybe  
6 ill-advisedly -- have you testified or written declarations as  
7 to whether or not the number of Playpen users increased during  
8 the tenure that the government was somewhat in control of the  
9 website?

10 A. Yes, I have.

11 Q. Okay. And are you aware that there is some suggestion  
12 that the number of users had in fact increased while the  
13 government ran that website?

14 A. Yes, I have.

15 Q. Okay, just so the record is clear, during which period or  
16 when did the government run this website?

17 A. The government took control of and operated the Playpen  
18 website from February 20, 2015, through March 4, 2015.

19 Q. And have you been able to analyze the data and determine  
20 essentially the number of individual users or users that used  
21 the website during that approximate two-week period?

22 A. Yes.

23 Q. And is it accurate that in your either testimony or your  
24 declarations, your statement and your position has been that  
25 the number of users did not essentially increase during those

1 two weeks?

2 A. Yes, that's correct.

3 Q. And you're comparing that to what period?

4 A. I analyzed a copy of the Playpen website that the  
5 government seized from the residence of the creator of the  
6 Playpen website. That backed-up copy of the Playpen website  
7 contained certain historical data about Playpen, including when  
8 members had accessed the website. And so analyzing that copy  
9 of the Playpen website, I was able to determine that for an  
10 approximate two-week period between January 31, 2015, and  
11 February 14, 2015, that the Playpen website saw approximately  
12 50,000 unique users a week.

13 Q. Now, just so it's clear, that is before it was seized or  
14 in any way, shape, or form operated by the government?

15 A. That's correct.

16 THE COURT: And is that the exact number of days that  
17 you operated the website?

18 MR. TOBIN: No. I think what he's giving us now is  
19 not the days that the government operated the website. He's  
20 giving us the --

21 THE COURT: Is the number of days he analyzed the same  
22 number of days exactly as the days that you operated it? In  
23 other words, are we dealing with apples and apples?

24 THE WITNESS: I believe the FBI operation from  
25 February 20 through March 4 would constitute 13 days, your

1 Honor.

2 THE COURT: Okay.

3 Q. So the FBI, the data you have for the FBI's operation is  
4 for 13 days?

5 A. Yes.

6 Q. And so I think the next logical question would be --

7 THE COURT: This is 15 days, right? No?

8 THE WITNESS: I believe January 31 through February 14  
9 should be two weeks, 14 days, your Honor.

10 THE COURT: I guess it depends when you start and when  
11 you stop. All right.

12 Q. I'm sorry. I think right now we're discussing your  
13 analysis of usage or number of users from January 31, 2015, to  
14 February 14, 2015, a period when the FBI had no control of the  
15 website. What was the number of users?

16 A. Approximately 50,000 a week.

17 Q. And then have you been able to analyze and to look at the  
18 number of users between February 20 and March 4, that 13-day  
19 period when the government was operating, in control of, or  
20 supervising the website?

21 A. It was similarly approximately 50,000 a week, and in the  
22 declaration that I submitted, there are more specific numbers  
23 and specific dates and times provided.

24 Q. And how --

25 THE COURT: When you say unique users, so if you take

1 somebody who keeps coming back, repeat user, you wouldn't count  
2 them separately?

3 THE WITNESS: That's correct, your Honor.

4 Q. And that's because you know the unique handle or the  
5 unique designation or IP address?

6 A. Well, the actual message board software only records the  
7 last time that someone accessed the website, and so in  
8 analyzing the seized copies of the website, we'll only see the  
9 last time that a user accessed the website, so there will only  
10 be one entry per user account.

11 Q. And how did you calculate these numbers? I think your  
12 testimony seems to be that for the two-week period that you  
13 analyzed before the FBI became involved, it was approximately  
14 50,000 users. How do you get this? I mean, I assume that  
15 you're not sitting there with an abacus counting one, two,  
16 three, four, five, six, seven, eight, nine, ten. Explain to us  
17 in a way, how do you determine how many users? Is it all done  
18 by computer software?

19 A. The actual message board software that Playpen ran on  
20 maintained all of the records that I analyzed, so it was a very  
21 simple process of just extracting that data from the database.  
22 A more detailed explanation and the tools that I use are  
23 contained in my declaration, but these tools are all commonly  
24 freely available. I think the specific very simple  
25 calculations that I performed are also included in detail.

1 It's just a simple process of calculating an average number of  
2 user log-ins over the given period of time.

3 Q. Your declaration was filed with the court, but you had  
4 provided to me along with the declaration various spreadsheets  
5 which were not filed with the court but were given to the  
6 defense. Just so the Judge understands what the defense has  
7 been given, can you tell us in general terms, what were on the  
8 spreadsheets that you provided to me and I provided to the  
9 defense?

10 A. So the database that I analyzed contained all of the  
11 relevant fields about when users had logged into the website  
12 last, what their user ID was. And so I exported all of the  
13 data that I analyzed into spreadsheets so that defense can look  
14 at those spreadsheets and confirm that the calculations that I  
15 performed are accurate. I also added some additional columns  
16 of data to those spreadsheets to assist in that analysis to  
17 make them easier to read.

18 Q. Now, you're using the number approximately 50,000 a week,  
19 but in the NIT search warrant affidavit, wasn't a different  
20 number used for users on this website?

21 A. Yes.

22 Q. What number was used there?

23 A. The NIT warrant affidavit stated that the Playpen website  
24 saw, I believe it was just over 11,000 unique users a week.

25 Q. But, sir, 11,000 is a far cry from approximately 50,000.

1 Can you explain the apparent discrepancy?

2 THE COURT: Well, can I just start with, so one was  
3 11,000 a week, but the 50,000 is for two weeks, right?

4 MR. TOBIN: No.

5 THE WITNESS: No, your Honor.

6 THE COURT: 50,000 a week over those two periods?

7 THE WITNESS: Yes, your Honor.

8 THE COURT: All right.

9 Q. So your testimony today is that it was 50,000 a week.  
10 What's this 11,000 that was in the NIT warrant? Where does  
11 that come from?

12 A. So, in the NIT warrant, the calculation that was done  
13 there calculated the average number of unique user log-ins over  
14 the entire length of the time that the Playpen website had  
15 existed. And so the Playpen website came online approximately  
16 August, 2014, and so understandably, in the first days and  
17 weeks of any new website, membership is very low. When the  
18 website is first created, there's only one user, the person who  
19 created the website. As time goes on, as the website becomes  
20 more popular, as more people find out about it, more people  
21 join and access the website. And so the average that was given  
22 in the NIT affidavit that stated approximately 11,000 was  
23 calculated using the entire time frame that the website had  
24 existed, so it included that initial weeks and months of the  
25 website where user activity was low, and that's what took that

1 average and brought it down so low.

2 Now, when the FBI had control of the website, it was  
3 at the height of its popularity. This is the final two weeks  
4 that the website had operated, and so it wasn't brand-new.  
5 Everyone knew about it. It was popular. And so if you  
6 calculate average user activity just on the most two popular  
7 weeks of the website, you're going to have a much higher  
8 number. This is not to say that anything in the NIT warrant  
9 affidavit was incorrect. It was one hundred percent correct.  
10 It's just we're comparing two completely different formulas.

11 Q. Now --

12 THE COURT: At some point early on in this litigation,  
13 there had been some notion that Tor was congested or needed to  
14 be fixed?

15 THE WITNESS: Yes, your Honor. When the FBI initially  
16 took control of the Playpen website, it was operating very  
17 slowly. People were having problems accessing the website, and  
18 it's not a problem that we fully understand. The Tor project  
19 itself, the nonprofit who develops and maintains the Tor  
20 network, they have articles on their own website that I cited  
21 in one of my declarations that state as much. Sometimes Tor  
22 hidden services like Playpen are slow and no one really knows  
23 why, just because of the complicated setup process for  
24 connecting to a Tor hidden service. So we encountered  
25 connectivity issues. I think they lasted for the first few

1 days of the FBI operation, and then things got better.

2 Q. Let me ask you a question about that. I believe there's  
3 been some suggestion that things got better because you folks,  
4 for lack of a better term, tinkered with it, fixed it, modified  
5 it, did something to it to allow more of these people access to  
6 it. Can you address that? Is that accurate?

7 A. It is not accurate. In one of the motions alleging that  
8 the government, or myself personally, made improvements to the  
9 Playpen website, there is a particular post cited by an  
10 undercover FBI agent. That undercover cover FBI agent, after  
11 the connectivity issues were resolved, stated that he had  
12 upgraded the Token Ring to Ethernet, and that that was why the  
13 website was suddenly working faster. This was a, for lack of a  
14 better description, a nerd joke. Token Ring was a networking  
15 technology that was used in the '80s. It is generally not used  
16 in modern technology. No part of the Playpen website ever  
17 relied on Token Ring. This was just the undercover agent  
18 making a joke consistent with previous activity that the  
19 creator of the Playpen website would have said. It was not any  
20 reference to actual upgrades or improvements to the Playpen  
21 website.

22 Q. And you've been on this investigation since before the  
23 website was taken from the server?

24 A. Yes.

25 Q. You've been the lead agent on the case since then?



1 A. Yes.

2 Q. And to the best of your knowledge, has the FBI or anybody  
3 in your employ or at your call done anything to increase the  
4 efficiency or to allow more people onto the website?

5 A. No, and as I stated, again, there was consistent activity  
6 on the website both before and after the FBI takeover.

7 Q. I have another question, something, for what it's worth,  
8 we haven't discussed because this goes beyond what I thought  
9 was the scope of the hearing, so I apologize that I didn't give  
10 you warning, but whatever, it is what it is. There have been  
11 some statements made in various affidavits or declarations  
12 about the utility or the usefulness of this operation or this  
13 NIT. As you heard the Judge momentarily a few minutes ago make  
14 reference, there's been some suggestion or talk or  
15 representation that as a result of the NIT in this  
16 investigation, a certain number of people have been rescued or  
17 saved from sexual exploitation. Are you familiar with that?

18 A. Yes, I am.

19 Q. And just so it's clear, in any of your testimony or  
20 writings, did you make a reference to the number of children or  
21 children that have been saved from sexual exploitation because  
22 of this investigation and the NIT?

23 A. Yes. In one or more of my declarations, I've stated that  
24 our investigations of members of the Playpen website have led  
25 to the rescue of at least 38 children from hands-on sexual

1 abuse. As of today, I believe the number is either 49 children  
2 or higher.

3 THE COURT: So as a result of the NIT, you're saying  
4 you did searches in homes and found these children?

5 THE WITNESS: Yes, your Honor.

6 Q. So I'm not going to ask you to go through 49 or more  
7 cases, but, generally, what do you mean that children had been  
8 saved or safeguarded? What do you mean by that?

9 A. In general, when search warrants were executed as a result  
10 of this investigation, during the course of those subsequent  
11 local investigations, it was determined generally that a child  
12 in the house was being sexually abused. Whether or not there  
13 was production of child pornography involved, sometimes there  
14 was; sometimes there was not. Sometimes it was just hands-on  
15 abuse with no production of child pornography. But to date,  
16 our investigation has led to the identification and rescue of  
17 at least 49 children in such circumstances.

18 THE COURT: Can you estimate the number who had the  
19 child pornography posted on that website; in other words,  
20 pictures of the abuse being posted?

21 THE WITNESS: To my knowledge, of those 49 children, I  
22 have personal knowledge that I believe two of them had images  
23 that were produced and distributed on the Playpen website. The  
24 majority of the children that were rescued I don't believe had  
25 images or videos produced of them. I think they were just

1 being abused generally by a relative.

2 THE COURT: And just to make it clear, none of that  
3 involved this defendant?

4 THE WITNESS: To my knowledge, I don't believe there's  
5 been any allegation of hands-on offenses with this defendant.

6 MR. TOBIN: May I have just a moment, your Honor,  
7 please.

8 I don't think I have any other questions.

9 THE COURT: You've made it seem as if the production  
10 capability was still on even though you had turned it off?

11 THE WITNESS: No, so when the FBI took control --

12 THE COURT: That function where somebody could post  
13 child pornography?

14 THE WITNESS: So while the FBI had control of the  
15 website, people could still post child pornography images  
16 there. However, there was a specific section of the Playpen  
17 website that was called The Producer's Pen. This section of  
18 the Playpen website encouraged members to produce new images of  
19 child pornography. The FBI shut that part of the website down  
20 immediately upon taking it over, and it was never brought back.

21 THE COURT: Was it ever used before you shut it down?

22 THE WITNESS: Before we shut it down, there was one  
23 individual who had posted images, either images or videos of  
24 child pornography that he had produced exclusively for the  
25 Playpen website. That individual was identified and his

1 victims were rescued.

2 THE COURT: As a result of this investigation?

3 THE WITNESS: Partially. He was located in a foreign  
4 country, and some of our foreign counterparts had engaged with  
5 him in undercover activity. And so we contributed to that  
6 effort, but we were not the lead investigative agency with  
7 respect to that individual's arrest.

8 THE COURT: All right, thank you. I'm sorry.

9 MR. TOBIN: No, no, I don't have any follow-up to  
10 that, so I'll sit down.

11 MR. WATKINS: May I, your Honor?

12 CROSS-EXAMINATION BY MR. WATKINS:

13 Q. Good morning, Special Agent Alfin.

14 A. Good morning.

15 Q. I just want to get the timeline a little bit. You were  
16 already -- part of your job is monitoring child exploitation  
17 websites?

18 A. Yes. That's fair to say.

19 Q. And you began seeing links to Playpen in August of 2014,  
20 which I think you've testified shortly after Playpen got going?

21 A. Correct.

22 Q. At that point you navigated yourself over to Playpen and  
23 could see what was there?

24 A. Correct.

25 Q. And you saw that the site was growing, as you mentioned,

1 starts out slow, but you kept on through the months keeping an  
2 eye on the growth of Playpen, right?

3 A. That's fair to say, yes.

4 Q. And, of course, because it's on the Tor network,  
5 difficult, if not impossible, to find out where it is?

6 A. Yes.

7 Q. In December you were given an IP address for the server  
8 that Playpen was on, right?

9 A. Yes.

10 Q. And just I'm going to break that down a little bit. A  
11 server and a site are two different things, right?

12 A. Yes. A server is just a computer, and the site is the  
13 software that was running on that server.

14 Q. And this case is a good example because this is a  
15 server-hosting company that actually had Playpen on it, right?

16 A. Yes.

17 Q. They're leasing space to all kinds of people? They're a  
18 fairly large hosting operation, right?

19 A. They were a legitimate business. I don't know the size  
20 comparatively, but it was a legitimate business in North  
21 Carolina.

22 Q. And that's what they did was lease space on that server in  
23 North Carolina, and that's where the IP address resolved it?

24 A. Well, generally, yes, but just to clarify, I believe that  
25 the subject who created the website was leasing the entire

1 server, not just space on one server.

2 Q. Okay, the company's entire space?

3 A. No, just -- he had one dedicated server, I believe.

4 Q. All right. And, well, two things: One, the  
5 administrator, the person who designed the site is Steven  
6 Chase, right?

7 A. Yes.

8 Q. We can say his name. He's been convicted, right?

9 A. Yes.

10 Q. And also the name of the hosting service, that's redacted  
11 from the affidavit, but that's public knowledge now, right?

12 A. I believe it is. It was -- the name of the company was  
13 Central Logic.

14 Q. Right. So Central Logic has a whole bunch of servers that  
15 they rent space to, right? That's common?

16 A. Yes.

17 Q. And one of those places was -- one of those operations was  
18 Playpen?

19 A. Well, they were leasing space to Steven Chase, and Steven  
20 Chase was hosting the Playpen website on that server.

21 Q. Turning back to the Internet protocol address, the IP  
22 address that we're talking about, you were given that  
23 information that despite the fact that it was on Tor, this IP  
24 address had shown up at some point, right?

25 A. Yes.

1 Q. And that's because the site administrator misconfigured  
2 the site for a moment where it wasn't on Tor anymore, right?

3 A. Well, no, that's not accurate.

4 Q. Well, tell me how it was that an IP address shows up where  
5 it's supposed to be on Tor.

6 A. So, generally, when you configure a Tor hidden service,  
7 you create a normal website as you would any other website, but  
8 then you make certain configurations to the software on the  
9 server to insure that that website can now only be accessed  
10 over the Tor network. And so in that configuration file on the  
11 server, there was a typo in one of those lines of code, and so  
12 that typo caused the website to be still available on the Tor  
13 network, but you could also access it through the regular  
14 Internet if you knew its true IP address.

15 Q. And that's what happened, is somebody discovered its true  
16 IP address and gave that information to you?

17 A. Yes, that's correct, and then I was able to authenticate  
18 that information and verify that it was accurate.

19 Q. That's an extremely happy day for you, right? You're able  
20 to find a large child pornography website?

21 A. That is generally considered a good thing, yes.

22 Q. And so in December, that's when you identify where Central  
23 Logic is, and that is where Playpen is operating from?

24 A. Yes.

25 Q. And you begin making further efforts to identify the

1 administrator, and that leads you to Steven Chase?

2 A. Yes, that's correct.

3 Q. In January of 2015, you obtained a search warrant to go to  
4 Central Logic and get a copy of the Playpen website?

5 A. Yes, that's correct.

6 Q. So even though you did not control it until February 20,  
7 beginning on a date in January, the FBI had a copy of  
8 everything that was on the Playpen website, right?

9 A. As of the date that that copy was seized, yes, that's fair  
10 to say.

11 Q. And what was the date that that copy was seized in  
12 January?

13 A. It was mid-January. I don't recall the exact date, but  
14 the search warrant I think has been discussed publicly.

15 Q. The search warrant says January sometime, but you think  
16 mid-January. So for a full at least 31 days before the  
17 government took control of that website, you and other agents  
18 knew exactly what was on it?

19 A. Are you -- I just want to make sure you're referencing the  
20 same time period I am. Are you referencing the time period  
21 between the January seizure and the government takeover?

22 Q. Yes.

23 A. Yes.

24 Q. And so that would include access to all of the images and  
25 videos that were then on the website, right?



1 A. No. So the Playpen website, after the first few days of  
2 the website, the administrator, Steven Chase, disabled the  
3 functionality of the website that would allow users to attach  
4 images and videos directly to the website. And so generally --

5 THE COURT: So this is after he was arrested?

6 THE WITNESS: Before he was arrested, your Honor.

7 THE COURT: So he didn't know about you yet?

8 THE WITNESS: He did not know about me until he was  
9 arrested on February 20.

10 THE COURT: This wasn't part of the cooperation. He  
11 disabled it on his own?

12 THE WITNESS: He never cooperated, your Honor.

13 THE COURT: I see.

14 THE WITNESS: So websites like Playpen, because  
15 they're operating within the Tor network, they can be very  
16 slow. And so when you have a website, a very large child  
17 pornography website, if you allow individuals to attach images  
18 directly to their postings, it makes the website go even slower  
19 because some of those images are very large; it takes a long  
20 time to download them. And so generally with websites like  
21 Playpen, what users will do, they will actually post the images  
22 and videos on other websites, frequently not on the Tor  
23 network; and so they'll upload their images and videos to these  
24 other websites, encrypt them with a password, and then they'll  
25 go to Playpen. They'll post a small preview image and say, "If

1 you want the full thing, click on this link. Here's the  
2 password to download it. Here's the password to decrypt it."  
3 And so this was generally how content was distributed on the  
4 Playpen website.

5 And, now, at certain points in time the creator,  
6 Steven Chase, did create two additional features of the Playpen  
7 website that are referred to as Playpen image hosting and  
8 Playpen file hosting, and these were separate Tor hidden  
9 services that were part of the Playpen website where users  
10 could upload images and videos without making the actual  
11 website go slower. So when we seized that copy in January, we  
12 did not have access to all of the images and videos that were  
13 distributed through the Playpen website. I believe that  
14 seizure only included the actual -- the website itself.

15 THE COURT: So when you say you seized it but didn't  
16 control it, it means you just copied it and Chase didn't know  
17 about it?

18 THE WITNESS: Yes, your Honor. So Chase leased, I  
19 believe it was two physical servers at Central Logic in North  
20 Carolina. And so the day before we seized a copy of the  
21 website, Chase had moved the website from one of his servers to  
22 the other one. So the live copy of the website was now on what  
23 I'll call Server No. 2, and so we seized a copy of Server  
24 No. 1, so there was no interruption to the Playpen website,  
25 Chase didn't know that we had seized that copy, and the users

1 of the Playpen website never experienced any connectivity  
2 issues. So we were able to surreptitiously seize a copy of the  
3 website.

4 THE COURT: So you knew about its operations for  
5 30 days before you seized it?

6 THE WITNESS: So I first learned that the website was  
7 hosted in North Carolina, I believe it was December 23, 2014,  
8 and at that point we began drafting -- well, initially we sent  
9 a subpoena to the company, and then we sent -- we drafted a  
10 search warrant and continued our investigation through that  
11 manner.

12 THE COURT: Right, and then you copied it in January?  
13 Do you remember the date?

14 THE WITNESS: It was mid-January, your Honor. I  
15 believe it may have been somewhere between January 14 and 15.  
16 I can certainly look that information up and get it to the  
17 Court afterwards.

18 THE COURT: In any event, sometime mid-January, and  
19 then you actually, just so I get the timeline in, you actually  
20 seize it on February 20?

21 THE WITNESS: We took control of it on February 20.

22 THE COURT: So roughly a month, give or take?

23 THE WITNESS: In between those two, yes, your Honor.

24 Q. But you actually seized it in January, right, you seized  
25 the server? That's what the search warrant --

1 A. We seized a copy of it. We didn't take the physical  
2 server. It was an ECPA search warrant, so we got copies of the  
3 data. We didn't physically take any servers.

4 Q. And that search warrant, that wasn't in connection to a  
5 specific case? That was a search warrant directed at Central  
6 Logic, right?

7 A. I'm sorry. What do you mean, not directed towards a  
8 specific case?

9 Q. In other words, that particular search warrant has not  
10 been released publicly in any case?

11 A. Uhm, I'm not sure if it's still under seal or not. I know  
12 copies of it have been provided pursuant to protective orders,  
13 I believe, in some of the Playpen cases. I don't recall  
14 whether or not it's still under seal.

15 Q. Can you tell me which cases it was provided?

16 A. I believe we provided a copy of it in *U.S. v. Michaud* in  
17 the Western District of Washington. I would have to verify,  
18 but I'm fairly confident that we provided it pursuant to a  
19 protective order, if it's not already unsealed.

20 Q. So that's available. That search warrant authorized you  
21 to seize the entire website, right?

22 A. It authorized us to seize copies of data from a particular  
23 customer account in Central Logic.

24 Q. Once you have seized it and know where it is, you also  
25 have the ability at that point to shut it down?

1 A. We have the ability to shut down that particular instance  
2 of the Playpen website. We don't have the ability to remove it  
3 from existence.

4 Q. Well, so you asked Central Logic to make a copy of that  
5 website that's in North Carolina, right?

6 A. Actually, I think we sent an FBI agent out there to make  
7 the copy itself. I don't think Central Logic had the  
8 capability to do that.

9 Q. You already know what's on the website because you've been  
10 monitoring it, right?

11 A. Well, I had already logged into the website and confirmed  
12 that the Playpen website was there, so, yes, I knew that the  
13 Playpen website was on that particular server.

14 Q. And you have an FBI agent down there confirming that this  
15 is indeed a website that has links to child pornography all  
16 over the country, all over the world?

17 A. The FBI agent that went out to seize the copy, his only  
18 job was to go and copy the data from the server. He wasn't  
19 responsible for analyzing that data.

20 Q. Sure. You've analyzed that data since then, right?

21 A. I have.

22 Q. And that data confirmed what you saw in the months leading  
23 up to December, right, to January?

24 A. We confirmed that the Playpen website was being hosted at  
25 Central Logic at that time.

1 Q. And it also confirmed that there are child porn images and  
2 videos and links for child porn images and videos on that site,  
3 right?

4 A. Yes.

5 Q. So as of that date, there would have been no impediment to  
6 simply unplugging Playpen in North Carolina and stopping it?

7 A. We could have unplugged it in North Carolina, that's  
8 accurate.

9 Q. And once it's unplugged in North Carolina, that's it for  
10 Playpen? People can't go to the website anymore?

11 A. No. Well, they can't go into it in North Carolina  
12 anymore, but based on my training and experience, I think it  
13 would have taken maybe a day or two for it to pop up again  
14 somewhere else, just as it was up until that date.

15 Q. If Central Logic had -- by that time, you also knew or you  
16 were gaining information about Steven Chase, right?

17 A. Yes.

18 Q. And you knew -- actually, by then you knew of where he  
19 lived and what he was doing on the site?

20 A. It was approximately around that time frame. I don't  
21 remember the exact day when Steven Chase was identified.

22 Q. But in mid-January, so you have the site, you have the  
23 administrator both in your sights, so to speak?

24 A. Yes, that's fair to say.

25 Q. So at that point you could have taken down the website;

1 you could have arrested Steven Chase for operating the website.  
2 He can't move it around anyplace else.

3 A. He can't, that's true. Playpen had three administrators,  
4 and at that point it was unknown whether or not other  
5 administrators had backup copies of the website that they could  
6 have put back up online. So it is not accurate to say that we  
7 had everything we needed to insure that we could have shut down  
8 Playpen for good.

9 Q. For good, but you could have shut it down in North  
10 Carolina from people logging onto that IP address in North  
11 Carolina that was Playpen?

12 A. Yes, we could have shut down that particular copy of the  
13 website in North Carolina, that is true.

14 Q. And at that point you were aware that there was no copy  
15 running someplace else? There was no backup server someplace  
16 else?

17 A. Well, a Tor hidden service can only be running on one  
18 server at any particular time. Otherwise, there would be  
19 conflicts and collisions within the network. So that was the  
20 only current place where the Playpen website was.

21 Q. And you've certainly learned since then that that was the  
22 only place that it was ever hosted was in North Carolina?

23 A. That's not true.

24 Q. Where else was Playpen hosted?

25 A. It was hosted at at least one or two other service

1 providers prior to being hosted at Central Logic.

2 Q. Correct, in the early days of Playpen, it was hosted in  
3 other spots, right?

4 A. Yes.

5 Q. It moved to Central Logic when?

6 A. I believe it was October, 2014.

7 Q. So from October, 2014, right up to January, always  
8 operated off of Central Logic in North Carolina?

9 A. The website itself did. Some features of the website  
10 operated in other areas.

11 Q. Some features meaning the hosting and the actual images?

12 A. The file-hosting feature of the Playpen website was  
13 located on a server in Canada. The image-hosting feature of  
14 the website was also located at Central Logic in North  
15 Carolina. And then the majority of the content, I would  
16 estimate the majority of the content that was distributed  
17 through the Playpen website over the course of its existence  
18 was hosted at various providers, known and unknown.

19 Q. And just to be sure, these are all adjuncts to the Playpen  
20 site. The Playpen site is the front end of it that leads you  
21 to these other places that are portions of the site?

22 A. The image uploader and the file uploader for Playpen, yes.

23 Q. The website continued to run at that point, right?

24 A. After we seized the copy in January?

25 Q. Yes.



1 A. Yes.

2 Q. It ran all the way till March 4, right?

3 A. Well, it ran in North Carolina through approximately  
4 February 20.

5 Q. And in the FBI in Virginia until March 4?

6 A. Correct.

7 Q. So during this time, you're continuing to go -- well, let  
8 me back up. When you seize it, it's not just the website. You  
9 get the back end of the website as well. You get to see what  
10 the administrator sees, right?

11 A. Yes, that's true.

12 Q. And so this includes sometimes IP addresses, right? Some  
13 of the administrators actually had their real IP addresses  
14 within the site; is that true?

15 A. So the primary administrator, his IP address did show up  
16 in server logs.

17 Q. And there were some other logs with actual IP addresses  
18 that were recognizable, right?

19 A. There were other logs that had real IP addresses, but they  
20 were generally either Tor nodes or virtual private network IP  
21 addresses, both of which generally are not actionable. And so  
22 even if you don't access a Tor hidden service, in the case of  
23 Playpen, as I testified earlier, it was also available on the  
24 regular Internet. And so --

25 Q. For a short period of time?

1 A. Correct.

2 Q. Just to be clear, by the time you seized it in January,  
3 that misconfiguration had been fixed?

4 A. No, I don't believe it had been. I don't believe the  
5 administrator, Steven Chase, I don't believe he ever actually  
6 fixed that glitch. I think it was still present up until he  
7 was arrested.

8 Q. So just to be clear then, one could reach Playpen from  
9 December up until the time that the FBI finally shut it down,  
10 one could reach that without using a Tor browser?

11 A. If you knew its true IP address, yes, you could.

12 Q. In addition, when you seized the copy of the server, you  
13 had the back-end information that showed you where the links on  
14 the site would take one for images and videos, right?

15 A. Yes. That information was contained in that database.

16 Q. So because you now had the site from both the front end  
17 and the back end, you could in fact go through and download  
18 videos, all of the videos and all of the images that Playpen  
19 referenced there, right?

20 A. We were engaging in undercover activity on the Playpen  
21 website for a while. We could have always logged onto the  
22 website and seen the links to the images and videos. That  
23 wasn't any specific capability that we gained after seizing a  
24 copy of it.

25 Q. That's true, but at that point you actually had the

1 website. When you were looking at it before, right, you can't  
2 do anything about it? You'd love to shut that thing down, but  
3 you can't do anything about it because you don't know it,  
4 right?

5 THE COURT: Because you don't know what?

6 Q. You don't know where it is?

7 A. The actual website, correct.

8 Q. Once you did know the website in January, you could have  
9 shut it down, right?

10 A. As I testified earlier, we could have taken offline the  
11 copy that was in North Carolina, that is true.

12 Q. And indeed the FBI now has taken the whole thing down.  
13 There's no Playpen left anywhere, right?

14 A. That's correct.

15 Q. So that could have also happened in January the same way  
16 it happened in March?

17 A. No.

18 Q. Let me --

19 THE COURT: Why not?

20 THE WITNESS: Your Honor, as I testified earlier, the  
21 administrator had hosted the Playpen website at various hosting  
22 providers, not just in North Carolina. And so we know that he  
23 had multiple backup copies of the Playpen website in his  
24 possession. And so if we had just knocked the server offline  
25 in January, it would have been a process of hours to lease

1 server space at another company, put a copy of the Playpen  
2 website back online, and then it would have been running again  
3 just as it was before in North Carolina.

4 Q. But you arrested Mr. Chase later on, February?

5 A. Yes, we did.

6 Q. And he was the one with the backup copy, right?

7 A. Yes. He had multiple backup copies of the website.

8 Q. And indeed, I think you already testified to this, but you  
9 had his information in January when you seized the site?

10 A. Around that time frame we had identified Mr. Chase as our  
11 primary suspect, yes.

12 Q. So whether it was during the time that you were just  
13 monitoring the website before you knew where it was, and then  
14 after you found out that you did know where it was and could  
15 seize it, did you download images or videos yourself to check  
16 on victims?

17 A. I'm not sure I understand the question.

18 Q. Well, let me do it this way. You're familiar with the  
19 National Center for Missing & Exploited Children, right?

20 A. Yes, I am.

21 Q. And I'm going to refer to them as NCMEC, the acronym. You  
22 know that NCMEC keeps a database of hash values of images and  
23 videos, right?

24 A. Yes.

25 Q. So if you had downloaded one or 10,000 or 100,000 of the

1 images that were up there, send them to NCMEC, NCMEC will give  
2 you a report very quickly about whether those are known  
3 children or not, right?

4 A. Generally, yes.

5 Q. And they will tell you where some are not, right?

6 A. So NCMEC will tell you whether or not that particular hash  
7 value has been seen before, and if that hash value or if the  
8 image has never been altered since its initial submission to  
9 NCMEC, then those results will be accurate. So during the  
10 course of our investigation, we did submit all of the images  
11 and videos that we were able to capture to NCMEC.

12 Q. When did you do that?

13 A. I would estimate sometime in March, 2015.

14 Q. So that was after the FBI had shut down Playpen?

15 A. Yes.

16 Q. And you've received the results of what you sent to NCMEC  
17 at this point?

18 A. Yes, we have.

19 Q. And indeed there are many, many, many, many known victims  
20 that were posted up on Playpen?

21 A. Yes.

22 Q. And were those --

23 THE COURT: I don't know what you mean by victims.  
24 You mean the Holly series?

25 THE WITNESS: Yes, your Honor. The majority of child

1 pornography that was distributed through the Playpen website  
2 was existing series of child pornography. There was -- the  
3 actual section on the Playpen website, The Producer's Pen that  
4 encouraged new production, that actually only was created, I  
5 think it was a day or two before the FBI seized control of the  
6 website, so the majority of child pornography that was  
7 distributed through Playpen were existing series.

8 Q. And moving back, because you had the copy of the website  
9 already, there's no reason why you couldn't have sent those  
10 images and videos to NCMEC in January?

11 A. So, again, having a copy of the website is not the  
12 equivalent of having copies of all of the images and videos  
13 that were distributed through the website because the website  
14 itself was generally not the storage location for the images  
15 and videos; and so it's a lengthy manual process going through,  
16 downloading everything, decrypting it, and so on.

17 Q. Decrypting it means entering in a password, right?

18 A. Yes, it does.

19 Q. And the password was available on the website and you had  
20 it?

21 A. Yes.

22 Q. So when you talk about decrypting, it's not a long,  
23 involved process. It's finding where that password is,  
24 entering it in, and, bingo, you have a whole bunch of images?

25 A. Which is a lengthy process if you repeat it numerous

1 times. Doing it on one occasion is not a lengthy process.

2 Q. Did you do it at all in the period between January and  
3 March while the FBI allowed the site to run?

4 A. Yes, there were some instances where there were questions  
5 about whether or not images that were distributed on the  
6 website were in fact new or were not new, so some information  
7 was sent to NCMEC during that period.

8 Q. And that's very concerning to you if it's new images  
9 because -- why is that concerning to you?

10 A. Well, any images of child pornography are concerning, but  
11 anytime that a new series pops up, that generally means that  
12 there is a child somewhere who is actively being raped.

13 Q. And if it's on Playpen that it first shows up, that is a  
14 serious, serious issue, right? It's serious if it shows up  
15 anywhere. It's serious to you because now the FBI can stop  
16 that?

17 A. Well, no, that's not an accurate statement. The FBI at  
18 that point still has no capability to identify that child or  
19 stop the rape.

20 Q. Stop the posting of the image that is identified as a new  
21 image?

22 A. Which time period are you referring to?

23 Q. The time period where you talked about sending suspected  
24 new images to NCMEC.

25 A. Right.

1 Q. So if you start getting lots of responses from NCMEC, "We  
2 haven't seen that image or that video before," right, then  
3 Playpen is now posting brand-new content?

4 A. Playpen -- well, members -- under those circumstances,  
5 members are posting images and videos that NCMEC has never seen  
6 before. That's not necessarily an indication that Playpen is  
7 the first place that it was posted.

8 Q. Absolutely, but it's a much different thing than something  
9 that -- it's all serious, but it's different from something  
10 that NCMEC has seen over and over and over again, right?

11 A. Yes. It's different circumstances.

12 THE COURT: So did that happen during that initial  
13 January time period, new material being posted?

14 THE WITNESS: I am aware of two instances where  
15 confirmed new material was posted on the Playpen website after  
16 the government had the capability to do anything, no matter how  
17 limited that may be. One of those instances was, the  
18 individual who had posted in The Producer's Pen who I had  
19 testified to earlier was identified; his victims were rescued.  
20 The images that he had posted --

21 THE COURT: Is that the foreign guy?

22 THE WITNESS: Yes, your Honor. After that material  
23 was encountered, it was immediately removed from the Playpen  
24 website to prevent distribution of a new series. There was one  
25 other individual during the FBI's operation who had similarly



1 claimed to either have access to a child or be producing child  
2 pornography. That posting was also removed from the website,  
3 and a lead was sent to the country that that individual was  
4 believed to be in.

5 Q. And just to be clear, there have been declarations or  
6 assertions before that the FBI was unable to monitor every  
7 post, every download from Playpen during the course of this  
8 investigation?

9 A. I don't believe that's an accurate characterization. If  
10 there is a specific statement in a declaration you have a  
11 question about, I can address that, but I don't believe the way  
12 you've described it accurately reflects the declarations.

13 Q. I'll get to that in a moment, but I still want --

14 THE COURT: I'm just concerned about time.

15 MR. WATKINS: I'm sorry? Yes, I'll keep it --

16 THE COURT: Because I'm not going to bring him back,  
17 so I just want to make sure you get through what you've got to  
18 get through.

19 MR. WATKINS: We're moving, we're moving.

20 Q. So talking again now of this period between mid-January,  
21 perhaps the 15th or 16th, up through February 20 when the FBI  
22 starts operating the website itself, the website is ongoing.  
23 You talked -- there are other things happening in regard to the  
24 investigation, right? You're not just sitting on your hands at  
25 that point?

1 A. Correct. We are conducting surveillance on Steven Chase  
2 and preparing for our investigation of other members of the  
3 Playpen website.

4 Q. And at the same time, you and other members of the law  
5 enforcement team are trying to decide whether to keep running  
6 the site under government control?

7 A. Well, during this time frame that you've described, it was  
8 not under government control.

9 Q. But I'm saying, there are discussions about whether it  
10 should continue to operate, right?

11 A. Whether the government should take control of it and  
12 investigate other members of the website?

13 Q. Yes.

14 A. Yes, there were discussions had about that, about how to  
15 best conduct that investigation.

16 Q. Because one choice, though, always is just shut it down,  
17 right? Get everything we can and shut it down, right?

18 A. We could have shut down the Playpen website, as I  
19 testified to earlier.

20 Q. And there was a decision made to keep it going and to use  
21 the network investigative technique, right?

22 A. Yes.

23 Q. In regard to those discussions, who participated in those  
24 discussions about whether to continue it on?

25 MR. TOBIN: I'm going to object to that, your Honor.

1 Those are the internal deliberations of law enforcement that  
2 aren't --

3 THE COURT: Sustained.

4 MR. WATKINS: Your Honor, I'm not asking what they  
5 discussed. I'm asking who participated, and it's not internal  
6 deliberations. I should say, where this is --

7 THE COURT: For me, the issue is not so much who is  
8 involved. It was to use the NIT. That's just beyond the scope  
9 of what we're doing here. If you want to limit it to who was  
10 keeping it up and running it, I'm happy to have you do that.

11 MR. WATKINS: That's what I was asking, whose decision  
12 was it to keep it up and running in government control.

13 THE COURT: It was a two-part question. Anyway, so  
14 we're just going to limit it to, who decided to keep it going?

15 THE WITNESS: These were discussions that were had  
16 between the FBI and the Department of Justice, and we  
17 ultimately decided that we had a solid investigative plan, and  
18 we executed it.

19 Q. And when you talk about the Department of Justice, this  
20 was Main Justice in Washington that was part of these  
21 discussions?

22 A. Yes. We partner on this investigation with the Department  
23 of Justice Child Exploitation and Obscenity Section.

24 Q. And also with the Computer Crime and Intellectual Property  
25 Section?

1 A. Lawyers from CCIPS may have been consulted or involved at  
2 some point in time.

3 THE COURT: CCIPS?

4 THE WITNESS: I'm sorry, your Honor. The Computer  
5 Crime and Intellectual Property Section at the Department of  
6 Justice.

7 Q. So several arms of Main Justice were involved in the  
8 deliberations as to whether to continue the website with the  
9 government operating it?

10 A. Yes. We worked very closely with the Department of  
11 Justice on this operation.

12 Q. At the same time that you're working very closely with  
13 Main Justice about whether to keep it going, you are also  
14 drafting or getting ready to draft the NIT warrant?

15 A. Yes.

16 Q. And the people you were consulting with at Main Justice  
17 are also aware of the NIT warrant? It goes hand in glove?

18 MR. TOBIN: Objection. Again, beyond the scope of the  
19 focus here. I mean, the NIT warrant is the NIT warrant. It  
20 was decided and they did it. I don't know --

21 THE COURT: Well, I don't know whether it is, but let  
22 me just ask you, was the -- I don't want to go into the  
23 techniques of the NIT at all. It's just about the issue of why  
24 did you decide to keep it open?

25 THE WITNESS: We decided to keep the website running,

1 your Honor, because we could have just shut it down and  
2 hopefully removed Playpen from existence, but it would have  
3 left us with no ability to identify the members of the Playpen  
4 website, the individuals who were distributing child  
5 pornography or the individuals who were actual contact  
6 offenders who were members of the Playpen website. And so  
7 without going forward with this operation, we would have had no  
8 capability to identify anyone other than the creator of the  
9 Playpen website.

10 Q. So just to be clear, when you say "we," it's much more  
11 than you and Special Agent McFarland, who actually was the  
12 affiant on the search warrant, right? It's not just the two of  
13 you talking about this, right?

14 A. Correct. It's both the FBI and the Department of Justice,  
15 several individuals and levels of management from both  
16 organizations.

17 Q. There was an Assistant U.S. Attorney involved in the  
18 Eastern District of Virginia to issue the NIT warrant, but this  
19 went far beyond that as far as people having input?

20 A. There was an AUSA in Virginia that we worked with, yes.

21 Q. But it was not his or her decision either, right? This  
22 was a decision made higher up?

23 MR. TOBIN: Again, your Honor, with regard to the  
24 deliberative process at the Department of Justice --

25 THE COURT: I'll allow that it was made higher up.

1           THE WITNESS: It was, your Honor. It was done with  
2 the approval of executives in both the FBI and the Department  
3 of Justice.

4 Q. When you say executives, FBI general counsel?

5 A. The FBI Office of General Counsel was aware of the  
6 operation, yes.

7 Q. I don't want to get into the details of the NIT, but I do  
8 want to ask that you understood that the NIT would be deployed  
9 from the server to whatever computer logged into and went  
10 through the Playpen site, right?

11           MR. TOBIN: Objection. That essentially is a detail,  
12 and it goes beyond the scope of this.

13           THE COURT: Yes, let's just move ahead.

14           MR. WATKINS: If I may just have two quick questions  
15 on that.

16           THE COURT: I don't know what they are, but that one  
17 is just already established, so it --

18           MR. WATKINS: I was trying to do it as background more  
19 than anything. I think this is background also.

20 Q. So you knew it was going to be deployed domestically and  
21 internationally both, right?

22 A. Well, the NIT is installed on the server in the Eastern  
23 District of Virginia, and but for someone logging into the  
24 server in the Eastern District of Virginia, it would remain  
25 there. But, yes, we reasonably believed that there were

1 members of the Playpen website throughout the country and  
2 throughout the world.

3 Q. And this NIT, if it weren't the government doing it, it  
4 would be identified as malware or hacking other computers?

5 MR. TOBIN: Objection.

6 THE COURT: Sustained. We're just dealing with this.

7 MR. WATKINS: I understand.

8 Q. Are you aware of what the vulnerable equities --

9 MR. WATKINS: I'm sorry?

10 THE COURT: I just wondered, was there a specific  
11 protocol for addressing the ethical issues that come with  
12 keeping something like this alive?

13 THE WITNESS: I don't know if there is a specific  
14 protocol, your Honor, but we did have discussions on that very  
15 topic. It was decided that based on the population of the  
16 Playpen website, based on historical analysis of investigations  
17 of individuals who trade and distribute child pornography, that  
18 this was a rare opportunity to not only identify a large number  
19 of distributors of child pornography but to identify and rescue  
20 a large number of victims, as that is the primary focus of our  
21 work is to identify and rescue victims. And so opportunities  
22 such as the one presented in this case are incredibly rare, and  
23 so the benefits of engaging in this operation, we determined  
24 that they outweighed the option of just removing Playpen from  
25 existence and waiting until another such website popped up

1 24 hours later.

2 Q. I want to talk about the actual website as you found it.  
3 You mentioned that there was a typo in the code that made it  
4 misfigured, where actually it could be seen even if you didn't  
5 have a Tor browser?

6 A. Yes.

7 Q. There are also other amateurish features to it? The  
8 log-in page, right, you talked about that in one of your  
9 affidavits?

10 A. What do you mean, amateurish? I don't understand the  
11 question.

12 Q. Well, let me put it up on the screen, if I may. Do I have  
13 this -- I can move my computer over here.

14 THE CLERK: I can switch it, no. One second. It's up  
15 now.

16 MR. WATKINS: Sorry, your Honor. If I may just have a  
17 moment. Well, I'll just do it on the --

18 THE COURT: What are you showing?

19 MR. WATKINS: I'm going to the document camera.

20 THE CLERK: Okay, I switched it to doc camera.

21 Q. This log-in page, the administrator, Steven Chase, advised  
22 people just to enter in a random e-mail address because the  
23 software required it, but they weren't going to do anything  
24 about it, right?

25 A. Yes, that's correct.



1 Q. And indeed when the site first started, that didn't have  
2 to happen, right? You didn't have to put in a user name or a  
3 password, right?

4 A. Uhm, during the first maybe two or three days, I think you  
5 could access the website as a guest, but that functionality I  
6 don't think lasted for more than a week.

7 Q. And indeed that is functionality that Steven Chase could  
8 have put in if he knew what he was doing?

9 A. I don't know what that has to do with him knowing or not  
10 knowing what he's doing. That's just a configuration option on  
11 the website.

12 Q. Right, but instead of getting rid of this user name and  
13 password, he just had people put in random e-mail addresses?

14 A. I think you're confusing the registration page and the  
15 log-in page.

16 Q. Well, perhaps. So tell me what the difference is.

17 A. When you register an account on the Playpen website, you  
18 have to choose your user name, and you also have to enter an  
19 e-mail address. Now, the website warned you: Hey, don't enter  
20 a real e-mail address. Just enter something that looks like an  
21 e-mail address like Bob@aol.com. The website software is just  
22 going to check to make sure it looks like a real e-mail  
23 address: Don't worry, we're not going to send you any actual  
24 e-mails. So create your user name, enter a fake e-mail  
25 address, and then you get your account.

1 Q. He was telling users that the software requires that?

2 A. Correct.

3 Q. But you've actually learned that the software didn't  
4 require that?

5 A. No, that's not accurate.

6 Q. It could be configured so that you did not need to put in  
7 an e-mail and --

8 THE COURT: Why are we doing this?

9 MR. WATKINS: I was just asking, your Honor.

10 THE COURT: I know. We've just got to finish up. Are  
11 you done?

12 MR. WATKINS: I'm sorry?

13 THE WITNESS: Are we done?

14 MR. WATKINS: I've got a couple more questions, your  
15 Honor, if I may. I have till noon, I think.

16 THE COURT: I know, but I don't want to stray off into  
17 issues which may be relevant to the trial or something like  
18 that.

19 Q. When you started up the website under government control,  
20 the file-hosting feature was not working?

21 A. So the file-hosting feature was in Canada, and so we  
22 learned that pursuant to the arrest of Steven Chase. And so  
23 when we took control of the website in its initial period, that  
24 file-hosting feature was not available.

25 Q. And how many days before you took control of the website

1 was the file hosting not available?

2 A. It was available up until we took control of the website.

3 Q. I see, so it was available at that time. It's whatever  
4 happened that day when you took it that it went down?

5 A. As soon as we learned that that feature of the website was  
6 in Canada, we contacted Canadian authorities and alerted them  
7 to it.

8 THE COURT: To do what?

9 THE WITNESS: To take it down, your Honor.

10 Q. And why did you do that?

11 A. Our operation was such that we were going to take control  
12 of the Playpen website, move it to our own server in the  
13 Eastern District of Virginia, and operate it from there. We  
14 couldn't just download code from a foreign country without  
15 their permission and put it up on our server, so we alerted  
16 Canada. We told them this server is the Playpen file-hosting  
17 feature, and then they eventually shut it down, seized a copy  
18 of it, and sent us a copy of it.

19 Q. So I just want to unpack that for a minute because, as I  
20 understand it, you didn't move the actual server from North  
21 Carolina to Virginia. You made a copy of that server to move  
22 to Virginia, right?

23 A. Yes, that's correct.

24 THE COURT: How do you make a copy of a server as  
25 opposed to the software?

1           THE WITNESS:  So, your Honor, when we arrested Steven  
2 Chase at his residence in Naples, Florida, he was actively  
3 logged into the administrative account of the server that was  
4 hosting the website, and so we had the administrative user name  
5 and password for that server.  And so having that information,  
6 we were able to remotely log into the server and download a  
7 copy of the website that we --

8           THE COURT:  When you say copy the server, what you're  
9 actually doing is copying the website?

10          THE WITNESS:  Yes, your Honor.

11          THE COURT:  That's a shorthand?

12          THE WITNESS:  Yes, your Honor.

13 Q.    The server is actually the physical thing that contains  
14 the website, website's data, right?

15 A.    Yes.

16          THE COURT:  The server is the computer, the hardware?

17          THE WITNESS:  Yes, your Honor.

18          THE COURT:  I just want to make sure.

19 Q.    And so during that time actually Playpen is running, the  
20 file-hosting service is up in Canada while you're getting the  
21 copy and starting it up anew in Virginia, right?

22 A.    No.  So during the search of Steven Chase's residence, we  
23 assessed the situation.  We find the usernames and passwords  
24 for the Playpen website.  We determine that the file hoster is  
25 in Canada, and from there, we put the website into what we call

1 "maintenance mode." And so this makes it so that the front  
2 page of the website just says, "Hey, website currently down for  
3 maintenance. Come back later."

4 So we immediately put it in the maintenance mode, and at  
5 this point no features of the Playpen website are available.  
6 And while it is in maintenance mode, we are transferring a copy  
7 to our server in Virginia. After that, it's done. We power  
8 off the server in North Carolina, and we bring the website up  
9 on our server in Virginia.

10 Q. How long did that maintenance period last?

11 A. I would estimate eight to twelve hours. I don't remember  
12 exactly.

13 Q. You talked about calling up the Canadian -- was it the  
14 actual server company up there, or was it authorities in  
15 Canada?

16 A. I believe we contacted either the RCMP, the Royal Canadian  
17 Mounted Police, or the Ontario National Police. I don't  
18 remember exactly where the server was hosted, but we reached  
19 out to law enforcement in Canada.

20 Q. Was that before or after the maintenance period?

21 A. Around the same time. While this process was going on, we  
22 alerted Canadian officials.

23 Q. And then once you started the server up again in Virginia,  
24 you had to reboot that file-hosting service to put it back in  
25 with Playpen to allow Playpen to access it?

1 A. So we never enabled access back to that server in Canada  
2 while the FBI had control of it. That was not a part of our  
3 operation. We just enabled the file-hosting feature on the  
4 server that we had in Virginia after we brought the website  
5 back online. We did not actually keep anything running in  
6 Canada that anyone was accessing during our operation.

7 Q. So you moved the file-hosting service feature which was in  
8 Canada to the server in Virginia?

9 A. No. It was just incorporated into the existing website  
10 copy that we had moved to Virginia.

11 Q. And, as I understand it, there's also content up there in  
12 Canada on that server?

13 A. Yes, there was content on that server in Canada.

14 Q. And that server in Canada, the content there, Playpen  
15 users would not be able to get to it at that point, right,  
16 while the government was operating it?

17 A. Generally, yes. I don't know exactly when Canada pulled  
18 the plug, but, yes.

19 Q. When you say Canada pulled the plug, I thought they pulled  
20 the plug while you were doing the maintenance --

21 A. So we alerted them during the maintenance. I don't know  
22 exactly when they got out there and actually disconnected  
23 anything from the Internet, but that portion of the website,  
24 the Canada file-hosting service, was not available during the  
25 FBI operation.

1 Q. And so if someone clicked on a link that was supposed to  
2 get them the images up there, they wouldn't be able to go  
3 there?

4 A. Correct. You couldn't just access links to the Playpen  
5 image uploader or file uploader. The servers were configured  
6 in such a manner that just an external person with a link would  
7 get an error trying to access them. You had to actually access  
8 them from within the Playpen website.

9 Q. So when there is a message from the undercover to the  
10 Playpen community saying "File hosting is up and running  
11 again," what did that mean at the back end? What had you all  
12 done at that point to make that message?

13 A. We just re-enabled that feature of the Playpen website on  
14 the server in the Eastern District of Virginia, again, a  
15 feature that existed prior to the FBI takeover of the website.

16 Q. Sure. File hosting, what does that feature permit on the  
17 website?

18 A. So Playpen had two different hosting features on their own  
19 Tor hidden services. One was image hosting, which generally  
20 speaks for itself. It allowed users to upload individual  
21 images of child pornography. File hosting allowed users to  
22 upload larger files, generally encrypted archives that  
23 contained either multiple images or larger videos.

24 Q. So by re-enabling that file-hosting feature, you permitted  
25 users to upload content to Playpen?

1 A. To the file-hosting service, yes, we maintained that  
2 existing feature of the website.

3 Q. And the file-hosting feature was the more active of the  
4 two, right? You can upload more there?

5 A. I don't believe it was more active. Its life span was  
6 shorter, I believe, than the image uploading feature. I think  
7 it was used less frequently than the image uploading feature.

8 Q. But during the period of time the government was running,  
9 by doing the file-hosting service feature, re-enabling it, that  
10 did enable people to upload large files or large amounts of  
11 child pornography?

12 A. As they could do before the government takeover, yes.

13 Q. As there were discussions concerning whether to continue  
14 the operation of the website, there was also discussion about  
15 whether to shut down portions of the website? You talked about  
16 The Producer's Pen.

17 A. Yes. We did immediately shut down The Producer's Pen  
18 after we assumed control of the website.

19 Q. Following up on the Judge's question, was there any  
20 criteria about which parts of the website you would shut down  
21 versus keep going?

22 A. There was never any time where we entertained the idea of  
23 allowing a section or of operating a website that encouraged  
24 active rape of children, so it was always understood that any  
25 such features would be removed from the website when we assumed



1 control of it.

2 Q. When you say it was always understood, was there a  
3 protocol, a written protocol?

4 A. Not that I'm aware of.

5 Q. So, for example, the file-hosting feature, was there a  
6 discussion about whether to re-enable that or to just keep it  
7 down while you operated it?

8 A. There may have been discussions along those lines. I  
9 don't recall specifics of them. Obviously we came to the  
10 conclusion that we were going to keep the feature alive as it  
11 was before the takeover because we did.

12 Q. Were there discussions about other portions of the  
13 website, whether to close that down or to mitigate what was  
14 going on in other portions of the website?

15 A. So it was determined that if we had disabled features of  
16 the website, shut down sections of the website, it generally  
17 would have alerted people immediately to the FBI takeover, and  
18 so we generally let the website continue as it was prior to the  
19 FBI takeover.

20 Q. But I think you just told us, for images that were in  
21 Canada, somebody clicks on that, they get an error message.

22 A. Yes, in some circumstances.

23 Q. And there was quite a bit that was held on that Canadian  
24 server, right, quite a bit of content?

25 A. There were numerous images and videos. I don't know the

1 exact number.

2 Q. So because of that alone, people were going to get a lot  
3 of error messages off of the website, right?

4 A. Uhm, well, no, there was a message that was posted that  
5 says "File hosting is temporarily down while we fix a bug," or  
6 something of that nature, I believe.

7 Q. And then file hosting was back up?

8 A. Yes. That feature was brought back to an active state as  
9 it was prior to the FBI takeover.

10 Q. And, as I understand it, but to get to that Canadian  
11 content, you still wouldn't be able to do that?

12 A. That's correct, you couldn't get to that Canadian content  
13 after the FBI takeover.

14 Q. And a user on Playpen would start to get error messages  
15 anytime they tried to click on that content?

16 A. You would get a "File not found" message, something of  
17 that nature.

18 Q. In discussing the criteria about what to shut down or what  
19 to keep going, were there discussion about other ways to  
20 mitigate downloading of child pornography or uploading of child  
21 pornography?

22 A. So the majority of the child pornography that was  
23 distributed through the Playpen website was not actually on the  
24 Playpen servers. It was a minority of the content that was on  
25 that server in Canada or the servers in North Carolina. The

1 majority of the content that was distributed through the  
2 Playpen website was hosted on external hosting providers,  
3 generally outside of the United States. So there is no action  
4 that the FBI could have taken to remove that content. It  
5 wasn't under our control.

6 Q. In previous pleadings, the government has indicated that  
7 during a time they were operating Playpen, there was 67,000  
8 links within the site that were accessed. Is that accurate?

9 A. I would have to read the pleading. I don't know if that's  
10 exactly what we stated in there, but if you have the document,  
11 I can clarify.

12 (Pause.)

13 Q. This is the United States' response to defendant's motion  
14 to dismiss indictment as a response to a discovery order in the  
15 *United States v. Michaud* that's been submitted to the Court  
16 before. I want you to look at the last paragraph on there.

17 A. Okay.

18 Q. And that indicates 67,000?

19 A. Yes.

20 Q. Does it also indicate how many links went out externally?

21 (Witness examining document.)

22 A. That may be on the next page. The sentence is cut off.

23 (Document passed to the witness.)

24 A. Thank you.

25 (Witness examining document.)

1 A. No, it doesn't have any indication about that. I'm not  
2 sure what line you're referencing.

3 Q. So those 67,000 links, many thousand of them went to  
4 external websites, right?

5 A. Yes, that's fair to say.

6 Q. And what would happen is, once somebody went to that  
7 website, they might be able to download that content from that  
8 website?

9 A. Yes. That's also accurate.

10 Q. For links that went externally, unless you clicked on them  
11 or some law enforcement agent clicked on them, you have no idea  
12 what that content is, right?

13 A. So links that were posted on the Playpen website were  
14 generally posted in certain categories, Preteen Hard Core  
15 Girls, Boys, things of that nature, so you generally have an  
16 idea of what the link is going to lead to. I'm not sure if  
17 that answers your question.

18 Q. That's the subject matter, but the specific picture, you  
19 wouldn't know what that was?

20 A. Depending on how the post was configured, if the image was  
21 embedded in a particular post, you would see it when you opened  
22 the post. Sometimes you would have to actually click on the  
23 image file or the link to download the content first.

24 Q. And that's as opposed to the images that were hosted on  
25 the North Carolina server, right, where you could actually take

1 a look at the images immediately?

2 A. I think you're drawing a distinction that doesn't exist on  
3 the website. You could post links to images that were hosted  
4 on Playpen image uploader in the same manner that you could on  
5 external websites. The functionality was essentially the same.

6 Q. But now you have access -- since January of 2015, you had  
7 access to the back end, and you had access to the entire site  
8 starting on February 20. You can see exactly where the links  
9 to North Carolina child porn is, and you can go directly there,  
10 right?

11 A. Well, wait. You've just combined two completely different  
12 dates and when we had different controls of the website. So in  
13 January we had a copy of the website itself. I don't believe  
14 we had copies of the image uploader or the file uploader. I'm  
15 not sure if those features existed at that particular point in  
16 time. When we took control of it in February, we did have  
17 control of the website, as you said.

18 Q. So in February, where someone clicked on a link, you could  
19 have, for example, substituted adult pornography for that child  
20 pornography image for images that were hosted in North  
21 Carolina?

22 A. We could have chosen not to put the images in North  
23 Carolina back online, or we could have, I suppose, put adult  
24 pornography in there; again, would have led people to  
25 immediately acknowledge that there was clearly a law

1 enforcement takeover of the website, so that was not done.

2 Q. And, as I understand it, the NIT went out when you would  
3 click on the link, regardless of whether the pornography was  
4 actually viewed, right? The NIT went out when the link went;  
5 is that true?

6 A. So generally, in order for the NIT to be utilized, a user  
7 had to log into the website with the user name and password.  
8 Then they had to go down to one of the various sub-forums of  
9 the Web; for example, Preteen Girls Videos Hard Core. After  
10 they were in that sub-forum, they would have to open one of the  
11 postings in that forum that was advertising child pornography,  
12 and that's the point where the NIT would have been downloaded  
13 to their computer.

14 Q. Once on that thread, they can get to the actual content,  
15 right?

16 A. In some cases --

17 THE COURT: We're beyond.

18 MR. WILKINS: Yes.

19 Q. But at that point, you could have substituted adult porn;  
20 the NIT is already gone?

21 A. Again, substituting adult pornography would have tipped  
22 people off within minutes that there had been a law enforcement  
23 takeover.

24 THE COURT: Let's go. I need to give an  
25 opportunity -- do you have --

1 MR. TOBIN: A few questions, your Honor.

2 MR. WATKINS: May I just a couple more questions here,  
3 your Honor?

4 Q. As part of the monitoring, the site was monitored 24 hours  
5 a day?

6 A. Yes.

7 Q. And that was by live agents in Maryland?

8 A. Yes.

9 Q. In the office that you were?

10 A. Yes.

11 Q. And, nevertheless, you can't say with any kind of  
12 certainty how much child porn was downloaded or uploaded during  
13 that period of time; is that true?

14 A. We have provided statistics that we have available to us  
15 in response to discovery requests. If you have a specific  
16 question, I can answer it in more detail.

17 Q. But they are estimates, right? In prior assertions, the  
18 government can't say for sure because there was so much going  
19 on, right?

20 A. There again, I would --

21 THE COURT: Actually, are you referring to the 67,000  
22 links, or is there another number out there?

23 THE WITNESS: I'm not sure what we're discussing, your  
24 Honor.

25 Q. So one can click on a link, right, and then one can

1 download the child pornography, right?

2 A. So are you distinguishing between clicking a link and  
3 downloading child pornography? Because clicking on links to  
4 navigate the website is one thing. Clicking on links to child  
5 pornography is another. I want to make sure I'm answering the  
6 questions accurately.

7 Q. Sure. So you click on the child pornography and it comes  
8 up on the screen. One can then download it to one's computer  
9 as a separate step, right?

10 A. Well, no. If it's on your screen, it's already been  
11 downloaded to your computer.

12 Q. Sure, in cache, right? It does not necessarily save to  
13 your actual computer?

14 THE COURT: In what?

15 MR. WATKINS: Cache, c-a-c-h-e.

16 A. If it's on your computer screen, it's stored on your  
17 computer. It may be stored in different folders, but if it's  
18 on your screen, you've downloaded child porn.

19 Q. Right. And the government has no way to tell exactly how  
20 much or even really an estimate of how many times that  
21 happened?

22 A. I believe we provided in response to a discovery order the  
23 number of links that were clicked to external content.

24 Q. And you've also provided here today that there were a  
25 hundred thousand users during that two-week period?



1 A. Approximately a hundred thousand unique user accounts  
2 accessed the website during that time frame.

3 Q. So if each one of those active users clicked on ten  
4 photographs and they popped up on the screen, that would be a  
5 million pictures?

6 A. A hundred thousand times ten is a million, yes.

7 Q. And if they did a hundred while they were on there, then  
8 we're up to ten million?

9 A. That math is also accurate.

10 Q. So indeed that could be the amount of child porn that was  
11 distributed during the period of time?

12 MR. TOBIN: Objection.

13 A. There is no basis for that statement.

14 Q. It could have been, I think you just told us, right?

15 MR. TOBIN: That's speculation. It could have been a  
16 thousand; it could have been five. I mean, we don't know.

17 THE COURT: Sustained. I'm just trying to understand.  
18 So there are 67,000 external links, but what is that number?  
19 Is that the number of times clicked on an external link during  
20 that two-week period?

21 THE WITNESS: I -- sorry, now I'm confusing the  
22 various numbers. I'd have to look at the document again, but I  
23 believe it was 67,000 external links that were clicked on. I  
24 believe that's what the document said.

25 THE COURT: All right, and during the two weeks?

1 THE WITNESS: Yes, your Honor.

2 THE COURT: And, to your knowledge, was most of that  
3 child porn?

4 THE WITNESS: Yes, your Honor.

5 THE COURT: Okay, thank you. Mr. Tobin?

6 MR. TOBIN: Very briefly.

7 REDIRECT EXAMINATION BY MR. TOBIN:

8 Q. During your cross-examination, you have indicated that  
9 this opportunity was incredibly rare. What did you mean by  
10 that?

11 A. So the Playpen website, as described in various affidavits  
12 and pleadings, existed on the Tor network. When you create and  
13 configure a website on the Tor network, it's called a hidden  
14 service. And so if you configure a Tor hidden service  
15 properly, it's very difficult or impossible to find both it and  
16 its users. There are in fact hidden services dedicated to the  
17 advertisement of child pornography that have been around for  
18 years. We know about them, but there's nothing we can  
19 generally do about them. We can log on, we can look at the  
20 content, we can review the content, but we can't find the  
21 creators or the users.

22 And so given the minor mistakes that Mr. Chase had  
23 made in his creation of the Playpen website, it presented us  
24 with an opportunity where we could both identify and arrest the  
25 creator of the website, identify and arrest members of the

1 website, and rescue numerous victims from abuse. That's what I  
2 stated was a rare opportunity.

3 Q. You indicated, as the Judge I think just went over again,  
4 the 67,000 links, or at least many thousands went out to your  
5 external websites, meaning that they used the website, they  
6 used Playpen almost as a -- they clicked on something, and they  
7 were transported to a different child porn website to see a  
8 specific image or images?

9 A. Not necessarily a child porn website. So websites like  
10 Playpen generally have lists of approved image and file  
11 hosters. These are the websites that are generally not in the  
12 United States, and they generally do not respond to law  
13 enforcement inquiries. And so the creators of these websites  
14 will say: Hey, if you want to upload images or videos of child  
15 pornography, the process generally is upload your images or  
16 videos to this -- I'll throw out this website in Japan. Make  
17 sure you name the file something like innocuous like Sailboat.  
18 Make sure that the password is good. That way, that file  
19 hoster in Japan, they don't actually know that they're hosting  
20 child pornography, and generally the only people who will know  
21 how to access and download it are the members of the Playpen  
22 website.

23 Q. But just so it's clear, at least so I understand, there  
24 were images that folks using Playpen got to, images of child  
25 pornography they got to after starting at Playpen that were

1 being hosted or that were residing or they were on other  
2 websites?

3 A. Yes.

4 Q. And if you had shut down Playpen, abolished it entirely,  
5 those other websites would not have been affected? Is that the  
6 accurate?

7 A. That's correct. Those images and videos would --

8 Q. Those pictures of children would have still been on the  
9 Internet?

10 A. Yes.

11 Q. Now, when Playpen was up and running, either without the  
12 government's active involvement or with the government's active  
13 involvement, as we've discussed now at some length, were there  
14 other child pornography websites?

15 A. Yes.

16 Q. As we speak today, are there numerous --

17 THE COURT: Yes, I know this, Mr. Tobin.

18 MR. TOBIN: Huh? General knowledge? Okay, all right,  
19 okay.

20 Q. But this wasn't the only show in town?

21 THE COURT: You say there were 67,000 links external.  
22 Was there some on the website itself?

23 THE WITNESS: So the actual website itself was not  
24 hosting the images, but there was a separate website called the  
25 Playpen Image and File Uploader that were parts of the website,

1 but they were technically their own websites. So for those  
2 images, I believe, yes, some of the images --

3 THE COURT: So some were on the Playpen system?

4 THE WITNESS: Yes, your Honor.

5 THE COURT: But 67,000 of them were in foreign  
6 countries or elsewhere? Is that correct?

7 THE WITNESS: I believe the 67,000 number may  
8 encompass all of the content.

9 THE COURT: So some of it was in-house and some of it  
10 was external?

11 THE WITNESS: Yes, your Honor.

12 THE COURT: Okay, I just didn't get that distinction  
13 before. All right, anything else, Mr. Watkins?

14 MR. WATKINS: No, your Honor.

15 MR. TOBIN: Nothing for me.

16 THE COURT: Thank you. You may step down.

17 THE WITNESS: Thank you, your Honor.

18 (Witness excused.)

19 THE COURT: Okay, so anything else?

20 MR. TOBIN: No, your Honor.

21 THE COURT: Anything from your end?

22 MR. WATKINS: Your Honor, I did file the motion to  
23 compel discovery.

24 THE COURT: Yes, yesterday.

25 MR. WATKINS: Well, just to be clear that the Court

1 scheduled the evidentiary hearing late last week. I discussed  
2 with Mr. Tobin some of these items. These are things that are  
3 requested, some of them, at least, in the past. I sent the  
4 discovery letter to Mr. Tobin to make sure --

5 THE COURT: I'm just saying, I just got the motion to  
6 compel yesterday.

7 MR. WATKINS: Okay. And just to finish through, I  
8 told Mr. Tobin that time was of the essence. We're both very  
9 busy, and he was not able to give me his definitive answer to  
10 them till yesterday. Probably 20 minutes after he gave me the  
11 answer, I filed the motion, so that is why it is here at this  
12 time. But, still, I would press the items, given the kinds of  
13 evidence that we have heard today or the testimony that we've  
14 heard.

15 THE COURT: I am not prepared to deal with it. I'm  
16 likely to refer this to the United States Magistrate Judge, or  
17 at the very least want to see an opposition, but let's just  
18 have oral argument right now.

19 MR. WATKINS: Judge, I mean, I think the items I  
20 requested are relevant to what --

21 THE COURT: I don't want to have another oral  
22 argument. I mean, if something comes in that's newly  
23 discovered and you want to argue later, we'll deal with it,  
24 but, I mean, I've now dragged this out for a while. And I told  
25 you my initial instinct that based on what I had before, it

1 wasn't enough. However, you then added an additional fact.

2 MR. WATKINS: Right.

3 THE COURT: Which is, well, they pumped up the numbers  
4 essentially. And so I agreed to sort of hear that. It is  
5 different. And so that, at least based on what I'm hearing,  
6 turns out not to be the case. It's possible that something  
7 else that you see changes your mind and it's newly discovered,  
8 but I haven't seen it.

9 MR. WATKINS: What's newly discovered is the testimony  
10 we heard today about the deep involvement of Main Justice in  
11 the decision to run the website, and also the lack of any kind  
12 of controls and mitigation for distributing child pornography.  
13 We don't know -- to the extent outrageous governmental conduct  
14 depends on what shocks the conscience, what we're talking about  
15 is a very, very reasoned, up-the-chain apparently decision -- I  
16 don't know about reasoned but --

17 THE COURT: I was thinking that cuts the other way.  
18 It wasn't a rogue agent. It was something done in a purposeful  
19 way. In other words, it wasn't some renegade here. I guess  
20 the way I'm thinking, all right, is, the mere fact that they  
21 ran it was not enough for me. I told you that already. I  
22 might have been concerned if they pumped up the numbers. That  
23 apparently hasn't happened. I think I was worried, were they  
24 encouraging production by posting new stuff? That hasn't  
25 happened. You could have argued -- I actually learned

1 something here today. It was actually longer than I thought.  
2 It was actually not just two weeks. There was another month in  
3 January. You could argue that they shouldn't have done it;  
4 they should have done it sooner. But that's not shocking and  
5 outrageous. That's just a law enforcement decision.

6 And the thing that really has got me going is saving  
7 all these kids. Two of them were people who had pornography  
8 posted, but the rest were just, I guess, the correlation  
9 between possession and touching. They saved a bunch of kids.  
10 I mean, I'm not -- I get your point, some of this, maybe they  
11 could have done it quicker, or maybe there should have been a  
12 protocol and there wasn't one. I'm just not seeing it as  
13 outrageous, not when we've now done the case research on what's  
14 counted as outrageous.

15 So at this point I'm denying it, and if new stuff  
16 comes in that changes something and you want to move for it,  
17 let me know, but I need to move this case forward to trial.  
18 There may be something that you produce that's -- I'm not  
19 closing down discovery on it. I need to get this to the point  
20 of trial.

21 MR. WATKINS: Before we move to that stage, your  
22 Honor, if I can make just a couple of points. One is, given  
23 the testimony that there are 49 hands-on offenders that were  
24 discovered, if the government can provide the names of the  
25 prosecutions of those cases. I have no reason to believe or



1     disbelieve that there were 49 people discovered with hands-on  
2     offenses.

3             THE COURT:  As long as it's not confidential in an  
4     ongoing investigation, and under a protective order, and not  
5     mentioning the children's names.  That's protected.  So if  
6     there's a public prosecution, open complaint.

7             MR. TOBIN:  And I don't know specifically this.  I'd  
8     be shocked if there are 49 prosecutions.

9             THE COURT:  There may not be.  Whatever is public, not  
10    a private investigation.

11            MR. TOBIN:  Sure.

12            THE COURT:  And so what am I doing in terms of --

13            MR. WATKINS:  Just if the Court will indulge me, I  
14    would like to orally move and follow up with a written motion  
15    to reconsider the Court's decision on the Rule 41 motion.  
16    We've now learned today that it was not just two agents and an  
17    AUSA down in Eastern Virginia doing that stuff.  This was a  
18    very calculated decision that went up to the highest levels of  
19    the Department of Justice.  To suggest that there's some kind  
20    of good faith at this point on those local officers in either  
21    getting the affidavit or executing it once they have it, I  
22    think that's brought severely into doubt today, where you've  
23    got the same Department of Justice asking to get this warrant  
24    in the Eastern District of Virginia at the same time that they  
25    are trying to get the Supreme Court to amend Rule 41.  I think

1 it undercuts the good-faith argument, which is what the court  
2 decided a matter on. So I'm asking the Court orally today and  
3 allow me to supplement with a motion to reconsider.

4 MR. TOBIN: And, your Honor, I would object to that.  
5 I mean --

6 THE COURT: Enough already. Denied. All right, now  
7 let me just -- when are we going to go to trial?

8 MR. TOBIN: Soon.

9 MR. WATKINS: Well, that would be nice, but what we  
10 are now in is the middle of the forensic review of the --

11 THE COURT: That's what I'm asking you, when?

12 MR. WATKINS: Right, exactly. So we are about perhaps  
13 a third of the way through there. Mr. Tobin was finally able  
14 to get materials that I've been asking for for close to nine or  
15 ten months.

16 THE COURT: Give me a date.

17 MR. WATKINS: For a trial? I would say February.

18 THE COURT: Fine. Speedy Trial excluded, fine. We'll  
19 give you a pretrial order.

20 THE CLERK: I'll give you a pretrial order.

21 THE COURT: By the way, I have two questions that I  
22 want to know. Is any of this stuff -- I was fascinated by the  
23 NIT case law that's already evolving. Has any of it hit a  
24 circuit yet?

25 MR. TOBIN: I don't believe so. There's been no

1 circuit decisions.

2 THE COURT: So that may actually make a difference, if  
3 either our circuit in reviewing Judge Young --

4 MR. TOBIN: Judge, we are pursuing the appeal.  
5 Obviously, there have not been arguments. I don't even think  
6 briefs have even been submitted by the government as of yet,  
7 but that's being pursued. I don't believe there's been any  
8 arguments in any circuit on the actual issue.

9 MR. WATKINS: So the Solicitor General has okayed the  
10 appeal in *Levin*?

11 MR. TOBIN: Oh, gosh. We are pursuing an appeal. I  
12 don't want to say any more than that. I always get in trouble  
13 if I start talking about internal negotiations.

14 THE COURT: The local office wants to, but you don't  
15 know if the SG has signed off yet?

16 MR. TOBIN: I -- I'm not even saying that. I'm saying  
17 my office is pursuing an appeal. It's an alive issue. What's  
18 available for public consumption as to the AG or the Solicitor,  
19 I don't know.

20 THE COURT: Okay. Well, let me put it this way: I am  
21 going to schedule for February, and the reason I want to do  
22 this is, this isn't my first rodeo, and these forensic exams  
23 take --

24 MR. TOBIN: A long time.

25 THE COURT: -- a long time. I know that. They're

1 expensive. I know they take a long time, so that's why I'm  
2 giving you some leeway here. Do you have a forensic examiner?

3 MR. TOBIN: Well, yes, we have a case agent. I might  
4 bring somebody else in if we're actually going to trial.

5 THE COURT: Someone I would consider an expert?

6 MR. TOBIN: Well, I suspect, yes.

7 THE COURT: All right, because you're going to both  
8 have to exchange expert reports, so when you do the pretrial  
9 order, you need to build that in because you may want to  
10 challenge each other, or at least have the time to -- I mean,  
11 it's complicated stuff -- to understand it. So we're going to  
12 give you a pretrial order, but, more importantly, what date do  
13 you want in February? We actually are starting to clog up in  
14 February, so what --

15 (Discussion between the Court and Clerk.)

16 THE COURT: Why don't we give you February 6? On  
17 February 6, I'm just simply saying that there's another case  
18 there that may or may not plead, but basically I've got the  
19 whole month open, so --

20 MR. WATKINS: That's fine.

21 THE COURT: Okay? February 6.

22 The other question I have is, has anyone ruled on the  
23 outrageous conduct thing?

24 MR. TOBIN: Well, I don't know if there's been  
25 rulings -- no, yes, of course, in our very own courthouse,

1 Judge Burroughs denied that motion.

2 THE COURT: I did see that, but have there been any --

3 MR. TOBIN: There have been no allowances of it  
4 anywhere in the country.

5 THE COURT: Anywhere in the country?

6 MR. TOBIN: No.

7 MR. WATKINS: Not that I'm aware of.

8 THE CLERK: Pretrial two weeks in advance?

9 THE COURT: Two weeks in advance, yes.

10 THE CLERK: So we can do a pretrial, if you're  
11 available, January 26, January 26 at 2:00 o'clock?

12 MR. TOBIN: That's fine.

13 MR. WATKINS: Very good. Thank you.

14 THE COURT: And, to your knowledge, is it pending in  
15 any other circuit, an appeal?

16 MR. TOBIN: This issue? I don't know. I don't know  
17 if it's been brought up. I know that it's my belief that no  
18 district judge has dismissed the case for outrageous government  
19 misconduct. Whether or not it -- no, it couldn't be, it  
20 couldn't be, right, because they don't know --

21 THE COURT: Anyway, it's a more interesting question  
22 than the NIT thing because it's all this interesting corner of  
23 the law.

24 MR. TOBIN: It's been making its way through various  
25 appellate courts, as I understand.

1 THE COURT: It is.

2 MR. WATKINS: I understand that the Tenth Circuit is  
3 close to taking a case or two cases. The cases would be  
4 *Arterbury*, and there's a second one whose name I can't  
5 remember.

6 THE COURT: That will be interesting to follow.

7 MR. TOBIN: Very much so, fascinating.

8 THE COURT: And do you envision a likely trial here?

9 MR. TOBIN: I don't have any say in that, Judge.

10 MR. WATKINS: It's difficult to tell at this point.

11 THE COURT: A lot of these kinds of cases hinge on the  
12 legal issues, so I'll plan on it.

13 MR. TOBIN: Well, I mean, as the Court knows as well,  
14 you know, as we all do, it is very, very rare for a child  
15 pornography case to go to trial, but that doesn't mean this one  
16 won't.

17 THE COURT: Well, there are some very important  
18 cutting-edge legal issues here, so --

19 MR. TOBIN: Exactly, exactly.

20 THE COURT: Okay, all right, thank you. I'm going to  
21 count on it as a real trial, but you will be second to my other  
22 trial, so keep calling us as it goes along, all right?

23 MR. TOBIN: Thank you, Judge.

24 (Adjourned, 12:05 p.m.)  
25

C E R T I F I C A T E

1  
2  
3 UNITED STATES DISTRICT COURT )  
4 DISTRICT OF MASSACHUSETTS ) ss.  
5 CITY OF BOSTON )

6  
7 I, Lee A. Marzilli, Official Federal Court Reporter,  
8 do hereby certify that the foregoing transcript, Pages 1  
9 through 78 inclusive, was recorded by me stenographically at  
10 the time and place aforesaid in Criminal No. 15-10347-PBS,  
11 United States of America v. Vincent C. Anzalone, and thereafter  
12 by me reduced to typewriting and is a true and accurate record  
13 of the proceedings.

14 Dated this 16th day of October, 2016.

15  
16  
17  
18  
19 /s/ Lee A. Marzilli

20 \_\_\_\_\_  
21 LEE A. MARZILLI, CRR  
22 OFFICIAL COURT REPORTER  
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