

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
TERRE HAUTE DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Cause No. 2:12-CR-0021-WTL-CMM
	)	Cause No. 2:13-CR-0002-WTL-CMM
RICHARD L. FINKBINER,	)	
	)	
Defendant.	)	

**GOVERNMENT’S SENTENCING MEMORANDUM**

The United States of America, by counsel, Joseph H. Hogsett, United States Attorney for the Southern District of Indiana, and Zachary A. Myers and A. Brant Cook, Assistant United States Attorneys, hereby files its sentencing memorandum. This memorandum will address the factors set forth in Title 18, United States Code, Section 3553(a), the applicable advisory sentencing guidelines, and will explain why the government’s recommended sentence of 50 years imprisonment, an effective life sentence for the 40 year old Defendant, is sufficient, but not more than necessary to comply with the purposes of federal sentencing law and policy.

**I. INTRODUCTION**

The Defendant, Richard L. Finkbiner, faces sentencing on June 26, 2013, for his intentional, calculated and cruel sexual exploitation and extortion scheme. For over a year the Defendant engaged in this pervasive scheme, victimizing the thirteen minors from all over the country referenced in the pending charges. The Defendant also collected tens of thousands of images and videos depicting the sexual abuse of his victims, and many other minors.

Furthermore, through his widespread sexual exploitation and extortion scheme, the Defendant similarly victimized hundreds, if not thousands, of other minors and adults all over the world.

As discussed in detail below, the applicable Sentencing Guidelines advise that this Court impose a life sentence against the Defendant. Consideration of the sentencing factors enumerated in Title 18, United States Code, Section 3553(a) also demonstrates the need for a significant sentence in order to protect the public from the Defendant, to reflect the seriousness of the Defendant's many offenses, and deter others who would follow the Defendant's example. In short, the only just sentence is a significant sentence, reflecting the seriousness of each of the Defendant's intentional and separate criminal offenses. To that end, the United States requests that the Court impose an effective life sentence against the forty year-old Defendant, through a total term of imprisonment of 50 years.

## **II. THE NATURE AND CIRCUMSTANCES OF THE OFFENSES**

### **A. Finkbiner's Child Exploitation and Extortion Scheme**

Finkbiner used omegle.com and other similar websites to engage persons, including children, in video chat sessions with accompanying text. During these video chat sessions, Finkbiner knowingly misrepresented his identity to persuade, induce, entice or coerce minors to engage in sexually explicit conduct. Finkbiner used software that allowed for the video feed being displayed to the person with whom Finkbiner was chatting to appear to be a video feed from Finkbiner's webcam. In fact, the video feed was actually a previously recorded video file selected by Finkbiner. Finkbiner used this "fake webcam" software to display pornographic video files of both adults and minors to his video chat partners, and claimed that the videos were a live feed from his webcam. Finkbiner then induced his video chat partners to engage in

sexually explicit or sexually suggestive activity, and used screen capture software to record any such resulting activity.

Upon recording the sexually explicit or suggestive activity by his video chat partners, Finkbiner threatened to upload the captured video feed to websites hosting pornography, unless the video chat partner agreed to email Finkbiner at one of the several email addresses under his control.

Upon corresponding with Finkbiner through email, victims were threatened with the dissemination of the already captured webcam footage to friends, family, classmates, teachers and the general public, unless the victims contacted Finkbiner through other non-anonymous video chat websites and engaged in further sexually explicit or suggestive activity as demanded by Finkbiner. Finkbiner explained to victims that they were now his “cam slaves,” and required them to disrobe to various stages of nudity, engage in masturbation, or other sexually explicit or suggestive acts, including deeply embarrassing and humiliating sexual conduct. Finkbiner again used screen capture software to record any such resulting activity.

Analysis of electronic media seized from Finkbiner shows that he created approximately 22,204 video files captured from webcam feeds, during the course of his scheme. Because many individuals appear in multiple videos created by Finkbiner, it is estimated that he created video files of thousands of different people and stored them on his computer. Based upon a review of this collection, 40-50% of these videos appear to depict individuals engaged in sexually explicit or sexually suggestive activity. Many of these individuals appear to be minors. A review of Finkbiner’s known email communications and available internet chat logs shows that Finkbiner communicated threats as part of his extortion and exploitation scheme to at least 153 different

individuals. The FBI and other law enforcement officers have made contact with and interviewed at least twenty identified and confirmed victims of Finkbiner's scheme, almost all of them minors.

Finkbiner stands charged with eleven counts of Sexual Exploitation of Children/Production of Sexually Explicit Images of a Minor, two counts of Extortion, and one count of Possession of Child Pornography for the offenses charged in the two pending cases. The following is a summary of Finkbiner's specific offense conduct for the offenses charged in Cause Nos. 2:12-CR-21 (the "First Information") and 2:13-CR-2 (the "Second Information").

**B. Finkbiner's Victimization of John Doe 1 (Count 1 of the First Information)**

At the time of Finkbiner's offense against him, John Doe 1 was a 16 year old boy located in Avon, Indiana. During a March 6, 2011, video chat session, Finkbiner recorded a video of John Doe 1 masturbating. During a subsequent video chat session, Finkbiner recorded an additional video of John Doe 1 exposing his penis and touching himself, at Finkbiner's direction. Finkbiner threatened to publish the videos of John Doe 1 to the internet, unless John Doe 1 continued to perform for him on camera. John Doe 1 did not respond to these threats, and did not communicate with Finkbiner again.

**C. Finkbiner's Victimization of John Doe 2 (Count 2 of the First Information)**

At the time of Finkbiner's offense against him, John Doe 2 was a 14 year old boy located in Sissonville, West Virginia. During a March 10, 2011, video chat session, Finkbiner demanded that John Doe 2 model a jock strap, dance naked, do sit-ups, masturbate and eat his ejaculate, and penetrate his anus with a finger. John Doe 2 complied with Finkbiner's demands, which Finkbiner recorded on video.

During a March 14, 2011, video chat session, Finkbinder demanded that John Doe 2 wear short shorts, strip naked, dance, masturbate, wear a wet t-shirt and jock strap, dance, strip again, do sit-ups and simulate sex with a pillow. John Doe 2 again complied with Finkbinder's demands, which Finkbinder recorded on video.

During a March 16, 2011, video chat session, Finkbinder demanded that John Doe 2 do a strip dance, masturbate, wear his jock strap backwards, dance, get naked again, do push-ups and masturbate again. John Doe 2 again complied with Finkbinder's demands, which Finkbinder recorded on video.

**D. Finkbinder's Victimization of John Doe 3 (Count 3 of the First Information)**

At the time of Finkbinder's offense against him, John Doe 3 was a 14 year old boy located in Dubuque, Iowa. During a May 10, 2011, chat session, Finkbinder recorded a video of John Doe 3 masturbating.

During another video chat session about an hour later, John Doe 3 initially refused to show Finkbinder his face on camera. Finkbinder stated that he knew John Doe 3 lived in Dubuque, Iowa, and threatened to send the video to named individuals and teachers who knew John Doe 3, and a named high school. John Doe 3 then agreed to comply with Finkbinder's demands. During this chat session, Finkbinder demanded that John Doe 3 strip, dance, masturbate, and show Finkbinder his anus. John Doe 3 complied with Finkbinder's demands, which Finkbinder recorded on video.

**E. Finkbinner's Victimization of John Doe 4 (Count 4 of the First Information)**

At the time of Finkbinner's offense against him, John Doe 4 was a 15 year old boy located in River Falls, Wisconsin. During a May 12, 2011, video chat session, Finkbinner recorded a video of John Doe 4 masturbating.

During another video chat session about 20 minutes later, Finkbinner demanded that John Doe 4 be his "cam slave" and engage in additional sexually explicit conduct on video. John Doe 4 initially refused to comply. Finkbinner threatened to send the video to individuals and teachers who knew John Doe 4, naming the individuals and a high school. John Doe 4 then agreed to comply with Finkbinner's demands. Finkbinner demanded that John Doe 4 dance like "a stripper," masturbate, and show Finkbinner his anus. Finkbinner demanded that John Doe 4 play with his nipples, then lay in bed and masturbate. Finkbinner then told John Doe 4 to ejaculate into his hand, lick up his ejaculate and show his mouth full of ejaculate to Finkbinner on camera. John Doe 4 complied with Finkbinner's demands, which Finkbinner recorded on video.

Finkbinner then told John Doe 4 to contact him again the next day. John Doe 4 pleaded with Finkbinner not to have to engage in any more activity on camera. Finkbinner stated "complain and ill fukk u over," "depends on u." John Doe 4 then asked Finkbinner to just get it all done at that time, Finkbinner stated "ull be fine dgo do ur hw or something." John Doe 4 continued to plead with Finkbinner, stating "no please im scared i dont wanna worry about this please." Finkbinner did not respond further to John Doe 4.

**F. Finkbinder's Victimization of John Doe 5 (Count 5 of the First Information)**

At the time of Finkbinder's offense against him, John Doe 5 was a 15 year old boy located in Cincinnati, Ohio. During a June 17, 2011, video chat session, Finkbinder recorded a video of John Doe 5 masturbating. During this another video chat session about 20 minutes later, Finkbinder demanded that John Doe 5 stand up, strip, show off his body, masturbate and ejaculate into his hand. John Doe 5 complied with Finkbinder's demands, which Finkbinder recorded on video.

**G. Finkbinder's Victimization of John Doe 6 (Count 6 of the First Information)**

At the time of Finkbinder's offense against him, John Doe 6 was a 16 year old boy located in Hamlin, New York. During a July 31, 2011, video chat session, Finkbinder recorded a video of John Doe 6 masturbating. Finkbinder sent John Doe 6 an email demanding that John Doe 6 do what Finkbinder tells him, or else Finkbinder would publish the first video to pornography websites, and send copies to John Doe 6's teachers and friends. In his threatening email to John Doe 6, Finkbinder identified 13 individuals and a high school by name. John Doe 6 agreed to comply with Finkbinder's demands.

During another video chat session later that day, Finkbinder demanded that John Doe 6 stand up and turn around. Finkbinder demanded that John Doe 6 make his penis erect, get his guitar and dance, shake his buttocks, put the camera between his legs, and play with his testicles. Finkbinder then demanded that John Doe 6 get a marker and write "stephs bitch" on his penis. Finkbinder used the screen name "Steph Hawty" to chat with John Doe 6. Finkbinder then demanded that John Doe 6 show Finkbinder his anus, and then dance. Finkbinder then demanded that John Doe 6 masturbate, ejaculate in his hand, and then rub his ejaculate on his chest.

Finkbiner then demanded that John Doe 6 strip again and make his penis hard. Finkbiner demanded that John Doe 6 get a sock, make his penis hard, simulate sex with a pillow, and put the camera between his legs. John Doe 6 complied with Finkbiner's demands, which Finkbiner recorded on video.

After this chat session, John Doe 6 emailed Finkbiner, asking how many more times he would have to do this, and pleading with him to delete the video. Finkbiner replied that John Doe 6 couldn't stop until Finkbiner was done with him. Using email and text chat, Finkbiner continued to threaten to post video of John Doe 6 to pornographic websites and send the video to John Doe 6's friends, unless John Doe 6 agreed to engage in more sexually explicit conduct on camera. John Doe 6 begged Finkbiner to stop, but refused to continue to comply with Finkbiner's demands.

Finkbiner told John Doe 6 that he'd posted his video to a gay pornography site, and sent John Doe 6 an image file which appeared to show a sexually explicit video of John Doe 6 on the homepage of a pornography website. Based on legal process served on the website, and analysis of Finkbiner's computer and email accounts, it appears that Finkbiner used image editing software to make it appear that he had posted John Doe 6's video to the website, but did not in fact do so.<sup>1</sup>

---

<sup>1</sup> Analysis of Finkbiner's email accounts shows that the same photo-manipulation scheme may have been used to cause two other unidentified victims to believe that Finkbiner has posted their videos to pornographic websites, when in fact he had not.



**H. Finkbiner's Victimization of John Doe 7 (Count 7 of the First Information)**

At the time of Finkbiner's offense against him, John Doe 7 was a 12 year old boy located in Grand Rapids, Michigan. During a February 11, 2012, video chat session, Finkbiner recorded a video of John Doe 7 masturbating. Finkbiner later sent John Doe 7 an email demanding that he do what Finkbiner tells him, or else Finkbiner would publish the video to pornography websites.

John Doe 7 and Finkbiner exchanged a series of emails in which John Doe 7 begged Finkbiner not to put the video of him on the internet, and Finkbiner demanded that John Doe 7 be his "cam slave" or Finkbiner would make him a "gay porn star." John Doe 7 repeatedly refused Finkbiner's demands and begged Finkbiner not to put the videos on the internet. Finkbiner later emailed John Doe 7 stating that he had uploaded the videos to a pornographic website.

**I. Finkbiner's Victimization of John Doe 8 (Count 8 of the First Information)**

At the time of Finkbiner's offense against him, John Doe 8 was a 15 year old boy located in Fairview Heights, Illinois. On the evening of February 11, 2012, Finkbiner sent an email to John Doe 8 demanding that he be his "cam slave," or else Finkbiner would publish a video of him to pornography websites. John Doe 8 emailed Finkbiner stating "u know that im under age and that is aganst the law and u could be arested for this. u know that?" Finkbiner replied:

ok let me get all this out of the way  
1) this isnt my first time doing this.  
2) yes it is illegal im ok with that  
3) i know ur dad/mom/uncle/friend is a cop/fbi/cia thats fine  
4) i wont get caught im a hacker i covered my tracks  
5) if u dont play i promise ill fuck ur life over  
6) who is the cute gurl ur with in ur facebook profile pic?  
so u gonna play or b a gay porn star?

John Doe 8 and Finkbinder continued to exchange emails. John Doe 8 stated that he was scared and just didn't want anyone to see the video Finkbinder had of him. John Doe 8 eventually agreed to comply with Finkbinder's demands.

During a video chat session February 12, 2012, Finkbinder demanded that John Doe 8 stand up, strip to his boxers, play with his nipples and "lay on ur bed and give me a show." Finkbinder then demanded that John Doe 8 put his finger into his own anus, masturbate and lick his nipples. Finkbinder then demanded that John Doe 8 dance for him, and then ejaculate into his hand. John Doe 8 complied with Finkbinder's demands, which Finkbinder recorded on video.

**J. Finkbinder's Victimization of Jane Doe 1 (Count 9 of the First Information)**

At the time of Finkbinder's offense against her, Jane Doe 1 was a 17 year old girl located in Cincinnati, Ohio. On March 24, 2012, Finkbinder sent a series of emails to Jane Doe 1 demanding that she be his "cam slave," or else Finkbinder would publish a video of her to pornography websites, and send copies to Jane Doe 1's teachers and friends. In a threatening email to Jane Doe 1, Finkbinder identified five individuals and a high school by name. Jane Doe 1 agreed to comply with Finkbinder's demands.

During a March 24, 2012, video chat session, Finkbinder demanded that Jane Doe 1 stand, and strip to her underwear. Finkbinder demanded that Jane Doe 1 turn around slowly and then play with her nipples. Finkbinder then demanded that Jane Doe 1 take off her underwear and show him her vagina up close. Jane Doe 1 complied with Finkbinder's demands, which Finkbinder recorded on video.

Finkbinder demanded that Jane Doe 1 engage in more sexual conduct on video, but Jane Doe 1 refused. Finkbinder stated that he would post the videos of Jane Doe 1 to the internet. Jane

Doe 1 begged Finkbiner not to do so, but Finkbiner did not respond. The following morning, Jane Doe 1 sent Finkbiner an email stating that as a result of Finkbiner's conduct she had attempted to commit suicide the previous night, and would attempt to kill herself again. Finkbiner replied "Glad i could help."

According to law enforcement officers who contacted Jane Doe 1's family in connection with this investigation, Jane Doe 1 attempted or threatened to commit suicide following Finkbiner's offense against her, and was hospitalized on a 72-hour hold for evaluation.

**K. Finkbiner's Victimization of John Doe 9 (Count 10 of the First Information)**

At the time of Finkbiner's offense against him, John Doe 9 was a 15 year old boy located in Fort Collins, Colorado. During a February 20, 2012, video chat session, Finkbiner demanded that John Doe 9 stand up, strip to his boxers, turn around, and take off his boxers. Finkbiner then demanded that John Doe 9 make his penis hard, dance, and show Finkbiner his anus. John Doe 9 complied with Finkbiner's demands, which Finkbiner recorded on video.

During a February 22, 2012, video chat session Finkbiner demanded that John Doe 9 perform a strip dance for him. Finkbiner directed John Doe 9 to get a dress belonging to a female family member, put the clothing on, and then turn around, bend over and lift it up. Finkbiner demanded that John Doe 9 put on underwear he had taken from a female family member. Finkbiner then demanded that John Doe 9 go to his window and expose himself out the window. Finkbiner then demanded that John Doe 9 go to his female family member's bedroom and masturbate. John Doe 9 complied with Finkbiner's demands, which Finkbiner recorded on video.

On March 10, 2012, Finkbinder sent an email to John Doe 9, directing John Doe 9 to send Finkbinder pictures of himself wearing the underwear of a female family member and exposing his penis. The next day, John Doe 9 sent Finkbinder three image files complying with Finkbinder's demand.

During an April 2, 2012, video chat session Finkbinder made demands similar to the above, and John Doe 9 complied with Finkbinder's demands, which Finkbinder recorded on video.

**L. Finkbinder's Victimization of Jane Doe 2 (Count 11 of the First Information)**

At the time of Finkbinder's offense against her, Jane Doe 2 was a 16 year old girl located in Anchorage, Alaska. During a February 24, 2012, video chat session, Finkbinder recorded a video of Jane Doe 2 exposing her breasts. Finkbinder later sent emails to Jane Doe 2 threatening to publish the video of her to pornography websites if she did not agree to be his "cam slave." Jane Doe 2 stopped replying to Finkbinder's threats, and Finkbinder emailed her stating that he was publishing the video of her.

**M. Finkbinder's Victimization of Jane Doe 3 (Count 12 of the First Information)**

At the time of Finkbinder's offense against her, Jane Doe 3 was a 14 year old girl located in St. Peters, Minnesota. During a February 28, 2012, video chat session Finkbinder recorded a video of Jane Doe 3 exposing her breasts. Later that day, Finkbinder sent emails to Jane Doe 3 threatening to publish the video of her to pornography websites if she did not agree to be his "cam slave." Jane Doe 3 did not reply to Finkbinder's threats, and Finkbinder emailed her stating that he was publishing the video of her.

**N. Finkbiner's Possession of Child Pornography (Count 13 of the First Information)**

On April 6, 2012, a search warrant was executed at Finkbiner's residence in Brazil, Indiana. Examination of computers and other digital media seized during the execution of this search warrant uncovered approximately 754 video and 47,000 image files Finkbiner had obtained from the internet, the vast majority of which depict sexually explicit conduct, much of it involving minors. These images and videos are in addition to the 22,204 video files captured by Finkbiner during the course of his scheme from webcam feeds with video chat partners. During the search, Finkbiner stated that he downloaded the images and videos because he was interested in child pornography. The images possessed by Finkbiner on April 6, 2012, include the images charged in Count 13 of the First Information.

The Defendant's possession of child pornography files obtained from the internet demonstrates that the Defendant's fascination with child pornography extended to images of other children in addition to the victims of his sexual exploitation and extortion scheme. The child pornography files possessed by the Defendant depict very young minors being subjected to sex acts, including sadistic and masochistic abuse. The Defendant's possession of these files from the internet is a re-victimization of the children depicted, and is yet another example of the Defendant's vision of minors as nothing more than objects of his sexual desires.

**O. Finkbiner's Victimization of John Doe 10 (Count 1 of the Second Information)**

At the time of Finkbiner's offense against him, John Doe 10 was a 14 year old boy located in Rochester Hills, Michigan. During a February 25, 2012 video chat session, Finkbiner recorded a video of John Doe 10 masturbating. That day, Finkbiner sent John Doe 10 an email demanding that John Doe 7 be his "cam slave" or else Finkbiner would publish the first video to

pornography websites. During subsequent a February 25, 2012, video chat session, Finkbiner that John Doe 10 stand up, strip to his boxers and turn around. Finkbiner then demanded that John Doe 10 strip, stand up and make his penis hard. Finkbiner demanded that John Doe 10 turn around, bend over and spread his buttocks. Finkbiner then demanded that John Doe 10 put on “sexy clothes” and dance for him. Finkbiner demanded that John Doe 10 strip again, and then masturbate, ejaculate into his hand, and eat his ejaculate. John Doe 10 complied with Finkbiner’s demands, which Finkbiner recorded on video.

During a February 26, 2012, video chat session, Finkbiner demanded that John Doe 10 wear a jock strap, stand up, take out the cup and make his penis hard. Finkbiner then demanded that John Doe 10 turn around, spank his buttocks, and then play with his nipples. Finkbiner then demanded John Doe 10 dance, strip and then lay down with his legs pulled up to his chest and put his finger into his anus. Finkbiner demanded that John Doe 10 masturbate, ejaculate and then lick up his ejaculate. John Doe 10 complied with Finkbiner’s demands, which Finkbiner recorded on video.

Finkbiner then demanded that the next time they chat that John Doe 10 bring a 12 year old boy with him on camera. Finkbiner demanded that John Doe 10 perform oral sex on the 12 year old boy on camera. John Doe 10 was terrified of the videos being posted, and contacted a friend to come over the next day, but did not tell the friend why. That night, the stress of Finkbiner’s threats wore on John Doe 10, who broke down, became emotional and hysterical, and disclosed to his brother what was happening. John Doe 10’s brother told their parents, who then contacted law enforcement officers.

### **III. THE HISTORY AND CHARACTERISTICS OF THE DEFENDANT**

Finkbiner's personal history and characteristics also support the necessity for the imposition of a very significant sentence. Analysis of Finkbiner's electronic media indicates that he began recording sexual conduct *via* webcam no later than June 4, 2010, and began downloading child pornography from the internet no later than December 18, 2010. Finkbiner's criminal sexual offenses involving the exploitation of children continued until his arrest in April, 2012. Given the shocking number of criminal offenses encompassed by the charged offenses and relevant conduct, the five level guideline enhancement for being a repeat and dangerous sex offender against minors does not come close to fully encompassing his misconduct.

Furthermore, it is important to note that the Defendant previously worked as a Sunday school teacher, and took children on field trips and camping excursions. According to the minister at the Defendant's church, Finkbiner served as a youth minister until 2010. The facts show that Finkbiner has a sexual obsession with children, which he acted on repeatedly over a period of years. Instead of seeking counseling or therapy, Finkbiner chose to abuse the trust of his minister and the parents in his congregation by volunteering to be in a position where he would have custody and control over children away from home and on overnight trips. While there is no evidence at this time that Finkbiner sexually abused any of these children, his choice to serve as a youth minister while acting out his sexual obsession with other children online should give this Court grave concern about the need to protect the community from the Defendant.

**IV. THE SENTENCING GUIDELINES ADVISE AN EFFECTIVE LIFE SENTENCE**

As accurately calculated in the Pre-Sentence Report, the Defendant's long list of criminal convictions in the present case results in a total offense level of 45, after an adjustment for the Defendant's acceptance of responsibility with his plea of guilty to Counts 1-13 of the First Information and Count 1 of the Second Information. Even at Criminal History category I, the Defendant's offense level in excess of offense level 43, at which the guidelines advise a sentence of imprisonment for life.

In this case, however, the total offense level of 45 actually under represents the Defendant's criminal conduct. Offenses of the Sexual Exploitation of Children are excluded from the "grouping" rules of United States Sentencing Guideline ("USSG") § 3D1.2, and are accounted for separately in determining the total offense level – but only to a limited extent. Pursuant to USSG § 3D1.4, once five "units" are exceeded - and five levels added to the offense level - there are no further increases in the offense level. In this case, the Defendant's convictions for the eleven separate instances that he sexually exploited minors amounted to 10 units - yet, by operation of USSG 3D1.4, only five levels were added to the total offense level. Though any total offense level more than 43 is, in any event, treated as offense level 43 in determining the sentence (USSG § 5A, Application Note 2), as a measure of the full impact of the Defendant's crimes it is nonetheless significant that his total offense level does not account for a large part of his conduct.

In cases where there are multiple counts of conviction and the guidelines advise life imprisonment, USSG § 5G1.2(d) applies. That subsection states that "[i]f the sentence imposed on the count carrying the highest statutory maximum is less than the total punishment, then the



sentence imposed on one or more of the other counts shall run consecutively, but only to the extent necessary to produce a combined sentence equal to the total punishment. In all other respects, sentences on all counts shall run concurrently, except to the extent otherwise required by law.” U.S.S.G. § 5G1.2(d). Relying in large part on that subsection, the United States Seventh Circuit Court of Appeals has repeatedly upheld maximum, consecutive sentences on each of an offender’s counts of conviction—even when the resulting sentence well exceeded the life span of the offender—where the advisory guidelines range was life imprisonment. *United States v. Thompson*, 523 F.3d 806, 814 (7th Cir. 2008); *United States v. Veysey*, 334 F.3d 600, 602 (7th Cir. 2003).

In the instant case, the applicable guideline of life imprisonment means that the Defendant’s guideline sentence is 344 years—the maximum sentence on each of the counts of conviction, run consecutively. Under the terms of the proposed Plea Agreement, the maximum sentence the Court may impose if it accepts the agreement is 50 years. A 50 year sentence very likely exceeds the Defendant’s life span, given that he is 40 years old. Thus, there is no practical difference between imposition of a sentence of 50 years or 344 years; either would almost certainly be an effective life sentence as the guidelines advise. Therefore, the government again recommends that the Court impose a sentence of imprisonment 50 years.

V. **THE FACTORS ENUMERATED IN 18 U.S.C. § 3553(a) DEMONSTRATE THAT THE DEFENDANT SHOULD BE SENTENCED TO 50 YEARS IMPRISONMENT**

In determining a just sentence, the Court is directed by statute to consider a number of factors. 18 U.S.C. § 3553(a). The first factor to consider is the nature and circumstances of the offenses and the history and characteristics of the Defendant. 18 U.S.C. § 3553(a)(1). These factors are fully set forth in sections II and III, above. Analysis of these facts strongly suggests

that the Defendant should receive a very lengthy sentence. The Defendant engaged in the serial sexual exploitation and extortion of the thirteen charged minors over the course more than a year. Investigators have identified and confirmed more than twenty victims of Finkbiner's sexual exploitation and extortion scheme. Analysis of Finkbiner's digital media and online communications shows that Finkbiner engaged in similar criminal conduct with hundreds, if not thousands, of other children and adults across the United States and the rest of the world. The Defendant manipulated the children he targeted during this long time period, often by using the internet to identify their names, schools and friends. He then coerced and extorted them to produce additional child pornography for his benefit, frequently depicting especially embarrassing and degrading sexual conduct. During this same time period, the Defendant also amassed a large collection of child pornography, both what he produced and saved, as well as what he collected from the internet.

In this case, the Court is afforded an unusually high degree of insight into the nature and circumstances of the Defendant's offenses and the history and characteristics of the Defendant. The Court can actually see in the Defendant's chat texts and emails his callous, despicable treatment of minors over the course of his sexual exploitation and extortion scheme. Finkbiner's depraved indifference to the suffering he caused was so severe that when a victim told him that his crime against he caused her to attempt suicide and that she would attempt to kill herself again he replied "Glad I could help."

The over 22,000 webcam recordings produced by the Defendant, 40-50% of which appear to depict individuals engaged in sexually explicit or sexually suggestive activity, over the course of more than two years similarly testify to his offenses and to his characteristics. The

Court has also received victim impact statements showing the serious and lasting consequences of Finkbiner's actions on his victims and their families. A fair review of all of these sources demonstrates with stark clarity that the Defendant must be sentenced to a significant prison term that will almost certainly last for the rest of his natural life.

The sentence ultimately imposed on the Defendant must reflect the seriousness of his offenses, promote respect for the law, and provide a just punishment for the offenses. 18 U.S.C. § 3553(a)(2)(A). There can be no question that the Defendant's offenses, both in their character and in their shocking frequency and repetition, are among the most serious under the law. The Court is well aware of the age of all of the charged victims, the nature of the images and videos the Defendant produced, and his callous and cruel threats and demands to his victims. The government asserts that the seriousness of the Defendant's offenses necessitates that the Defendant be sentenced to a significant prison term almost certainly in excess of his life span in order to promote respect for the law and to provide a just punishment.

The sentence ultimately imposed on the Defendant must also afford adequate deterrence to criminal conduct of this nature, and protect the public from further crimes of the Defendant. 18 U.S.C. § 3553(a)(2)(B) and (C). It is clear from the nature and circumstances of the Defendant's offenses that he was obsessively focused on fueling his sexual fantasies by serially sexually exploiting children. There is no reason to believe that the Defendant would ever abandon this acting out of his fantasies, as he engaged in seeking out opportunities to do so for years and was only stopped upon his arrest. The public can only be adequately protected from the Defendant with his imprisonment for the rest of his life. Similarly, the public can only be protected from like-minded individuals (and those individuals adequately deterred from acting

on such an all-consuming obsession) with a significant sentence that demonstrates the Court's willingness to deliver an appropriate punishment.

Finally, a sentence of 50 years imprisonment would not create any unwarranted disparity with sentences issued to offenders with similar conduct, given the circumstances of this case. *See* 18 U.S.C. § 3553(a)(6). In *United States of America v. Trevor J. Shea*, 1:10-cr-96-WTL-KPF and 1:11-cr-169-WTL-KPF, the defendant ("Shea") was convicted of a total of seven counts of Sexual Exploitation of Children, in violation of 18 U.S.C. § 2251(a), in a sexual exploitation and extortion scheme similar to Finkbiner's. Shea was charged for exploitation of a total of five minor female victims. The investigation uncovered Shea's similar sexual exploitation of a total of ten minor girls, and more than a dozen young women over the age of eighteen. Shea committed the offenses charged in the 2011 Information while on pretrial release following the 2010 Indictment.

On June 1, 2007, this Court sentenced Shea to a total prison term of 33 years, issuing a sentence of 30 years on each of the seven counts of Sexual Exploitation of Children, all concurrent to each other, and an additional 12 months on three of the counts of Sexual Exploitation of Children because they were committed while the defendant was on pretrial release, all consecutive to one another and to the 30 year sentences. In imposing this 33 year sentence, as opposed to a much longer sentence, this Court cited the fact that Shea was only 19 years old at the time his offense conduct began. Shea's appeal of the sentence was dismissed following an *Anders* brief by his counsel. *United States v. Shea*, 493 Fed. Appx. 792 (7th Cir. 2012).

The following is a summary of sentences recently imposed in several similar federal “sextortion” prosecutions around the country:

CASE	DISTRICT	CHARGES OF CONVICTION	AGE <sup>2</sup>	TOTAL IMPRISONMENT
<i>U.S. v. Pedersen</i> 4:10-cr-257	W.D. Mo.	18 U.S.C. § 2251(a) (1 Count) 18 U.S.C. § 875(d) (1 Counts) 18 U.S.C. § 2252(a)(1) (1 Count)	61	30 years
<i>U.S. v. Bek</i> 1:11-cr-353	W.D.N.Y.	18 U.S.C. § 2251(a) (5 Counts) 18 U.S.C. § 2252A(a)(5)(B) (1 Count)	25	30 years
<i>U.S. v. Brandt</i> 8:11-cr-58	M.D. Fla.	18 U.S.C. § 2251(a) (3 Counts)	46	90 years
<i>U.S. v. Gunn</i> 2:12-cr-64 & 2:12-cr-151	M.D. Ala.	18 U.S.C. § 2251(a) (2 Counts) 18 U.S.C. § 875(d) (15 Counts) 18 U.S.C. § 2261A(2)(A) (7 Counts)	31	35 years
<i>U.S. v. Robinson</i> 1:12-cr-89	N.D. Iowa	18 U.S.C. § 2251(a) (1 Count) 18 U.S.C. § 2252A(a)(5)(B) (1 Counts) 18 U.S.C. § 875(d) (1 Count)	23	42 years

The total punishment the government is seeking against Finkbiner is consistent with the punishments imposed on these other defendants. The defendant was in his late 30’s when he began his offense conduct—not a very young man, like Shea, Robinson or Bek. The sheer number of individuals Finkbiner exploited and extorted justifies a sentence Finkbiner is almost certain not to outlive—like the sentences imposed on Pederson and Brandt. Finkbiner faces sentencing on far more counts of sexual exploitation of a child than any of the above defendants, and the extent of his relevant conduct is as widespread as this Court is ever likely to see. For all of these reasons, a sentence of 50 years imprisonment is sufficient, but no more than necessary to fulfill the goals of sentencing law and policy.

---

<sup>2</sup> Age of the Defendant at sentencing

## VI. CALCULATING THE TOTAL PRISON SENTENCE

The government suggests that the defendant be sentenced to terms of imprisonment calculated as follows:

- a) **25 years imprisonment** (300 months) for Sexual Exploitation of Children in 2011 (Counts 1-6 of the First Information); consecutive to,
- b) **25 years imprisonment** (300 months) for Sexual Exploitation of Children in 2012 (Counts 7-10 of the First Information, Count 1 of the Second Information);
- c) **2 years imprisonment** (24 months) for Extortion (Counts 11-12 of the First Information) (concurrent);
- d) **10 years imprisonment** (120 months) for Possession of Child Pornography (Count 13 of the First Information) (concurrent);

The government suggests that the 25 year terms for the six counts of Sexual Exploitation of Children in 2011 be ordered to be served concurrently to each other and the 25 year terms of the five counts of Sexual Exploitation of Children in 2012 be ordered to be served concurrently to each other. The 2011 Sexual Exploitation counts (Counts 1-6 of the First Information) should be ordered to be served consecutively to the 2012 Sexual Exploitation Counts (Counts 7-10 of the First Information, Count 1 of the Second Information). The 2 year terms for Extortion and the 10 year term for Possession of Child Pornography should be ordered to be served concurrently to all other counts. The resulting total punishment would be 50 years, or 600 months imprisonment.

## VII. CONCLUSION

In conclusion, the government respectfully requests that the Court consider the applicable guidelines and the factors set forth in Title 18, United States Code, Section 3553(a), including the nature and circumstances of the offense, the history and circumstances of the defendant, the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the

law, to provide just punishment, to afford adequate deterrence, and to protect against further crimes of the defendant, and in so doing, sentence the defendant to 50 years imprisonment.

Respectfully submitted,

JOSEPH H. HOGSETT  
United States Attorney

By: s/ Zachary A. Myers  
Zachary A. Myers  
Assistant United States Attorney

By: s/ A. Brant Cook  
A. Brant Cook  
Assistant United States Attorney

Office of the United States Attorney  
10 W. Market St., Suite 2100  
Indianapolis, Indiana 46204-3048  
Telephone: (317) 226-6333  
Fax: (317) 226-6125  
E-mail: [zachary.myers@usdoj.gov](mailto:zachary.myers@usdoj.gov)  
[brant.cook@usdoj.gov](mailto:brant.cook@usdoj.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that on June 18, 2013, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following counsel of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Monica Foster  
Monica\_foster@fd.org

Gwendolyn M. Beitz  
Gwendolyn\_beitz@fd.org

By: s/ Zachary A. Myers  
Zachary A. Myers  
Assistant United States Attorney  
Office of the United States Attorney  
10 W. Market St., Suite 2100  
Indianapolis, Indiana 46204-3048  
Telephone: (317) 226-6333  
Fax: (317) 226-6125  
E-mail: Zachary.Myers@usdoj.gov