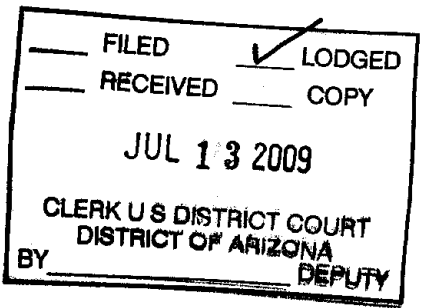


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DIANE HUMETEWA  
United States Attorney  
District of Arizona  
  
SHEILA PHILLIPS  
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sheila.phillips2@usdoj.gov



UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

United States of America,  
  
Plaintiff,  
  
v.  
  
Michael David Stanley,  
  
Defendant.

CR09-168-PHX-NVW  
**PLEA AGREEMENT**

Plaintiff, United States of America, and defendant, MICHAEL DAVID STANLEY,  
hereby agree to the following disposition of this matter:

**PLEA**

Defendant will plead guilty to Count 3 of the Indictment, POSSESSION OF CHILD  
PORNOGRAPHY, in violation of Title 18, United States Code, Section 2252A(a)(5)(B), a Class  
C felony offense. Defendant will also admit to the Forfeiture Allegation contained in the  
Indictment.

**TERMS**

Defendant understands that the guilty plea is conditioned upon the following terms,  
stipulations, and requirements. The defendant understands that the Court is required to consider  
the United States Sentencing Guidelines ("U.S.S.G" or "Sentencing Guidelines") among other  
factors in determining defendant's sentence. Defendant understands, however, that the  
Sentencing Guidelines are only advisory, and that after considering the Sentencing Guidelines,  
the Court may be free to exercise its discretion to impose any reasonable sentence up to the

1 maximum set by statute for the crimes of conviction, provided that such sentence is otherwise  
2 consistent with the terms of this plea agreement.

3 **1. MAXIMUM PENALTIES**

4 a. A violation of Title 18, United States Code, Section 2252A(a)(5)(B), is punishable  
5 by a maximum fine of \$250,000.00 and a maximum term of imprisonment of 10 years or both  
6 and a term of supervised release of any term of years up to life, pursuant to Title 18, United  
7 States Code, Section 3583(k).

8 b. According to the Sentencing Guidelines issued pursuant to the Sentencing Reform  
9 Act of 1984, the court shall:

10 (1) Order the defendant to make restitution to any victim of the offense unless,  
11 pursuant to Title 18, United States Code, Section 3663, the court determines that restitution  
12 would not be appropriate in this case;

13 (2) Order the defendant to pay a fine, which may include the costs of probation,  
14 supervised release or incarceration, unless, pursuant to Title 18, United States Code, Section  
15 3611, the defendant establishes the applicability of the exceptions found therein;

16 (3) Order the defendant, pursuant to Title 18, United States Code, Section 3583,  
17 to serve a term of supervised release when required by statute or when a sentence of  
18 imprisonment of more than one year is imposed, and the court may impose a term of supervised  
19 release in all other cases.

20 c. Pursuant to Title 18, United States Code, Section 3013, the court is required to  
21 impose a special assessment on the defendant of \$100. The special assessment is due at the time  
22 the defendant enters the plea of guilty, but in no event shall it be paid later than the time of  
23 sentencing.

24 **2. AGREEMENTS REGARDING SENTENCING**

25 a. The parties stipulate pursuant to Fed. R. Crim. P. 11(c)(1)(C) that the defendant  
26 shall be sentenced to a term of prison not less than 60 months but not to exceed 97 months.

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28

1 b. Pursuant to Fed. R. Crim. P. 11(c)(1)(C) the defendant agrees to the following additional  
2 sex offender conditions: Within 3 days of release from prison or sentence to probation, the  
3 defendant shall register as a sex offender in accordance with state and federal law and provide  
4 his supervising probation officer with verification of such registration. During the term of  
5 supervised release, the defendant shall undergo sex offender treatment and counseling as  
6 directed by the probation department. Such treatment may include physiological testing,  
7 including clinical polygraph and plethysmograph, provided that plethysmograph testing is  
8 supported by the facts of defendant's case and the relevant case law and is ordered by the court.  
9 Further, if the probation department, and the court, in determining the most appropriate sentence,  
10 deems is appropriate, the defendant shall submit to a presentence sex offender evaluation  
11 pursuant to 18 U.S.C. § 3552(b). As a condition of supervised release, the defendant shall  
12 cooperate in the collection of a DNA sample as authorized in 18 U.S.C. § 3583(d).

13 c. The United States of America and Defendant hereby agree that all items named  
14 in the Forfeiture Allegation of the Indictment, seized from the defendant and currently in the  
15 custody and/or control of the Federal Bureau of Investigation (FBI) or other law enforcement  
16 agency, was properly seized and was involved in or used in violation of Federal law by  
17 defendant. The defendant agrees that the above described computer is subject to seizure,  
18 forfeiture and/or abandonment by the United States, and that no defense exists to the seizure,  
19 forfeiture and/or abandonment of that property by the United States. As such, defendant hereby  
20 relinquishes all claim, title and interest he has in the above stated property, to the United States  
21 of America with the understanding and consent that the Court, upon approval of this agreement,  
22 hereby directs FBI, or other appropriate agency, to cause the property described above to be  
23 declared abandoned, and to be disposed of according to law, without further obligation or duty  
24 whatsoever owing to defendant or any other person.

25 d. Defendant states under penalty of perjury that he is the sole and rightful owner of  
26 the property, and that no other person has any interest in this property. Defendant hereby  
27 voluntarily abandons all right and claim to the above described computer.

28

1 e. The defendant hereby agrees to withdraw any claim made in any civil,  
2 administrative or judicial forfeiture brought against the property listed in this agreement, and  
3 further agrees not to oppose any civil, administrative or judicial forfeiture or abandonment of  
4 the property, and further confirms that defendant has abandoned any and all rights to the above  
5 stated property.

6 f. Defendant knowingly and voluntarily waives any right to notice provided for in  
7 18 U.S.C. § 983. Defendant waives all constitutional, legal and equitable claims arising out of  
8 and/or defenses to the forfeiture or abandonment of this property in any proceeding, including  
9 any equitable claims arising out of and/or defenses to the forfeiture or abandonment of this  
10 property, including any claim of innocent ownership and any claim or defense under the Eighth  
11 Amendment, including any claim of excessive fine. Defendant agrees not to contest or assist  
12 anyone else in contesting the forfeiture on any other ground. Defendant further agrees not to  
13 petition or assist anyone else in petitioning for the remission or mitigation of the forfeiture.

14 g. Defendant agrees to unconditionally release and hold harmless FBI, its office,  
15 employees and Agents from any and all claims, demands, damages, cause of action or suits of  
16 whatever kind and description, and wheresoever situated, that might now exist or hereafter exist  
17 by reason of or growing out of or affecting, directly or indirectly, the seizure, forfeiture and  
18 abandonment of the above described property.

19 h. If the court, after reviewing this plea agreement, concludes that any provision is  
20 inappropriate, it may reject the plea and plea agreement, giving both parties an opportunity to  
21 withdraw from the agreement in accordance with Fed. R. Crim. P. 11(c)(5).

22 i. The United States retains the unrestricted right to make any and all statements it  
23 deems appropriate to the Probation Office and to make factual and legal responses to any  
24 statements made by the defendant or defense counsel or objections to the presentence report or  
25 to questions by the court at the time of sentencing.

26 j. If the defendant makes full and complete disclosure to the Probation Office of the  
27 circumstances surrounding the defendant's commission of the offense and if the defendant  
28 demonstrates an acceptance of responsibility for the offense up to and including sentencing, and

1 if the court finds that the defendant has fully accepted responsibility for his actions pursuant to  
2 Section 3E1.1 of the Sentencing Guidelines, the government will recommend pursuant to Rule  
3 11(c)(1)(B) a three-point reduction in the applicable sentencing guideline offense level.

4 k. Defendant understands that the court is neither a party to nor bound by this  
5 agreement and specifically that the United States' recommendation is not binding on the court,  
6 and the court may impose any sentence consistent with the terms of this plea agreement.  
7 Defendant further understands that if the court imposes a sentence different from what the  
8 United States recommends the defendant will not be permitted to withdraw the guilty plea.

9 l. Defendant understands that there is no agreement regarding the defendant's  
10 criminal history or criminal history category.

11 **3. AGREEMENT TO MAKE RESTITUTION**

12 Defendant specifically agrees to pay any restitution that the Court determines is  
13 appropriate in this case.

14 **4. AGREEMENT TO DISMISS OR NOT TO PROSECUTE**

15 a. Upon acceptance of this plea, the government agrees to dismiss Counts 1 and 2  
16 of the sentencing. This agreement does not, in any manner, restrict the actions of the United  
17 States in any other district nor bind any other United States Attorney's Office.

18 b. Undersigned counsel for the government is not presently aware of any other  
19 federal or state investigations or charges.

20 **5. WAIVER OF DEFENSES AND APPEAL RIGHTS**

21 The defendant waives any and all motions, defenses, probable cause determinations, and  
22 objections which the defendant could assert to the indictment or information or the Court's entry  
23 of judgment against the defendant and imposition of sentence upon the defendant, provided the  
24 sentence is consistent with this agreement. The defendant further waives: (1) any right to appeal  
25 the Court's entry of judgment against the defendant; (2) any right to appeal the imposition of  
26 sentence upon defendant under Title 18, United States Code, Section 3742 (sentence appeals);  
27 and (3) any right to collaterally attack defendant's conviction and sentence under Title 28,  
28 United States Code, Section 2255, or any other collateral attack. The defendant acknowledges

1 that this waiver shall result in the dismissal of any appeal or collateral attack the defendant might  
2 file challenging his conviction or sentence in this case.

3 **6. PERJURY AND OTHER FALSE STATEMENT OFFENSES OR OTHER**  
4 **OFFENSES**

5 Nothing in this agreement shall be construed to protect the defendant in any way from  
6 prosecution for perjury, false declaration or false statement, or any other offense committed by  
7 defendant after the date of this agreement. Any information, statements, documents, and  
8 evidence which defendant provides to the United States pursuant to this agreement may be used  
9 against the defendant in all such prosecutions.

10 **7. REINSTITUTION OF PROSECUTION**

11 If defendant's guilty plea is rejected, withdrawn, vacated, or reversed at any time, the  
12 United States will be free to prosecute the defendant for all charges of which it has knowledge,  
13 and any charges that have been dismissed because of this plea agreement will be automatically  
14 reinstated. In such event, defendant waives any objections, motions, or defenses based upon the  
15 Statute of Limitations, the Speedy Trial Act or constitutional restrictions in bringing of the later  
16 charges or proceedings. The defendant understands that any statements made at the time of the  
17 defendant's change of plea or sentencing may be used against the defendant in any subsequent  
18 hearing, trial or proceeding as permitted by Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410.

19 **8. DISCLOSURE OF INFORMATION TO U.S. PROBATION OFFICE**

20 a. Defendant understands the United States' obligation to provide all information in  
21 its file regarding defendant to the United States Probation Office.

22 b. The defendant will cooperate fully with the United States Probation Office. Such  
23 cooperation will include truthful statements in response to any questions posed by the Probation  
24 Department including, but not limited to:

25 (1) All criminal history information, i.e., all criminal convictions as defined  
under the Sentencing Guidelines.

26 (2) All financial information, e.g., present financial assets or liabilities that  
27 relate to the ability of the defendant to pay a fine or restitution.

28 (3) All history of drug abuse which would warrant a treatment condition as part  
of sentencing.

1 (4) All history of mental illness or conditions which would warrant a treatment  
2 condition as a part of sentencing.

3  
4 **9. FORFEITURE, CIVIL, AND ADMINISTRATIVE PROCEEDINGS**

5 a. The defendant agrees to forfeit the following: (a) any visual depiction described in 18  
6 U.S.C. Sections 2251, 2251(A), 2252, or 2260, or any book, magazine, periodical, film,  
7 videotape, or other matter which contains any such visual depiction, which was produced,  
8 transported, mailed, shipped or received in violation of this chapter; (b) any property, real or  
9 personal, constituting or traceable to gross profits or other proceeds obtained from such offense;  
10 and (c) any property, real or personal, used or intended to be used to commit or to promote the  
11 commission of such offense(s), including, but not limited to the defendant's computer hard drive.

12 The defendant agrees that the above listed property is subject to forfeiture pursuant to 18  
13 U.S.C. Section 2253, that he has an interest in this property, and that no defense exists as to the  
14 forfeiture of this property.

15 b. The defendant further agrees to waive all interest in the assets described above in  
16 any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal.  
17 The defendant agrees to consent to the entry of a Preliminary Order of Forfeiture, and a Final  
18 Order of Forfeiture (prior to sentencing) for such property and waives the requirements of  
19 Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the  
20 charging instrument, announcement of the forfeiture at sentencing, and incorporation of the  
21 forfeiture in the judgment. The defendant further understands and agrees that forfeiture of the  
22 assets is in accordance with both 21 U.S.C. § 853 and 18 U.S.C. Section 2253.

23 c Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine,  
24 restitution, cost of imprisonment, or any other penalty this court may impose upon the defendant  
25 in addition to forfeiture. This agreement does not preclude the United States from instituting any  
26 civil or administrative proceedings as may be appropriate now or in the future.

27 d. The defendant agrees to waive all constitutional and statutory challenges in any  
28 manner (including direct appeal, habeas corpus, double jeopardy or any other means) to any  
forfeiture imposed as a result of this indictment and/or any pending or completed administrative

1 or civil forfeiture actions based upon the course of conduct that provides the factual basis for the  
2 forfeiture, including that the forfeiture constitutes an excessive fine or punishment. The  
3 defendant agrees to take all steps as requested by the United States to pass clear title to  
4 forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture  
5 proceeding.

6 e. The government reserves its right to proceed against any remaining assets not  
7 identified either in this agreement or in any civil actions which are being resolved along with this  
8 plea of guilty, including any property in which the defendant has any interest or control, if said  
9 assets, real or personal, tangible or intangible were involved in money laundering violations.

10 **FACTUAL BASIS**

11 I further agree that if this matter were to proceed to trial the United States could prove  
12 the following facts beyond a reasonable doubt:

13 **COUNT 3: POSSESSION OF CHILD PORNOGRAPHY: The elements of this offense**  
14 **are as follows:**

- 15 1. The defendant knowingly possessed an image of child pornography, that is,  
16 any visual depiction, including any photograph, film, video, picture or  
17 computer-generated image or picture, whether made or produced by electronic,  
18 mechanical or other means, of sexually explicit conduct, and such images had  
19 been mailed, or shipped or transported in interstate or foreign commerce by any  
20 means, including computer.
- 21 2. The production of the visual depiction involved the use of a minor engaging  
22 in sexually explicit conduct.
- 23 3. The defendant knew the child pornography in question involved the use of a  
24 minor engaged in sexually explicit conduct.
- 25 4. "Sexually explicit conduct" means actual or simulated sexual intercourse,  
26 including genital-genital, oral-genital, anal-genital, or oral-anal, whether  
27 between persons of the same or opposite sex, bestiality, masturbation, sadistic  
28 or masochistic abuse or lascivious exhibition of the genitals or pubic area of  
any person.
5. The possession occurred in the District of Arizona and elsewhere.

26 **The Facts of this offense are as follows:**

27 On December 12, 2007, I had a folder on my computer hard drive, which I had in  
28 my possession at my residence in the District of Arizona. That folder was labeled



1 "shared" and I knew that it contained multiple video and images files that contained child  
2 pornography. I had downloaded these files from the Internet a using peer-to-peer  
3 program called Limewire. I allowed other Limewire users to access this folder and  
4 upload video files to their computers. The video files contained images and video files  
5 of minors engaging in sexually explicit activity . One of the video files in the shared  
6 folder was of a nude prepubescent female who is bound above her head and wearing a  
7 black dog collar. She is also wearing knee high stockings but is otherwise nude. Her  
8 legs are spread apart and her legs are bound with the same type of robe used to bind her  
9 hands. An unknown person's right hand masturbates the minor and then an adult male's  
10 penis is inserted into the prepubescent minor's mouth and she performs oral sex on the  
11 adult male. There were more than ten video files that contained child pornographic  
12 images on my computer hard drive as well as other image files that depicted minors  
13 engaging in sexually explicit activity.

14 I understand that I will have to swear under oath to the accuracy of this statement, and  
15 if I should be called upon to testify about this matter in the future, any intentional material  
16 inconsistencies in my testimony may subject me to additional penalties of perjury or false  
17 swearing which may be enforced by the United States under this agreement.

18  
19 **DEFENDANT'S APPROVAL AND ACCEPTANCE**

20 I have read each of the provisions of the entire plea agreement with the assistance of  
21 counsel and understand its provisions.

22 I have discussed the case and my constitutional and other rights with my attorney. I  
23 understand that by entering my plea of guilty I will be giving up my rights to plead not  
24 guilty, to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to  
25 present evidence in my defense, to remain silent and refuse to be a witness against myself by  
26 asserting my privilege against self-incrimination -- all with the assistance of counsel -- and to  
27 be presumed innocent until proven guilty beyond a reasonable doubt.

28

1 I agree to enter my guilty plea as indicated above on the terms and conditions set forth  
2 in this agreement.

3 I have been advised by my attorney of the nature of the charges to which I am entering  
4 my guilty plea. I have further been advised by my attorney of the nature and range of the  
5 possible sentence and that my ultimate sentence will be determined after consideration of the  
6 advisory Sentencing Guidelines.

7 My guilty plea is not the result of force, threats, assurances or promises other than the  
8 promises contained in this agreement. I agree to the provisions of this agreement as a  
9 voluntary act on my part, rather than at the direction of or because of the recommendation of  
10 any other person, and I agree to be bound according to its provisions.

11 I fully understand that, if I am granted probation or placed on supervised release by  
12 the court, the terms and conditions of such probation/supervised release are subject to  
13 modification at any time. I further understand that, if I violate any of the conditions of my  
14 probation/ supervised release, my probation/supervised release may be revoked and upon  
15 such revocation, notwithstanding any other provision of this agreement, I may be required to  
16 serve a term of imprisonment or my sentence may otherwise be altered.

17 I agree that this written plea agreement contains all the terms and conditions of my  
18 plea and that promises made by anyone (including my attorney), and specifically any  
19 predictions as to the guideline range applicable, that are not contained within this written plea  
20 agreement are without force and effect and are null and void.

21 I am satisfied that my defense attorney has represented me in a competent manner.

22 I am fully capable of understanding the terms and conditions of this plea agreement. I  
23 am not now on or under the influence of any drug, medication, liquor, or other intoxicant or  
24 depressant, which would impair my ability to fully understand the terms and conditions of  
25 this plea agreement.

26  
27 7-13-89  
Date

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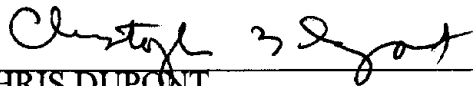
  
MICHAEL DAVID STANLEY  
Defendant

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**DEFENSE ATTORNEY'S APPROVAL**

I have discussed this case and the plea agreement with my client, in detail and have advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the constitutional and other rights of an accused, the factual basis for and the nature of the offense to which the guilty plea will be entered, possible defenses, and the consequences of the guilty plea including the maximum statutory sentence possible. I have further discussed the concept of the advisory sentencing guideline with the defendant. No assurances, promises, or representations have been given to me or to the defendant by the United States or by any of its representatives which are not contained in this written agreement. I concur in the entry of the plea as indicated above and on the terms and conditions set forth in this agreement as in the best interests of my client. I agree to make a bona fide effort to ensure that the guilty plea is entered in accordance with all the requirements of Fed. R. Crim. P. 11.

7-13-09  
Date

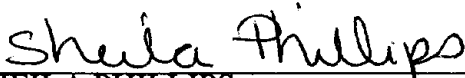
  
CHRIS DUPONT  
Attorney for Defendant

**UNITED STATES' APPROVAL**

I have reviewed this matter and the plea agreement. I agree on behalf of the United States that the terms and conditions set forth are appropriate and are in the best interests of justice.

DIANE J. HUMETEWA  
United States Attorney  
District of Arizona

7-13-09  
Date

  
SHEILA PHILLIPS  
Assistant U.S. Attorney

**COURT'S ACCEPTANCE**

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Date \_\_\_\_\_

HON. NEIL V. WAKE  
United States District Judge