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In the interest of making this newsletter as useful a tool as possible for you, we ask that you keep us informed of your efforts. Additionally, we would like to feature articles written by you. Please contact us with information, proposed articles and comments about this newsletter. Thank you.

**SUPREME COURT DECLINES TO WEIGH IN ON INTERNET SALES TAXES**

On December 2, the U.S. Supreme Court denied petitions of certiorari from Amazon.com and Overstock.com, leaving intact a 2008 New York law requiring the Internet retailers to collect taxes on purchases made by New York customers. In Amazon.com, Inc. LLC v. New York State Department of Taxation and Finance, No. 13-259, and Overstock.com, Inc. v. New York State Department of Taxation and Finance, No. 13-252, the companies had argued the law violates the Constitution by requiring tax collection from businesses without facilities in the state.

The New York Court of Appeals upheld the law by finding Amazon, based in Seattle, and Overstock, based in Salt Lake City, while having no physical facilities in New York, did have a presence through their “associates” or “affiliates” programs, and thus were subject to collecting sales taxes. Under such programs, third parties put a link on their own websites to the host’s website for a particular product, collecting a small commission from sales made via that link. The appeals court noted that schools were active participants in Amazon’s associates program. Overstock.com had suspended its affiliates program in New York when the law was enacted, but had hoped to re-establish it so it could generate more business in the state.
New York has a four percent state sales tax, and local jurisdictions can impose additional taxes. For example, in New York City, the total effective tax rate is 8.875 percent.

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**CALLING ALL TECHIES: NIJ ISSUES APP CHALLENGE AND $$**

The National Institute of Justice (NIJ) has issued a high tech challenge to design and create UHS-compatible apps that measurably improve the efficiency and/or effectiveness of criminal justice and public safety services and operation. Public and private entities, labs, startups and others are eligible to apply, although NIJ recommends submissions be developed by collaboration between 1) a criminal justice agency capable of providing insight into available data and agency operations; 2) a UHS provider capable of providing information on network specifications and capabilities; and 3) a software developer.

The Challenge prize money will be awarded as follows: $75,000 for first prize, $50,000 for second prize and $25,000 for third prize.

All application proposals will be submitted in two phases. In Phase I, applicants will submit a prospectus consisting of: 1) a description of the app and its purpose; 2) how the app will be implemented in the field, including the geographic range and specifications of the UHS network on which it will operate; 3) the proposed data sets used in the app, including plans for obtaining access or collecting original data; 4) the purpose of the app, based on existing needs and information deficits; 5) anticipated impact of the app in terms of improved efficiency and/or effectiveness; and 6) proposed methods for impact measurement. The closing date for Phase I submission is February 14, 2014.

In Phase II, the detailed application will be submitted.


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**ATTORNEYS GENERAL FIGHTING CYBER CRIME**

**MULTI-STATE**

Thirty-eight Attorneys General reached a $17 million agreement with Google, Inc. to resolve allegations the company circumvented default privacy settings pertaining to cookie blocking in Safari web browsers. The states alleged Google circumvented the default privacy settings without consumers’ knowledge and consent, enabling advertisers to set third party cookies on users’ browsers. The states further alleged these acts contradicted Google’s assurances to consumers about Safari’s blocking of third party cookies. The settlement prohibits Google from employing any HTTP Form POST functionality using JavaScript to override a browser’s cookie-blocking without the consumers’ consent, unless to prevent fraud or address security issues. Google must also provide consolidated information about cookies and how they are used for five years. The settlement also prohibits Google from misrepresenting material facts about how consumers can use Google’s Ad Settings tool or any Google product or tool to directly manage how Google serves ads to their browsers. Google must also maintain systems configured to instruct Safari web browsers to expire offending cookies. The 38 jurisdictions involved in the settlement, led by Maryland, are Alabama, Arizona, Arkansas, California, Connecticut, District of Columbia, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Is-
The National Association of Attorneys General (NAAG) sent comments to the Federal Trade Commission (FTC) expressing support for the FTC’s proposed project to collect data about Patent Assertion Entities (PAEs), a/k/a patent trolls, declaring the project will greatly assist law enforcement efforts. The NAAG comments, signed by 43 state and territorial Attorneys General, suggest the FTC share, to the extent permitted by law, the entirety of the response to the information request with state Attorneys General. They also recommend two additions: 1) the FTC should inquire about the role of legal counsel, who may play a central role in patent assertion schemes; and 2) the FTC should increase the number of PAEs, manufacturing firms and other firms to which the information request will be submitted. The Attorneys General signing on to the comments, led by Nebraska and Vermont, are: Alabama, Alaska, Arkansas, Arizona, Colorado, Connecticut, Florida, Georgia, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington and West Virginia.

Nine Attorneys General and the U.S. Department of Justice reached an $11 million settlement with CA Technologies, Inc., resolving allegations the company overcharged government customers for software maintenance plans. The settlement resulted from a lawsuit brought under the federal and state false claims acts. The settlement amount will be divided based on the number of transactions each state had with CA Technologies, with the states recovering more than $3 million. The jurisdictions participating in the settlement are California, District of Columbia, Florida, Hawaii, Illinois, Massachusetts, Nevada, New York and Virginia.

Thirty-four state and territorial Attorneys General filed a “friend of the court” brief in the U.S. Supreme Court supporting full restitution for child pornography victims. The issue in the underlying case, Polonine v. Amy Unknown and the U.S., No. 12-8561, is the extent to which victims of child pornography can recover restitution from those who market, possess or trade images depicting sexual assault of children. The Attorneys General’s amicus brief argues Congress, by enacting the Mandatory Restitution law, 18 U.S.C. § 2259, directed the courts to order defendants to provide “full recovery” for the damages suffered by victims of child pornography. The jurisdictions joining the brief are Alabama, Alaska, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Utah, Vermont, Virgin Islands, West Virginia, Washington and Wyoming.

Thirty-one state and territorial Attorneys General signed onto a Secure Our Smartphones (S.O.S.) Initiative letter urging Google/Motorola, Samsung and Microsoft, three leading smartphone manufacturers, to develop a technological means to protect smartphone users by drying up secondary markets for stolen phones. The Initiative is an international coalition chaired by New York Attorney General Eric Schneiderman to encourage the industry to implement a solution to robberies of mobile communication devices, known as “Apple Picking.” The Attorneys General signing on to the Initiative are Arizona, Arkansas, Florida, Guam, Indiana, Iowa, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, New Jersey, North Dakota, Oregon, Pennsylvania, Puerto Rico, Rhode Island, Utah and Vermont. They join the current Initiative member Attorney Generals: Connecti-
cut, Delaware, Hawaii, Illinois, Massachusetts, Minnesota, Nebraska and New York.

**ALABAMA**

Attorney General Luther Strange joined Criminal Justice Information Center Director Maury Mitchell, a member of Attorney General Strange’s Special Prosecution Alliance, to announce the arrest of Thomas Hixon of Georgia for attempting to access confidential state information systems. Attorney General Strange’s Office presented information to a grand jury resulting in Hixon’s indictment, charging him with one felony count of computer tampering and one felony count of seeking to obtain criminal record offender information under false pretenses. If convicted, Hixon faces a penalty of from one year and one day to 10 years in prison and a fine of up to $15,000 for the computer tampering charge, a class C felony, and up to five years in prison and a fine of up to $10,000 for the obtaining information under false pretenses charge, an unclassified felony. Assistant Attorney General Pete Smyczek of Attorney General Strange’s Special Prosecutions Division handled the case. The Georgia Bureau of Investigation and the Chickamauga Police Department assisted with the investigation.

**ARKANSAS**

Attorney General Dustin McDaniel announced the sentencing of Michael Rea to 310 years in prison after being convicted of 20 counts of possession of child pornography and four counts of computer exploitation of a child. Rea, a Level 3 sex offender, was arrested while on probation for a sexual assault conviction. The Malvern Police Department notified Attorney General McDaniel’s Cyber Crimes Unit of suspected child pornography at Rea’s residence. Unit Special Agent Chad Mell and a Saline County probation officer went to the residence, finding multiple images of child pornography on a laptop. Mell and Special Agent Jeff Shackelford, who runs the Unit’s Forensic Lab, testified for the State. Assistant Attorney General Will Jones and Saline County Deputy Prosecuting Attorney Adam Warford represented the State at trial.

**CALIFORNIA**

Attorney General Kamala Harris announced the removal of 10 private health insurance websites for misleading residents by imitating Covered California, the State’s official marketplace for the Affordable Care Act (ACA). The websites had domain names similar to the State’s Exchange and contained unauthorized references to the Exchange’s log and name. The California ACA forbids entities from claiming to provide services on behalf of Covered California without a valid agreement with the State Exchange. Multiple website operators were sent cease and desist letters informing them their websites were in violation of state law and demanding immediate removal. To date, all of the websites contacted have complied, and the websites have been either deactivated or redirected to the official Exchange.
COLORADO
Attorney General John Suthers announced the indictment of Ronald Gollehan and his companies, Open Source Games, Inc., WikiRainforest, Inc., Gameworking, LLC and others, on 56 counts of securities fraud. Hollehan is accused of offering investment opportunities for an online game in development. The indictment resulted from a joint effort between Attorney General Suthers’ Office and DORA’s Colorado Division of Securities. Approximately 95 consumers made investments, resulting in $885,930 in losses. Gollehan directed investments into his bank accounts and also solicited and accepted investments from people abroad as well as in 14 other states.

DELAWARE
Attorney General Beau Biden announced the arrest of Thomas Noble, aka Thomas Guyer, pursuant to an undercover online investigation by the Delaware Child Predator Task Force into the distribution of child pornography. Undercover detectives tracked the source of files containing child pornography to Noble’s residence, where they executed a search warrant and seized a computer, multiple digital storage devices and numerous pages of child pornography. Noble was charged with 28 counts of Dealing in Child Pornography.

FLORIDA
Attorney General Pam Bondi’s Office reached a settlement with DADATA, Inc. and related companies to resolve allegations of telephone bill charges for voicemail, e-fax and other services without the customers’ consent. The agreement requires the companies to refund all charges billed since July 1, 2009 to eligible state customers who did not consent to the services. More than 18,000 Florida customers are potentially eligible for refunds, and the company will also be making refunds to more than 53,000 Florida telephone lines, for a total value of $2.2 million, in addition to the settlement.

ILLINOIS
Attorney General Lisa Madigan announced the arrest of Donald Currier on seven counts of possession of child pornography, a Class 2 felony punishable by three to seven years’ incarceration. Attorney General Madigan’s investigators, assisted by the White County Sheriff’s Office and State’s Attorney’s Office and the Carmi Police Department, executed a search warrant at Currier’s residence, where evidence of alleged child pornography was found.

KENTUCKY
Attorney General Jack Conway’s Office of Consumer Protection compelled the company operating kynet101.com, a copycat website deceptively similar to kynect.ky.gov, the State’s official health insurance website, to take down the site. Attorney General Conway received information about the site from the Governor’s staff after several consumers had entered information on the site and began receiving harassing calls and emails. The Office of Consumer Protection’s letter to the site owners also noted kynect is a copyrighted term, so the site infringed on the State’s copyrights. Google was also contacted and removed the site from its search results.

LOUISIANA
Attorney General Buddy Caldwell’s High Technology Crime Unit arrested Brian Stewart on 15 counts of possession of child pornography and one count of distribution of child pornography. The arrest resulted from a joint investigation involving the Unit, the New Orleans Police Department and Homeland Security Investigations. Stewart faces up to 20 years in prison on each count.

MINNESOTA
Attorney General Lori Swanson entered into a settlement with MPHJ Technology Investments, LLC, a
company targeting businesses for using basic office equipment to scan documents to email, whereby the company will cease “patent trolling.” Under the Assurance of Discontinuance, MPHJ must cease its patent enforcement activities in the State and cannot resume them without Attorney General Swanson’s permission. MPHJ is also barred from assigning the patents to anyone who does not agree to be bound by these terms. Attorney General Swanson’s Office began investigating MPHJ for violations of consumer protection laws after receiving complaints from small businesses targeted by the company. MPHJ sent threatening letters to these businesses alleging infringement of its patents for using basic office equipment to scan documents into email, demanding a fee of $1,000 to $1,200 per employee for a license to avoid litigation.

MISSISSIPPI

Attorney General Jim Hood’s investigators, assisted by the Clinton Police Department, arrested Bryant Roby at his home on one count of possession of child pornography. Roby faces up to 40 years in prison, if convicted. The case will be prosecuted by Special Assistant Attorney General Brandon Ogburn.

NEW JERSEY

Acting Attorney General John Hoffman, his Division of Law and Division of Consumer Affairs entered into a $1 million settlement with online video gaming company E-Sports Entertainment, LLC, resolving allegations the company infected thousands of personal computers with malicious software code enabling E-Sports to monitor the programs subscribers were running and illegally mine for bitcoins through a botnet it created. Under the settlement, E-Sports has agreed to refrain from deploying software code capable of downloading to consumers’ computers without their knowledge and authorization. The company must also submit to a 10-year compliance program and create a dedicated page on its web site specifying the type of data it collects, the manner in which the data is collected and how the data is used. E-Sports must pay the State $350,000 of its $1 million settlement obligation, with the remainder to be suspended and vacated within 10 years, provided the company adheres to all settlement terms and avoids future violations.

NEW MEXICO

Attorney General Gary King’s Communications Division presented an Internet safety workshop at the Santa Fe Bureau of Indian Education’s Educational Forum. Attendees were given the Attorney General’s brochure, “Cyberbullying – Protecting Yourself and Your Personal Information.”

NEW YORK

Attorney General Eric Schneiderman sent letters to the chief executive officers of Verizon, AT&T, T-Mobile, U.S. Cellular Corporation and Sprint seeking information on their decision to prohibit Samsung from pre-loading an opt-out “kill switch” application on approved smartphones, a default feature to enable users to render the phones inoperable if stolen. The letter urges carriers to embrace the technology as an effective way to protect subscribers and expresses concerns over each carrier’s independence from a competitive standpoint in deciding to reject Samsung’s proposed solution. Attorney General Schneiderman also made a “document hold” request for the carriers to preserve any communications pertaining to the decision. He also requested them to provide a detailed explanation of their decision to reject Samsung’s proposal and any other kill-switch technologies by December 31, 2013.

NORTH CAROLINA

Attorney General Roy Cooper’s information technology staff developed and made available a free North Carolina Sex Offender app for Android devices, similar to the app previously released for Apple devices. The app allows users to search for registered state sex offenders by GPS location or street address.
They can also search for all offenders within a certain mile radius and can zoom in on the map.

**OHIO**

Attorney General Mike DeWine announced his office will begin inspections of electronic raffle machines. Attorney General DeWine had previously provided notice the machines were illegal under state law to the organization representing operators of the machines, advising the law would be enforced if operations did not cease. Electronic raffle machines meet the definition of “slot machines” under state law.

**OKLAHOMA**

Attorney General Scott Pruitt secured $3.5 million in laundered proceeds from an illegal gambling ring involving multiple Internet cafes in Florida. The proceeds are part of an agreement with Chase and Kristin Burns, who ran the Florida cafes with computer servers in Oklahoma. Attorney General Pruitt’s agreement will dismantle the illegal operation and prohibit its owners from running gambling facilities or laundering gambling proceeds through Oklahoma bank accounts.

**PENNSYLVANIA**

Attorney General Kathleen Kane’s Child Predator Section agents arrested Robert Horsch on two felony counts of distribution of child pornography, 10 felony counts of felony possession of child pornography and one felony count of criminal use of a communications facility. According to the criminal complaint, agents conducting an online investigation found numerous files of child pornography and determined the files were allegedly downloaded to and shared from Horsch’s computer. During the search of Horsch’s residence, Attorney General Kane’s Computer Forensic Unit agents previewed an external hard drive and found child pornography files. The West Brandywine Police Department assisted with the investigation.

**RHODE ISLAND**

Attorney General Peter Kilmartin joined state Senator Erin Lynch and state Representative Donald Lally, Jr. to announce the intention to file legislation prohibiting the posting of “revenge porn” without the consent of the individual depicted in the images. Those in violation would be guilty of a felony with a maximum penalty of three years in prison or a fine of up to $3,000 or both.

**TEXAS**

Attorney General Greg Abbott filed an enforcement action charging four text messaging content providers and their billing aggregator with unlawful cell phone cramming. According to court documents, the defendants enroll customers in premium text messaging services programs without properly disclosing the costs associated with the services and then bill the customers without their consent. The services purportedly offered by defendants include ringtones, horoscopes, celebrity gossip news and discount coupons. The action named four affiliated providers: Bear Communications LLC, MDK Media Inc., Anacapa Media LLC and Tendenci Media LLC. The petition also named billing aggregator Mobile Messenger U.S. Inc., a California entity serving as middle man between the content provider and wireless cell phone carriers, and Mundo Media Ltd. of Canada, a paid third party advertising network driving cell phone users to the content providers’ offers.

**VERMONT**

Attorney General Bill Sorrell announced the arrest of Jose Bruzual, a teacher at St. Johnsbury Academy, on five felony counts of possession of child pornography. The charges resulted from an investigation conducted by Attorney General Sorrell’s Office and the Vermont Internet Crimes Against Children Task Force. According to court documents, Bruzual obtained and distributed child pornography using peer-to-peer file-sharing programs. A search warrant was executed at Bruzual’s residence by personnel from
the Attorney General’s office, the Caledonia Special Investigations Unit, the State Police and the St. Johnsbury, UVM and South Burlington Police Departments.

WASHINGTON
Attorney General Bob Ferguson’s Office filed suit against Ohio-based Form Giant, LLC, a/k/a change-my-address.com, for failing to disclose its service charges and failing to fully refund customers. The company offers online change-of-address services, but when customers are taken to the payment page, the company obscures the pricing information about its $19.95 fee and creates the impression the cost of services is limited to the $1 charge assessed by the U.S. Post Office for address changes. In addition, the company refused to refund the full amount charged when customers sought refunds.

WISCONSIN
Attorney General J.B. Van Hollen announced the indictment of Dylan Jordan in the U.S. District Court for the Western District of Wisconsin for traveling in foreign commerce for the purpose of engaging in illicit sexual conduct, traveling in foreign commerce for the purpose of engaging in illicit sexual conduct with a minor and with using a minor to engage in sexually explicit conduct for the purpose of producing visual depictions of such conduct. Attorney General Van Hollen’s Division of Criminal Investigation special agents worked with the U.S. Attorney’s Office for the Western District of Wisconsin, Immigration and Customs Enforcement Homeland Security Investigations special agents and the Royal Canadian Mounted Police to investigate Jordan, who had travelled from Madison, Wisconsin to Canada to engage in illicit sexual conduct with a minor.

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CYBER NEWS BRIEFS

TECH GIANTS CREATE “BUG BOUNTY” FUND
Facebook and Microsoft have created a new fund to pay researchers who find security holes in widely used parts of the Internet, an effort referred to as “bug bounty” programs. The fund is part of an ongoing effort by tech companies to fix the problems before hackers can take advantage of them. For example, in one category, the group will pay at least $5,000 for a security hole manifesting itself across a wide range of products or impacting a large number of end users. The new fund will be operated by a panel including employees from the two companies, Google, Etsy and iSEC Partners, a cybersecurity research firm.

SENATE LAUNCHES ANTI-FRAUD HOTLINE FOR SENIORS
The U.S. Senate Special Committee on Aging unveiled a toll-free hotline to enable senior citizens to report suspected fraud and receive assistance. The hotline, 1-855-303-9470, will be staffed by a team of committee investigators on weekdays from 9 am to 5 pm. Those investigators, who have experience with online and offline investment scams, identity theft, bogus sweepstakes and lottery schemes, will directly examine complaints and, if appropriate, refer them to the proper authorities. Concomitant with the hotline launch, the committee also established an enhanced senior-friendly website. The site’s new features include large print, easy navigation and an uncluttered layout, as well as providing the ability to increase text size, change colors or view a text-only version. The site may be accessed at http://www.aging.senate.gov.
NJ: THIRD STATE TO OK ONLINE GAMBLING

New Jersey became the third state, but by far the most populous, to roll out online gambling, as state regulators approved 13 Internet gaming websites run by six Atlantic City casinos. During the five-day test phase, casinos were limited to 500 players on each site at one time and were not allowed to advertise widely, but those restrictions were lifted after regulatory approval. The casinos use geolocation services to determine whether someone outside of the state is trying to access the site, the same technology being used in Delaware and Nevada, the other two states offering online wagering.

REPORT: BOOM IN WORLDWIDE IP PATENT FILINGS

Worldwide intellectual property (IP) patent filings grew by 9.2 percent in 2012, the fastest growth recorded in the past 18 years, according to the 2013 World Intellectual Property Indicators annual report. Additionally, for the first time the total number of patents worldwide exceeded the one million mark. The report, produced by the United Nations World Intellectual Property Organization (WIPO), found China filed the largest number of patent applications in the world. The fastest growth in filings came from China (up 24 percent), New Zealand (up 14.3 percent), Mexico (up nine percent), the U.S. (up 7.8 percent) and Russia (up 6.8 percent). The full report may be accessed at http://www.wipo.int/pstats/en/wipi/.

FIRSTNET SEEKS APP DEVELOPERS

The First Responder Network Authority (FirstNet) issued a request for information (RFI) for the development of applications for the public safety broadband network as well as a mobile app platform. Firstnet is seeking companies with experience working with public safety data and integrating data from several sources. The RFI asks about capabilities ranging from an app store to security features, as well as the industry’s ability to provide priority, preemption and related services for network users. The responses are due on January 17, 2014. The RFI may be accessed at http://www.fbo.gov/spg/doc/os/oam-osbs/sa1301-12-rp-00016-k/listing.html.

IN THE COURTS

POSSESSION OF CHILD PORNOGRAPHY: INSUFFICIENT EVIDENCE CLAIM

The People v. Mahoney, 220 Cal. App. 4th 781 (October 17, 2013). The California Court of Appeal, Fourth Appellate District, found the sheer volume of child pornography images created sufficient evidence to support the jury’s verdict. Clark Mahoney, Jr. was convicted of possession of child pornography. He appealed, denying he had viewed any of the images and arguing the images had been downloaded onto his computer without his knowledge, such as with an ad downloaded from a website. He further argued insufficiency of the evidence to support his conviction. The appeals court disagreed, finding sufficient evidence showing Mahoney knew the images of child pornography found in temporary Internet files had been downloaded to his hard drives. Further, the court noted the sheer volume of images, along with the Internet searches tied to Mahoney, created sufficient evidence to support the verdict. The evidence showed the images could not have gotten onto Mahoney’s hard drives unless he (or another user) visited the website containing those images. The judgment was affirmed. Ed. Note: Assistant Attorney General Julie Garland and Deputy Attorneys General Anthony Da Silva and Peter Quon, Jr. represented the People.

TEXT MESSAGES: AUTHENTICATION OF CELL PHONE OWNER

U.S. v. Mebrtatu, 2013 U.S. App. LEXIS 22093 (3rd Cir. October 30, 2013). The Third Circuit Court of
Appeals held the text messages on the seized cell phone were properly authenticated. Promise Mebrtatu was convicted of participating in conspiracy to commit bank fraud and aggravated identity theft in the U.S. District Court for the Eastern District of Pennsylvania. She appealed the denial of her motion to exclude the text messages retrieved from a cell phone found on her person. The appeals court found the messages were properly authenticated because the device containing them was found on Mebrtatu’s person and the content of the messages indicated she was the user of the seized cell phone, and hence the sender and receiver of messages found on that phone. The denial of the motion was affirmed.

**CONFRONTATION CLAUSE: IP ADDRESS DATA**

*U.S. v. Wyss*, 2013 U.S. App. LEXIS 21320 (5th Cir. October 21, 2013). The Fifth Circuit Court of Appeals found defendant’s Confrontation Clause rights were not violated. John Wyss aka Bones was convicted in the U.S. District Court for the Western District of Louisiana of engaging in a child exploitation enterprise. He appealed, arguing his Confrontation Clause rights were violated by admission of Internet Protocol address data and testimony about that data from a records custodian of Sprint Nextel. The court found Wyss’ Confrontation Clause rights were not violated because the data at issue was not testimonial in nature, having been created by the telecommunications company for the primary purpose of customer billing. Wyss’ conviction was affirmed.

**4TH AMENDMENT: CELL TOWER RECORDS**

*Barfield v. State of Texas*, 2013 Tex. App. LEXIS 13493 (October 31, 2013). The Texas Court of Appeals, Fourteenth District, found the State’s obtaining of cell tower records from a third party provider did not violate reasonable privacy expectations. Brandon Barfield was convicted of murder and appealed, challenging the admission of cell tower records used to trace his location at the time of the murder and disposition of the body. He argued the State’s obtaining of those records without a search warrant violated the Fourth Amendment’s prohibition against unlawful search and seizure. The appeals court noted Barfield knowingly exposed himself to third party actions each time he used his cell phone. Finding no reasonable expectation of privacy in third party data, the court held the State’s obtaining of cell tower records from a third party provider did not violate reasonable privacy expectations, and thus the trial court did not violate the exclusionary rule in admitting those records and related expert testimony into evidence. The judgment was affirmed.

**RIGHT TO REMAIN SILENT: TESTIMONY OF WITNESS**

*U.S. V. Schatz*, 2013 U.S. App. LEXIS 23610 (11th Cir. November 25, 2013). The Eleventh Circuit Court of Appeals found the lower court did not abuse its discretion in declining to order a mistrial. Gary Schatz was convicted in the U.S. District Court for the Southern District of Florida of attempting to engage a minor in sexual activity. He appealed, asserting among many other arguments that the district court erred in not declaring a mistrial during a detective’s testimony. During his testimony, the detective described his investigation after Schatz’ arrest, telling the jury he obtained a search warrant for Schatz’ mobile phone. When asked about “how that works,” the detective said since they did not know the password, and Schatz did not give it to them, they enlisted Google’s help. Schatz objected, arguing the detective improperly commented on his right to remain silent and moved for a mistrial. The appeals court noted the district court gave a curative instruction to the jury, advising them the detective’s answer was improper and they should disregard it. Therefore, the court found the district court did not err in declining to declare a mistrial. As to
Schatz' other arguments, the court found the evidence against him overwhelming and affirmed the conviction.

FOURTH AMENDMENT: PARTICULARITY REQUIREMENT
U.S. v. Kuc, 2013 U.S. App. LEXIS 24489 (1st Cir. December 10, 2013). The First Circuit Court of Appeals found the district court properly denied the motion to suppress. Matthew Kuc was indicted for fraudulently obtaining computer parts and then selling them for profit. Kuc would order replacement parts from computer companies, giving them serial numbers for parts he did not own and then failing to return the defective parts. He then sold the new replacement parts online. Kuc was convicted in the U.S. District Court for the District of Massachusetts of four counts of wire fraud, one count of possession of stolen property and one count of aggravated identity theft. He appealed, arguing the district court erred in denying his motion to suppress the evidence obtained because the search warrant violated the Fourth Amendment’s particularity requirement. Kuc argued the language of the warrant was overbroad and didn’t limit the scope of the search, citing the first sentence stating “…all records…and tangible objects that constitute evidence, fruits and instrumentalities of [specified criminal statutes]….” The appeals court disagreed, finding the warrant had to be read comprehensively, as the second clause detailed the companies Kuc was suspected of defrauding as well as the aliases, street addresses and email addresses he was believed to have used in his scheme. The judgment was affirmed.

LEGISLATIVE UPDATE

TEXTING WHILE DRIVING
NEW JERSEY. On November 14, S3057, a bill to expand the state law against using a handheld wireless device while driving to apply to instances when the vehicle is temporarily stopped, such as at traffic lights, stop signs or in traffic jams, was introduced. First offense violations would be subject to fines of between $200 and $400; second offense violations would receive fines between $400 and $600; and third and subsequent offenders would be fined between $600 and $800; receive three points on their license; and at the discretion of the court receive a 90-day suspension of their license. The bill was referred to the Law and Public Safety Committee. A4497 is the similar bill in the Assembly.

COMPUTER TAMPERING AND UNAUTHORIZED ACCESS
FLORIDA. On November 5, SB 364, a bill amending the State’s Computer Crimes Act, was introduced. The bill makes it a crime to 1) willfully and without authorization access a computer network or device; 2) disrupt the network or device’s ability to transmit data; 3) damage a network or device; or 4) engage in audio or video surveillance of an individual without that person’s knowledge by accessing a network or device. Anyone who violates 1) above would commit a felony of the third degree; anyone violating 2), 3) and 4) above would commit a felony in the second degree. The bill has been referred to the Communications, Energy and Public Utilities; Criminal Justice; and Appropriations Committee and the Appropriations Subcommittee on Criminal and Civil Justice.

“REVENGE PORN”
WISCONSIN. On November 20, the Wisconsin Senate held a public hearing on AB 462, a bill making it a crime to disseminate a sexually explicit image of a person without their consent, regardless of whether the person consented to the capture of the image. A person who does so would be guilty of a Class A misdemeanor and could be fined up to $10,000, imprisoned for up to nine months, or both. The bill passed the Assembly on November 12. The similar Senate bill is SB 367.

PATENT TROLLS
U.S. HOUSE. On December 5, the House passed HR 3309, a bill aimed at placing limits on entities buying patents in order to demand nuisance royalties. The bill would require a party alleging infringement to provide more information on their invention and the infringement and would limit the amount of pre-trial information such entities could seek. It would also require courts to award fees and expenses to prevailing parties and would direct the courts to require another party to certify whether it is able to pay such fees and expenses if awarded. The bill has been referred to the Senate Judiciary Committee. The similar Senate bill is S. 1720.

NEW PUBLICATIONS AND WEBSITES

EVALUATION OF INTERNET CHILD SAFETY MATERIALS USED BY ICAC TASK FORCES IN SCHOOL AND COMMUNITY SETTINGS, FINAL REPORT

This National Institute of Justice (NIJ) project evaluated the content of current Internet safety education program materials and how law enforcement presenters and school personnel deliver them. The report can be accessed at https://www.ncjrs.gov/pdffiles1/nij/grants/242016.pdf.

PRIVACY AND CLOUD COMPUTING IN PUBLIC SCHOOLS

This report by the Center on Law and Information Policy at Fordham University includes recommendations for school districts using cloud services. The report can be accessed at http://ir.lawnet.fordham.edu/clip/2/.

THE BIG DATA REVOLUTION: PRIVACY CONSIDERATIONS

This paper by the Technology Policy Institute discusses the uses of big data and the implications of big data on data security and privacy. It can be accessed at http://www.techpolicyinstitute.org/files/lenard_rubin_thebigdatarevolution_privacyconsiderations.pdf

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