

## FOREWORD

### *Prosecution Responses to Internet Victimization*

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The National Center for Justice and the Rule of Law,<sup>1</sup> a program of the University of Mississippi School of Law, focuses on issues relating to the criminal justice system, with its purpose to promote the two concepts comprising the title of the Center. In furtherance of its mission, the Center has established the *Cyber Crime Initiative*. This initiative provides educational opportunities for judges, prosecutors, law enforcement, and law students to learn about computer-related crime and develops projects to facilitate the prosecution of persons engaged in sophisticated criminal activity. The projects become the focus of national conferences and produce innovative training materials and prototypical approaches to help states combat computer-related crime.

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On April 4-6, 2006, the Center held a conference entitled *PROSECUTION RESPONSES TO INTERNET VICTIMIZATION*. The conference focused on identifying the dimensions of victimization, including of individuals and of entities but explicitly excluded discussion of international issues. It also was designed to focus on the responses of state and local prosecutors to victimization. It did not discuss what private parties, such as individuals or corporations, can do either to prevent the problem or what private remedies are available. The conference was sponsored by the Center, in cooperation with the National Association of Attorneys General, and was attended by representatives of Attorneys General offices from thirty-five states, American commonwealths, and territories. Also attending the conference were representatives from high-tech industry, the United States Department of Justice, and academics.

The Center believes that the conference, and the insightful articles published in this special edition of the *Mississippi Law Journal* that stemmed from the presentations at the event, further the Center's mission and, more importantly, make significant contributions to understanding the dimensions of Internet victimization and strategies to combat that growing problem. The Center, and I personally, wish to thank the participants for their contributions.

This edition of the law journal, as did the conference, begins with a keynote address by the Honorable Jane Brady, of the Superior Court of Delaware. Judge Brady is the former Attorney General for the State of Delaware and is nationally recognized as an advocate of victim's rights.

The remaining articles resulting from the conference, as was the conference, are organized around three themes. The first part examines the attributes and dimensions of Internet victimization: who are the victims? Clearly, a complete answer to that vast problem is not provided here. Instead, several

aspects of the problem are emphasized.<sup>2</sup> Edward M. Roche, PhD., of the Information Policy Institute, takes on the task of measuring harm in his article, *Internet and Computer Related Crime: Economic and Other Harms to Organizational Entities*. Cindy Southworth, who is Director of Technology, the Safe and Strategic Technology Project, of the National Network to End Domestic Violence, and Sarah Tucker, examine *Technology, Stalking and Domestic Violence Victims*. Kyle Duncan, an Assistant Professor at the University of Mississippi School of Law, examines the Supreme Court's view of who is the victim in child pornography cases and adds perspective in *Child Pornography and First Amendment Standards*. Professor Susan Brenner, of the University of Dayton School of Law, who had been scheduled to speak at the conference but was unable to do so due to illness, proposes rethinking the current defamation standards in light of the changed circumstances of the Internet in her article, *Should Online Defamation be Criminalized?*

The second day of the conference focused on victimization issues that factor into criminal prosecution decision-making. Three panels and one special presentation examined aspects of that question.

First, there was a panel on *The Decision to Prosecute*. Leading that panel was moderator Marc Harrold, Counsel for National Programs at the National Center for Justice and the Rule of Law. Participating in that panel were Terry Berg, First Assistant United States Attorney, District of Michigan and, formerly, member of the cyber crime unit in the Attorney General's Office for the State of Michigan; Professor Patrick Corbett, an Associate Professor at Cooley Law School and another former member of the cyber crime unit in the Attor-

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<sup>2</sup> In addition, at the conference, Allison L. Turkel, of the American Prosecutor Research Institute, who is the Senior Attorney/Chief of Training, Child Abuse Programs, spoke about understanding adolescent and compliant victims.

ney General's Office for the State of Michigan; Todd Lawson, an Assistant Attorney General for State of Arizona; and Thomas Sadaka, who is a former Special Counsel in the Computer Crimes Prosecution section of the Office of State Wide Prosecutor for the State of Florida, and who is now in private practice. Each of these panelists has extensive cyber crime prosecution experience and lecture nationally on the subject. The panel discussion, reproduced here, addresses a variety of factors that prosecutors must consider when weighing the decision to prosecute a case involving the Internet.

The results of a second panel are also reproduced here. That panel discussed *Preparing the Case After the Decision to Prosecute Has Been Made*. Marc Harrold also moderated that panel, which consisted of John Grossman, who is Chief of the Corruption, Fraud and Computer Crime Division, and an Assistant Attorney General, for the Commonwealth of Massachusetts; Richard Hamp, an Assistant Attorney General for the State of Utah; and Jean Smith Vaughn, Chief of the Computer Crime Unit and a Special Attorney General for the State of Mississippi. The three panelists all have extensive experience litigating cyber crime cases and their comments provide valuable insights on the preparation phase of a criminal case.

Professor Corbett presented a special lecture and an article on *Prosecuting The Internet Fraud Case Without Going Broke*, to illustrate the point that Internet related-prosecutions are feasible and do not have to be fiscally prohibitive for state and local prosecutors to pursue.

The final panel provided a corporate perspective on cyber crime's impact and the commonality of interests that corporations and government have in assuring the safety of the Internet. That panel, entitled *Working with Corporations on Case Investigations*, was moderated by Hedda Litwin, who is the Cyber Crime Counsel for the National Association of Attorneys General. That distinguished panel included: Jack Christian, who is Trust and Safety Counsel, eBay, Inc., who

discussed many of the ways that eBay cooperates with law enforcement; John Deerin, Vice President and Director of Security at the Bank of Tampa, who focused on banking practices; Michael Robinson, U.S. Anti-Piracy Director for the Motion Picture Corporation of America, who discussed how online piracy affects the movie industry; and Thomas Sadaka, who added the perspective of a former prosecutor who now works with corporations in the area.

The third day and the final part of this edition of the *Mississippi Law Journal* examine aspects of sentencing as it relates to Internet victimization. Don Mason, the Assistant Director of the National Center for Justice and the Rule of Law, served as coordinator for this part of the conference. His remarks, *Sentencing Policy and Procedure as Applied to Cyber Crimes: A Call for Reconsideration and Dialogue*, are expanded upon here. As Professor Mason notes, “very little attention has been given to post conviction matters such as sentencing, victim impact, or alternative resolution” in the cyber crime area. The presentations at the conference and the resulting articles are designed to begin to address those deficiencies. In *Internet Crime Victimization*, John F. Curran, Vice President and Deputy General Counsel of Stroz Friedberg, LLC, takes on that difficult issue. Richard Downing, of the U.S. Department of Justice, Criminal Division, Computer Crime & Intellectual Property Section, provides his perspective in *Thinking Through Sentencing in Computer Hacking Cases: Did the U.S. Sentencing Commission Get it Right?* Finally, Jayne W. Barnard, the Cutler Professor of Law at the College of William & Mary School of Law, discusses *Creative Sanctions for Online Investment Fraud*.

No one conference or one series of articles can address all of the vast challenges that the Internet has created. It is our hope that the reader will find these articles insightful and helpful in understanding and addressing those challenges.

