

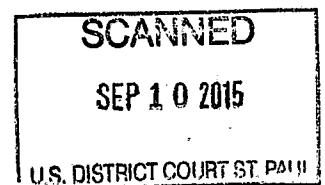
UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Case No. 15-88 (SRN/JJK)

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	<b>PLEA AGREEMENT AND</b>
	)	<b>SENTENCING STIPULATIONS</b>
v.	)	
	)	
ANDREW L. SCHILLER,	)	
	)	
Defendant.	)	

The United States of America, by and through its attorneys, Andrew M. Luger, United States Attorney for the District of Minnesota, Katharine T. Buzicky, Assistant United States Attorney, and Jeffrey Zeeman, Department of Justice Child Exploitation and Obscenity Section Trial Attorney, and Defendant Andrew L. Schiller, together with his attorney, Marsh Halberg Esq., agree to resolve this case on the terms and conditions that follow. This Plea Agreement binds only Defendant and the United States Attorney's Office for the District of Minnesota. This Plea Agreement does not bind any other United States Attorney's Office or any other federal or state agency.

PLEA AGREEMENT

1. **Charges.** Defendant agrees to plead guilty to Count 1 of the Indictment, which charges him with Production of Child Pornography, in violation of 18 U.S.C. §§ 2251(a) and 2251(e).



2. **Stipulated Facts.** Defendant agrees to the following facts and further agrees that, were this matter to go to trial, the United States would prove the following facts beyond a reasonable doubt:

a. Between on or about September 23, 2013, and January 12, 2014, in the State and District of Minnesota, Defendant used and employed a known minor, Minor A, who was 14 years old at the time, to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct. Specifically, Defendant used and employed the known minor to create an image entitled "AB4503D1-F4C9-49CA-B2AE-E33145E29211.jpg" depicting the lascivious exhibition of Minor A's genitalia and pubic area.

b. Defendant admits that at the time the defendant used and employed the known minor to create the image entitled "AB4503D1-F4C9-49CA-B2AE-E33145E29211.jpg," the defendant knew and had reason to know that the image would be transported and transmitted using a means of interstate and foreign commerce, specifically the Internet. Defendant further admits that the image entitled "AB4503D1-F4C9-49CA-B2AE-E33145E29211.jpg," was actually transported and transmitted using a means of interstate and foreign commerce, specifically the Internet, because Minor A sent him the image via the Internet at Defendant's request.

c. **Relevant Conduct.** Defendant admits that in addition to the conduct charged in Count 1 of the Indictment, Defendant actively enticed and attempted to entice numerous other children to engage in sexually explicit conduct online, and used and employed at least two other known children to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct. Specifically, Defendant admits that he knowingly used the Internet to entice a 14-year-old child, Minor B, in the Western District of Missouri, to engage in sexually explicit conduct for the purpose of producing a depiction of such conduct, and that he also knowingly used the Internet to entice a 15-year-old child, Minor C, in the Western District of North Carolina, to engage in sexually explicit conduct for the purpose of producing a depiction of such conduct.

d. **Jurisdiction.** Defendant admits that the Court has jurisdiction over the offense charged in Count 1, because the offense occurred in the State and District of Minnesota.

3. **Waiver of Pre-trial Motions.** Defendant understands and agrees that Defendant has certain rights to file pre-trial motions in this case, and has in fact filed certain pre-trial motions.

As part of this Plea Agreement, and based upon the concessions of the United States within this Plea Agreement, Defendant knowingly, willingly, and voluntarily gives up the right to file pre-

trial motions in this case and withdraws any pre-trial motions currently pending before the Court.

STATUTORY PENALTIES

4. **Maximum Potential Penalties.** The parties agree that Count 1 of the Indictment carries the following statutory penalties:

- a. a maximum term of thirty (30) years in prison;
- b. a mandatory minimum term of fifteen (15) years in prison;
- c. a supervised release term of at least five (5) years up to a maximum supervised release term of life;
- d. a criminal fine of up to \$250,000.00;
- e. a mandatory special assessment of \$100.00, which is payable to the Clerk of Court before sentencing; and
- f. payment of mandatory restitution in an amount to be determined by the Court.

5. **Revocation of Supervised Release.** Defendant understands that, if he were to violate any condition of supervised release, he could be sentenced to an additional term of imprisonment up to the length of the original supervised release term, subject to the statutory maximums set forth in 18 U.S.C. § 3583.

GUIDELINE SENTENCING STIPULATIONS

6. **Guideline Calculations.** Defendant agrees to be sentenced in accordance with the Federal Sentencing Act, 18 U.S.C. §§ 3551, *et seq.*, with reference to the applicable United States Sentencing Guidelines (“U.S.S.G.” or “Guidelines”). Nothing in this plea agreement should be construed to limit the parties from presenting any and all relevant evidence to the Court at sentencing. The parties stipulate that the following Guideline calculations are applicable with

respect to Defendant's offense conduct:

a. Base Offense Level. The parties agree that the base offense level for Production of Child Pornography is 32. (U.S.S.G. § 2G2.1(a)).

b. Specific Offense Characteristics. The parties agree that 2 levels are added because the offense involved a minor who was more than twelve years of age but had not attained the age of sixteen years. (U.S.S.G. § 2G2.1(b)(1)(B)). The parties also agree that 2 levels are added because the defendant used a computer and interactive computer service to solicit participation with a minor in sexually explicit conduct. (U.S.S.G. § 2G2.1(b)(6)(ii)).

The Government believes that a further 5 levels should be added because Defendant is a Repeat and Dangerous Sex Offender Against Minors. (U.S.S.G. § 4B1.5(b)(1)). The defendant does not agree and will oppose this enhancement. The Government believes that a 2 level enhancement should occur as the offense included distribution (U.S.S.G. § 2G2.1(b)(3)). The defendant does not agree and will oppose this enhancement. The Government believes that the offense level should be increased a further 3 levels because the offense involved two additional identified victims, Minor B and Minor C. (U.S.S.G. §§ 2G2.1(d)(1) and 3D1.1, *et seq.*). The defendant does not agree and will oppose this enhancement.

The Government believes that the adjusted base offense level, after the application of Specific Offense Characteristics, is 46 (32 + 2 + 2 + 2 + 5 + 3). Defendant believes that the adjusted base offense level, after the application of Specific Offense Characteristics, is 36 (32 + 2 + 2).

c. Acceptance of Responsibility and Other Chapter Three Adjustments. The parties agree that if Defendant (1) provides full, complete and truthful disclosures to the United States

Probation and Pretrial Service Office, including providing complete, accurate and truthful financial information; (2) testifies truthfully during the change of plea and sentencing hearings; (3) complies with this agreement; and (4) undertakes no act inconsistent with acceptance of responsibility before the time of sentencing, the Government agrees to recommend that Defendant receive a two-level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1(a), and to move for an additional one level reduction under U.S.S.G. § 3E1.1(b). If Defendant receives a reduction for Acceptance of Responsibility, his adjusted base offense level will be 33 (36 – 3) or 43 (46 – 3).

Whether there will be a reduction for acceptance of responsibility shall be determined by the Court in its discretion. The parties agree that no other Chapter Three adjustments apply in this case.

d. Criminal History Category. Based on information available at this time, the Parties believe that Defendant's criminal history category is I. This does not constitute a stipulation, but a belief based on an assessment of the information currently known. Defendant's actual criminal history will be determined by the Court based on the information presented in the Presentence Report and by the Parties at the time of sentencing.

e. Guideline Range. The parties understand that the statutory mandatory minimum sentence is fifteen years, or 180 months' imprisonment, and the statutory maximum sentence is thirty years, or 360 months' imprisonment. If Defendant's final adjusted offense level is 33, and his criminal history category is I, the advisory Guidelines range is 135-168 months, adjusted to 180 months by operation of the statutory mandatory minimum. If Defendant's final adjusted offense level is 43, and his criminal history category is I, the advisory Guidelines range is life in

prison, adjusted to 360 months in prison by operation of the statutory maximum.

f. Fine Range. If the adjusted offense level is 33, the fine range is \$17,500 to \$175,000. (U.S.S.G. § 5E1.2). If the adjusted offense level is 43, the fine range is \$25,000 to \$250,000. (U.S.S.G. § 5E1.2).

g. Supervised Release. The Sentencing Guidelines require a term of supervised release of at least five (5) years and up to a life term if a term of imprisonment of more than one year is imposed. (U.S.S.G. §§ 5D1.2(a)(1) and 5D1.2(b)(2); 18 U.S.C. § 3583 (k)).

7. Discretion of the Court. The foregoing stipulations are binding on the parties, but do not bind the Court. The parties understand that the Sentencing Guidelines are advisory and their application is a matter that falls solely within the Court's discretion. The Court may make its own determinations regarding the applicable Guidelines factors and the applicable criminal history category. The Court may also depart from the applicable Guidelines. If the Court determines that the applicable advisory Guideline calculations or Defendant's criminal history category are different from that stated above, the parties may not withdraw from this Plea Agreement and Defendant will be sentenced pursuant to the Court's determinations.

8. Special Assessment. The Guidelines require payment of a special assessment in the amount of \$100 for each felony count of which Defendant is convicted. U.S.S.G. § 5E1.3. Defendant agrees that he is obligated to pay the \$100 special assessment.

9. Restitution. Defendant understands and agrees that 18 U.S.C. § 2259 and the Mandatory Victim Restitution Act, 18 U.S.C. § 3663A, apply and that the Court is required to order Defendant to make restitution to the victims of his crime. Defendant understands and agrees that the Court may order Defendant to make restitution to any victims of his crime regardless of

whether the victim was named in the Indictment or whether the victim is included in the count of conviction. There is no agreement with regard to the amount of restitution.

10. **Waiver of Appeal.** The defendant understands that 18 U.S.C. § 3742 affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this right, and in exchange for the concessions made by the United States in this plea agreement, the defendant hereby waives all rights conferred by 18 U.S.C. § 3742 to appeal defendant's sentence, unless that sentence exceeds 180 months. The defendant has discussed these rights with the defendant's attorney. The defendant understands the rights being waived, and the defendant waives these rights knowingly, intelligently, and voluntarily.

11. **Forfeiture.** Defendant agrees to forfeit to the United States, pursuant to Title 18, United States Code, Section 2253(a):

- a. any visual depiction described in section 2251, 2251A, 2252, 2252A, 2252B, or 2260 of Chapter 110, or any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped or received in violation of Chapter 110;
- b. any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and
- c. any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.

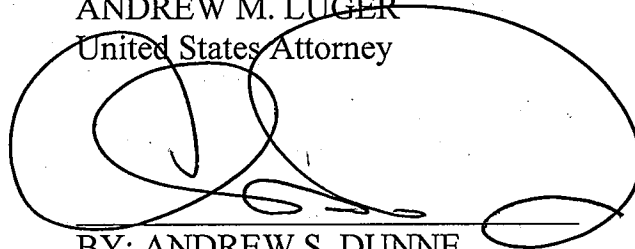
Specifically, the parties agree that Defendant shall forfeit the following to the United States: one Asus laptop S/N C1N0AS14871602B containing a Hitachi hard drive; one Samsung Galaxy Tablet S/N R61BC67500M; and one Samsung SCH-T769 cellular phone S/N DW6B307FS/7-B. Defendant agrees that this property is subject to forfeiture because the items were used to commit the violations charged in the Indictment. The United States reserves the

right to seek the forfeiture of additional property

12. **Complete Agreement.** This, along with any agreement signed by the parties before entry of plea, is the entire agreement and understanding between the United States and the defendant.

Dated: Sept. 10 2015

ANDREW M. LUGER  
United States Attorney



BY: ANDREW S. DUNNE  
Assistant U.S. Attorney

Dated: 10 Sept, 2015



ANDREW L. SCHILLER  
Defendant

Dated: 9/10, 2015



MARSH HALBERG, ESQ.  
Attorney for Defendant ~~Dowling~~

Schiller

AD  
M/A  
ALS