

1 ANDREW G. OOSTERBAAN  
Chief, Child Exploitation and Obscenity Section  
2 Criminal Division - Department of Justice

3 STEVE GROCKI (VABN 41502)  
Trial Attorney  
4 Child Exploitation and Obscenity Section  
Criminal Division - Department of Justice

5 MICHAEL I. YOON (ILBN 6244165)  
6 Trial Attorney  
Child Exploitation and Obscenity Section  
7 Criminal Division - Department of Justice

8 1400 New York Ave., NW  
Ste. 600  
9 Washington, DC 20005  
telephone (202) 514-5780  
10 facsimile (202) 514-1793  
email [Steve.Grocki@usdoj.gov](mailto:Steve.Grocki@usdoj.gov)  
11 [Michael.Yoon@usdoj.gov](mailto:Michael.Yoon@usdoj.gov)

12 Attorneys for the United States of America

13  
14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN FRANCISCO DIVISION

17 UNITED STATES OF AMERICA, ) No. CR 07-0602 VRW  
18 Plaintiff, ) PLEA AGREEMENT  
19 v. )  
20 BERNARD V. WARD, )  
21 Defendant. )

22  
23 I, Bernard V. Ward, and the Department of Justice, Criminal Division, Child Exploitation  
24 and Obscenity Section, (hereafter "the Government") enter into this written plea agreement (the  
25 "Agreement") pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

26 The Defendant's Promises

27 1. I agree to plead guilty to Count One of the captioned Indictment charging me with  
28 Distribution of Child Pornography, in violation of 18 U.S.C. § 2252A(a)(2). I agree that the

**FILED**

**MAY X 8 2008**

**RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

1 elements of the offense are as follows: (1) I knowingly distributed an image of child  
2 pornography in interstate or foreign commerce by any means, including by computer; (2) the  
3 production of such image involved the use of an actual minor engaging in sexually explicit  
4 conduct as defined in 18 U.S.C. § 2256(8)(A); (3) such visual depiction was of an actual minor  
5 engaged in sexually explicit conduct; (4) I knew that such visual depiction was of sexually  
6 explicit conduct; and

7 (5) I knew that at least one of the persons engaged in sexually explicit conduct in such visual  
8 depiction was an actual minor. I agree that the maximum penalties are as follows:

- |    |    |                                     |  |
|----|----|-------------------------------------|--|
| 9  | a. | Maximum and Minimum prison sentence | Maximum - 20 years<br>Minimum - 5 years  |
| 10 | b. | Maximum fine                        | \$ 250,000   |
| 11 | c. | Supervised release term             | Maximum - up to life   |
| 12 | d. | Mandatory special assessment        | \$100  |
| 13 | e. | Other Consequences                  |  |
| 14 |    | I.                                  | Registration as a sex offender under the Sex Offender Registration<br>15 and Notification Act, a federal law, pursuant to 42 U.S.C.<br>16 §§ 16913 - 916, which includes the requirement to keep the<br>17 registration current in each jurisdiction where the defendant<br>18 resides, is an employee, and is a student. I understand that the<br>19 requirements for registration include providing my name, my<br>20 residence address, and the names and addresses of any places<br>21 where I am or will be an employee or a student, among other<br>22 information. I further understand that the requirement to keep the<br>23 registration current includes informing at least one jurisdiction in<br>24 which I reside, am an employee, or am a student not later than<br>three business days after any change of my name, residence,<br>employment, or student status. For failing to register, update my<br>registration, or verify my registration, I agree that I may be subject<br>to prosecution under 18 U.S.C. § 2250 and face a penalty of up to<br>10 years imprisonment. |
|    |    | ii.                                 | Collateral consequences from a felony conviction may include the<br>loss of certain civil rights, including, but not limited to, the right to<br>vote or the right to possess firearms.  |

25 As stated above in paragraph (a), I understand that my conviction for violating 18 U.S.C.  
26 § 2252A(a)(2) carries a mandatory minimum term of imprisonment of 5 years.

27 2. I agree that I am guilty of the offense to which I will plead guilty, and I agree  
28 that the following facts are true: At all times relevant herein, I resided in San Francisco,

1 California, which is located in the Northern District of California and all relevant acts took place  
2 in that district. On or about December 23, 2004, I engaged in an online chat conversation using  
3 America Online (AOL) Instant Messenger and using my screen name "Vincentlio." The AOL  
4 account I was using at that time is subscribed to in my name, and I have used that screen name  
5 since 1995. My conversation was with an individual who used the screen name "Sexfairy2005."  
6 During the course of that conversation, I sent an image of child pornography to "Sexfairy2005"  
7 via my AOL email account after telling her I was sending her mail. Based on my review of the  
8 evidence in my case, I know that "Sexfairy2005" was an individual living in Oakdale, California.  
9 I further understand that by sending her an email with an image containing child pornography  
10 via AOL, the message I sent her would first travel to AOL's servers in Virginia and then to  
11 "Sexfairy2005" in California, thereby traveling in interstate commerce. After the image was  
12 sent, "Sexfairy2005" asked how old the individuals were in the image I sent. I responded that I  
13 believed that the boy was fourteen, the girl was twelve, and the woman was in her thirties. The  
14 image clearly depicts sexually explicit activity and involves a prepubescent minor. In addition to  
15 this image, I distributed images of child pornography to other individuals using my AOL email  
16 account. These images, like the one I sent to "Sexfairy2005," depicted actual minors engaged in  
17 sexually explicit conduct. I understand that the production of these still images involved the use  
18 of actual minors engaging in sexual explicit conduct. When I distributed these images, I knew  
19 that these images depicted sexually explicit conduct and that at least one of the persons engaged  
20 in the sexually explicit conduct depicted was a minor. Moreover, I acknowledge that several of  
21 the images I sent via AOL involved sadistic or masochistic conduct or other depictions of  
22 violence, and I agree that I distributed between 15-150 images of child pornography using my  
23 AOL account and screen name.

24 3. I agree to give up all rights that I would have if I chose to proceed to trial,  
25 including the right: to a jury trial with the assistance of an attorney; to confront and  
26 cross-examine Government witnesses; to remain silent or testify; to move to suppress evidence  
27 or raise any other Fourth or Fifth Amendment claims; to any further discovery from the  
28 Government; and to pursue any affirmative defenses and present evidence thereon, including a

1 “journalistic purpose” affirmative defense.

2 4. I agree to give up my right to appeal my conviction, the judgment, and orders  
3 of the Court. I also agree to waive any right I may have to appeal any aspect of my sentence,  
4 including any orders relating to forfeiture and/or restitution.

5 5. I agree not to file any collateral attack on my conviction or sentence, including  
6 a petition under 28 U.S.C. § 2255 or 28 U.S.C. § 2241, or motion under 18 U.S.C. § 3582, at any  
7 time in the future after I am sentenced, except for a claim that my constitutional right to the  
8 effective assistance of counsel was violated.

9 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is  
10 entered. I further agree that the Court is not bound by any recommendation, stipulation, or  
11 request made by the parties, pursuant to Fed. R. Crim. P. 11(c)(1)(B), as to the appropriate  
12 sentence, and I understand that I may not withdraw my guilty plea if the Court declines to follow  
13 any such recommendation.

14 7. I agree that the Court will calculate my sentencing range under the advisory United  
15 States Sentencing Guidelines (“U.S.S.G.”). I understand that the Court, while not bound to  
16 apply the Guidelines, must consult those Guidelines and take them into account when  
17 sentencing, together with the factors set forth in 18 U.S.C. § 3553(a). I agree that the sentence to  
18 be imposed is within the discretion of the sentencing Court, subject to the applicable statutory  
19 maximum and minimum penalties for the offense of conviction and the provisions of the  
20 Sentencing Reform Act and the Sentencing Guidelines promulgated thereunder, as modified by  
21 United States v. Booker, 543 U.S. 220 (2005), and its progeny. I agree that, while the Court is  
22 not ultimately bound to impose a sentence within the applicable Sentencing Guideline range, its  
23 sentence must be reasonable based upon consideration of all relevant sentencing factors. I agree  
24 that regardless of the sentence that the Court imposes on me, I will not be entitled, nor will I ask,  
25 to withdraw my guilty plea. I also agree that the Sentencing Guidelines range will be calculated  
26 as follows:

- 27 a. Base Offense Level, U.S.S.G. § 2G2.2(a)(2) 22
- 28 b. Stipulated specific offense characteristics:

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- i. Material involves prepubescent minor, U.S.S.G. § 2G2.2(b)(2) +2
- ii. Distribution other than distribution described in subdivisions (A) through (E) U.S.S.G. § 2G2.2(b)(3)(F) +2
- iii. Offense involved Sadistic or masochistic conduct or other depictions of violence +4
- iv. Offense involved between 10 and 150 images, U.S.S.G. § 2G2.2(b)(7)(D) +2

c. Disputed Enhancement: I reserve the right to argue that U.S.S.G. § 2G2.2(6) (whether the offense involved the use of a computer or an interactive computer service for the possession, transmission, receipt, or distribution of the material), which could result in an increase of three (3) levels, does not apply to my case, and I understand that the Government reserves its right to argue that this enhancement applies.

d. Acceptance of responsibility: - 3

If I meet the requirements of U.S.S.G. § 3E1.1, I may be entitled to a three-level reduction for acceptance of responsibility, provided that I forthrightly admit my guilt, cooperate with the Court and the Probation Office in any presentence investigation ordered by the Court, and continue to manifest an acceptance of responsibility through and including the time of sentencing.

e. Downward Departure Motion: I reserve the right to file a motion for a downward departure from the Guidelines imprisonment range determined by the Court, and I understand that the Government reserves its right to oppose any such motion. The basis for the downward departure shall be limited to factors listed in § 18 U.S.C. 3553(a).

I agree that if the Court finds that an enhancement under § 2G2.2(6) does not apply, the Guidelines calculation will be Level 29, assuming I qualify for a three-level reduction for acceptance of responsibility. Assuming a Criminal History Category of I, I understand that the Sentencing Guidelines range for a Total Offense Level 29 is 87-108 months, prior to the Court's ruling on the downward departure motion described in Paragraph 7(e). However, if the Court finds that § 2G2.2(6) does apply, I agree that the Guidelines calculation will be Level 31, assuming I qualify for a three-level reduction for acceptance of responsibility. Consequently, assuming a Criminal History Category of I, I understand that the Sentencing Guidelines range for a Total Offense Level 31 is 108-135 months, prior to the Court's ruling on the downward departure motion described in Paragraph 7(e).

8. I agree that the Sentencing Court may make factual findings, by a preponderance

1 of the evidence, with respect to any and all sentencing factors and issues, including those  
2 referenced in the Sentencing Guidelines (without regard to whether they are ultimately deemed  
3 to be “elements” of the offense of conviction), whether or not such factors or issues have been  
4 stipulated by the parties or admitted in this agreement. In making those findings, I agree that the  
5 Court may consider any reliable evidence, including hearsay. I agree to the determination of my  
6 sentence based upon such judicial fact-finding and knowingly and voluntarily waive any right to  
7 have any such sentencing factors or issues charged in the Indictment or presented to and  
8 determined by a jury beyond a reasonable doubt.

9 9. The parties have not agreed on the Criminal History category. I agree that I will  
10 make a good faith effort to pay any fine, forfeiture, or restitution I am ordered to pay. Before or  
11 after sentencing, I will, upon request of the Court, the Government, or the U.S. Probation Office,  
12 provide accurate and complete financial information, submit sworn statements and give  
13 depositions under oath concerning my assets and my ability to pay, surrender assets I obtained as  
14 a result of my crimes, and release funds and property under my control in order to pay any fine,  
15 forfeiture, or restitution. I agree to pay the special assessment at the time of sentencing.

16 10. I agree not to commit or attempt to commit any crimes before sentence is imposed  
17 or before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial  
18 release (if any); not to intentionally provide false information to the Court, the Probation Office,  
19 Pretrial Services, or the Government; and not to fail to comply with any of the other promises I  
20 have made in this Agreement. I agree that, if I fail to comply with any promises I have made in  
21 this Agreement, then the Government will be released from all of its promises in this Agreement,  
22 including those set forth in paragraphs 13 through 15 below, but I will not be released from my  
23 guilty plea. I also agree to consent to the forfeiture, destruction, and/or any other lawful and  
24 appropriate disposition of all contraband seized by any law enforcement agency from my  
25 possession, or which were in my direct or indirect control, including but not limited to the  
26 content seized from my America Online (AOL) email account.

27 11. I agree that this Agreement contains all of the promises and agreements between  
28 the Government and me, and I will not claim otherwise in the future.

1           12. I agree that this Agreement binds the Department of Justice's Criminal Division,  
2 Child Exploitation and Obscenity Section, and does not bind any other federal, state, or local  
3 agency.

4           The Government's Promises

5           13. The Government agrees to move to dismiss any open charges pending against the  
6 defendant in the captioned Indictment at the time of sentencing. If the guilty plea to 18 U.S.C.  
7 §2252A(a)(2) is, for any reason, later withdrawn or vacated, the charges not prosecuted pursuant  
8 to this agreement may be reinstated and prosecuted, notwithstanding the expiration of the statute  
9 of limitations between the time of the signing of this Agreement and the reinstatement of any  
10 such charges. The defendant waives any defense or objection to the reinstatement and  
11 prosecution of any such charges that are not time-barred by the applicable statute of limitations  
12 as of the date of this Agreement.

13           14. The Government agrees not to file any additional charges against the defendant  
14 that could be filed as a result of the investigation that led to the captioned Indictment.

15           15. The Government agrees to argue for the low end of the applicable Sentencing  
16 Guidelines as properly calculated by the Court, unless the defendant violates the Agreement as  
17 set forth above, or fails to accept responsibility.

18           16. The Government reserves the right to advise the sentencing Court and the  
19 Probation Office of any information, in aggravation or mitigation of sentencing, whether or not  
20 encompassed within 18 U.S.C. § 2252A(a)(2).

21           The Defendant's Affirmations

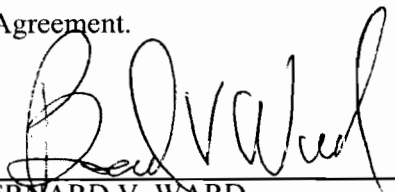
22           17. I confirm that I have had adequate time to discuss this case, the evidence, and this  
23 Agreement with my attorney, and that he has provided me with all the legal advice that I  
24 requested.

25           18. I confirm that while I considered signing this Agreement, and at the time I signed  
26 it, I was not under the influence of any alcohol, drug, or medicine.

27  
28           19. I confirm that my decision to enter a guilty plea is made knowing the charges that

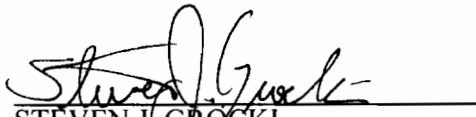
1 have been brought against me, any possible defenses, and the benefits and possible detriments of  
2 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no  
3 one coerced or threatened me to enter into this Agreement.

4  
5 Dated: May 8, 2008


  
BERNARD V. WARD  
Defendant

8 ANDREW G. OOSTERBAAN  
9 Chief  
10 Child Exploitation and Obscenity Section  
11 Criminal Division, Department of Justice

12 Dated: May 8, 2008

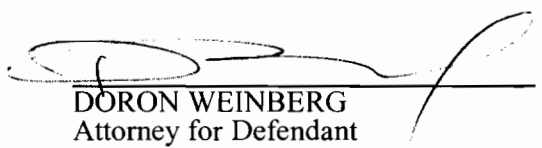
  
STEVEN J. GROCKI  
Trial Attorney

14  
15 Dated: May 8, 2008

by:   
MICHAEL I. YOON  
Trial Attorney

17 I have fully explained to my client all the rights that a criminal defendant has and all the  
18 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement  
19 and all the rights he is giving up by pleading guilty, and, based on the information now known to  
20 me, his decision to plead guilty is knowing and voluntary.

21  
22 Dated: May 8, 2008

  
DORON WEINBERG  
Attorney for Defendant