



Smart Phones & Dumb Laws

The complex legal and constitutional issues generated
by the mobile delivery of adult-oriented content

February 2012

Presented by: Kevin W. Wimberly



Overview

- Vocabulary – What are we talking about?
- So What?
- Some Dumb Laws (well, Rules/Policies/Regs)
 - Apple
 - Android
 - Got EULA?
- Some Laws that Might Not Be So Dumb
 - FTC



The Vocabulary

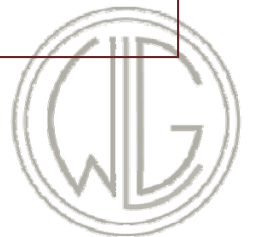
– “iOS” = Apple

- iPhones, iPads, iPods – iDevices
- CLOSED



– “Android” = Google

- HTC phones, Samsung Galaxy, Motorola XOOM, everything else...
- OPEN



The Vocabulary

“Marketplace”

Apple/iOS

- App Store/iTunes

Android

- Android Market (“official”)
- Amazon AppStore
- MiKandi
- AdultAppMart
- SlideME
- AndroidPIT
- Appoke
- and many more...



Why You Should Care

- Mobile/Tablet (“non-computer”) traffic increasing.
- Android, iOS, and marketplace policies will shape what businesses can deliver to their customers.
- Private censorship – marketplace of ideas being shaped by corporate policies based on conservatism and fear of government.



Why You Should Care

- The WWW browser is essentially neutral. The mobile device OS is not. Massive power is wielded by gatekeepers rather than the endpoints.
- Facebook IPO – concerns about increased reliance on mobile devices and need to capitalize on advertising.
- See: comScore “Digital Omnivores” report
– [http://www.comscore.com/Digital Omnivores](http://www.comscore.com/Digital_Omnivores)



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Wednesday, Jan 18, 2012

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XBIZ | Adult Mobile News | Mobile Porn News

Affil4You Offering Mobile Billing in Malaysia
Thursday, December 29, 2011
Affil4You announced that it is now offering its mobile billing services in Malaysia.
[Full Story »](#)

XBIZ LA, XBIZ Retail Mobile Show Guides Now Live
Thursday, December 29, 2011
XBIZ is pleased to announce that the mobile show guides for leading digital media conference XBIZ LA and retail trade event XBIZ Retail are now live. [Full Story »](#)

Catalina Cruz Expands Mobile Brand
Thursday, December 29, 2011
Catalina Cruz has announced the official launch of another porn star mobile site, SiennaWest.mobi.

Affil4You Expands Into Indonesian Market
Tuesday, December 20, 2011

www.famedollars.com

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Online industry publications creating Mobile News categories...



Mobile Market

PussyCash Offers Co-Branded ImLive Cam Site

LOS ANGELES — Affiliate program PussyCash is offering webmasters an opportunity to get their own co-branded ImLive mobile cam site by adding their own domain name.

The company said this gives webmasters a way to leverage the growing market trend and cash in from users accessing the Internet

ImLive.com
VideoChat Live With Experts!

via cell phones.

"At PussyCash, we understand that many webmasters do not have the time or resources to adapt their sites and content to fit the mobile platform," said Yuval Kijel, vice president of

sales and marketing of ImLive.com and PussyCash.com.

"This does not mean they need to miss out on the money. Together with the tools we provide to help create their own co-branded ImLive cam site plus huge payouts, webmasters will boost their current earnings and secure future profits."

SEE **IMLIVE**, PAGE 68



FleshDrive Rolls Out iPad-Compatible Drive

NEW YORK — USB flash drive company FleshDrive has released an iPad-compatible FleshDrive.

"In a world where a certain company president has looked down upon the adult

FLESHDRIVE

industry, it is the consumer who decides if they want to watch porn on their iPad," said Michael Grosso, FleshDrive vice president of sales.

The company said the new drive will need to plug the iPad into an iPad camera connection kit, which they can purchase from an Apple

store. Users can then watch adult videos anytime and can also delete them from their iPad for privacy or to save space.

Since the FleshDrive does not require an Internet connection to watch videos, it will work on both the iPad Wi-Fi and Wi-Fi Plus 3G.

FleshDrive's proprietary technology utilizes a FleshDrive player that can run on multiple platforms such as PC, MAC, XBOX, TVs with USB, PS3s and others. One FleshDrive device can hold full-length adult videos in

as amounts of 20, 40 and 90 videos and they play without buffering, waiting, viruses, spyware or spam.

W. Europe Mobile Revenue Set to Climb

APP LAW ISSUES

Why Mobile Apps Differ From Websites

BY LAWRENCE G. WALTERS AND KEVIN W. WIMBERLY

Providing a mobile application for customers and potential customers has become as ubiquitous as having a website.

Whether the app is used as a simple marketing tool (i.e. a trivia app that features the images of stars in an upcoming film), or a feature-packed version of an adult dating website, consumers are beginning to expect — if not demand — that their favorite online destinations have accompanying mobile applications.

In fact, a leading Morgan Stanley Internet analyst recently released an "Internet Trends" report which predicts that within the next four years "more users will connect to the Internet over mobile devices than desktop PCs."

This statistic isn't surprising considering the popularity of the iPhone/iPad, Android-based phones, and the slew of other pad-type devices slated for imminent release.

SEE **APP LAW**, PAGE 67



**XBIZ World,
November 2010**

...and reporting on
Mobile issues in print
magazines.



Why You Should Care

- 2011 Top 50 Industry Newsmakers:
<http://www.xbiz.com/news/legal/142039>.
 - “ADULT APP MART - With only a little over a year under its belt, Android app developer, AdultAppMart made news when it debuted the “Wonder Weiner” app on the heels of former Congressman Rep. Anthony Weiner’s (D-N.Y.) official resignation. The company also earned three 2012 XBIZ Award nominations for Mobile Services Company, Progressive Company of the Year, and Innovative Web/Tech Product of the Year. If that’s not enough, it launched an affiliate program, **app development services** and adopted **QR codes** for the desktop version of its site.”



Why You Should Care

- 2011 Top 50 Industry Newsmakers:
<http://www.xbiz.com/news/legal/142039>.
 - “MIKANDI - Adult app supplier MiKandi confirmed that AT&T Android users could access its adult app store by simply checking a box for “Unknown Sources.” It also debuted the iBoobs app that was banned from both the Apple App store and Google’s App market. The company partnered with Cherry Media S.L. (Cherrysauce) to launch a content service for MiKandi’s App Developer network as well as a deal with the Reporo mobile ad network. In-app billing, powered by MiKandi Gold also bowed in 2011.”



The Dumb Begins

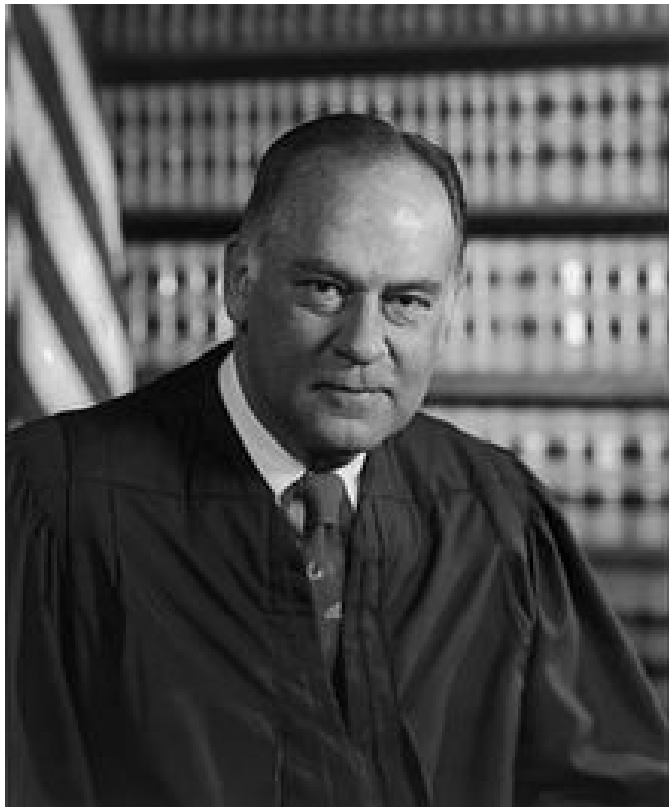
A Minefield of Policies



There's An App For That® (maybe)



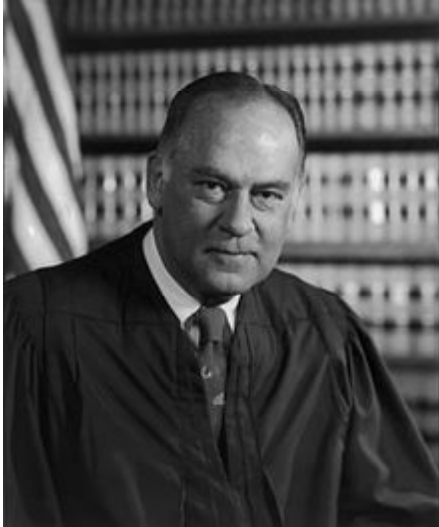
There's An App For That[®] (maybe)



Credit: Matthew Yohe



There's An App For That[®] (maybe)



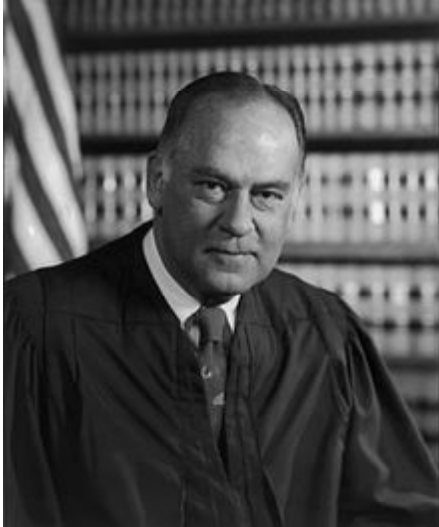
What Do Justice Potter and
Steve Jobs Have In Common?



Credit: Matthew Yohe



There's An App For That[®] (maybe)



They Know It When They See It



Credit: Matthew Yohe





There's An App For That[®] (maybe)

- Sept. 2010 – App Store Review Guidelines:
- “We will reject Apps for any content or behavior that we believe is over the line. What line, you ask? Well, as a Supreme Court Justice once said, "I'll know it when I see it". And we think that you will also know it when you cross it.”



- “Apps that are not very useful, are simply web sites bundled as apps, or do not provide any lasting entertainment value may be rejected”
- “Apps that use IAP to purchase credits or other currencies must consume those credits within the application”
- “Apps that use IAP to purchase credits or other currencies that expire will be rejected”
- “In general, the more expensive your app, the more thoroughly we will review it”
- “Any app that is defamatory, offensive, mean-spirited, or likely to place the targeted individual or group in harms way will be rejected” [BUT...]



- “Professional political satirists and humorists are exempt from the ban on offensive or meanspirited commentary”
- “Apps containing pornographic material, defined by Webster's Dictionary as "explicit descriptions or displays of sexual organs or activities intended to stimulate erotic rather than aesthetic or emotional feelings", will be rejected”
- “Apps that contain user generated content that is frequently pornographic (ex "Chat Roulette“ apps) will be rejected”



- “Sweepstakes and contests must be sponsored by the developer/company of the app”
- “It must be permissible by law for the developer to run a lottery app, and a lottery app must have all of the following characteristics: consideration, chance, and a prize”
- “Apps which contain DUI checkpoints that are not published by law enforcement agencies, or encourage and enable drunk driving, will be rejected.”





There's NOT An App For That

- Smuggle Truck (now available as Snuggle Truck)
- Phantom Alert (DUI checkpoint)
- Exodus International/Manhattan Declaration (“gay cure” and “traditional marriage” apps)
- Playboy (forced to use web version)
- The Third Intifada (anti-Israel “incitement” app)





Apple's iOS Developer Program License Agreement

- In addition to the App Store Review Guidelines, the iOS Developer Program License Agreement can dramatically affect your clients' rights.





Apple's iOS Developer Program License Agreement

2.5 You may not use the In App Purchase API to deliver any items that contain content or materials of any kind (text, graphics, images, photographs, sounds, etc.) that in Apple's reasonable judgment may be found objectionable or inappropriate, for example, materials that may be considered obscene, pornographic, or defamatory.

3.3.18 Applications may be rejected if they contain content or materials of any kind (text, graphics, images, photographs, sounds, etc.) that in Apple's reasonable judgment may be found objectionable or inappropriate, for example, materials that may be considered obscene, pornographic, or defamatory.

2.4 You may not use the APN or Local Notifications to send material that contains any obscene, pornographic, offensive or defamatory content or materials of any kind (text, graphics, images, photographs, sounds, etc.), or other content or materials that in Apple's reasonable judgment may be found objectionable by the end-user of Your Application.





Apple's iOS Developer Program License Agreement

3.3.13 For Applications that use location-based APIs for real-time route guidance (including, but not limited to, turn-by-turn route guidance and other routing that is enabled through the use of a sensor), You must have an end-user license agreement that includes the following notice: YOUR USE OF THIS REAL TIME ROUTE GUIDANCE APPLICATION IS AT YOUR SOLE RISK. LOCATION DATA MAY NOT BE ACCURATE.

3.2 You may deliver to Apple Your own EULA for any Licensed Application at the time that You deliver that Licensed Application to Apple, in accordance with Section 2.1 of this Schedule 1; provided, however, that Your EULA must include and may not be inconsistent with the minimum terms and conditions specified on Exhibit A to this Schedule 1 and must comply with all applicable laws in all countries where You wish Apple to allow end-users to download that Licensed Application. Apple shall allow each end-user to which Apple allows access to any such Licensed Application to review Your EULA (if any) at the time that Apple delivers that Licensed Application to that end-user, and Apple shall notify each end-user that the end-user's use of that Licensed Application is subject to the terms and conditions of Your EULA (if any). In the event that You do not furnish Your own EULA for any Licensed Application to Apple, You acknowledge and agree that each end-user's use of that Licensed Application shall be subject to Apple's standard EULA (which is part of the App Store Terms of Service).



Apple's iOS Developer Program License Agreement

1. Acknowledgement: You and the end-user must acknowledge that the EULA is concluded between You and the end-user only, and not with Apple, and You, not Apple, are solely responsible for the Licensed Application and the content thereof. The EULA may not provide for usage rules for Licensed Applications that are less restrictive than the Usage Rules set forth for Licensed Applications in, or otherwise be in conflict with, the App Store Terms of Service as of the Effective Date (which You acknowledge You have had the opportunity to review).

10. Third Party Beneficiary: You and the end-user must acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of the EULA, and that, upon the end-user's acceptance of the terms and conditions of the EULA, Apple will have the right (and will be deemed to have accepted the right) to enforce the EULA against the end-user as a third party beneficiary thereof.



There Really Might Be An App For *That*



ANDROID



There Really Might Be An App For *That*

- Unlike Apple, the “official” Android Market lacks a pre-publication review.

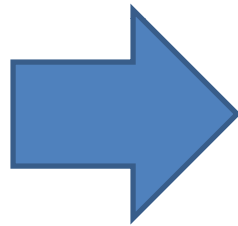


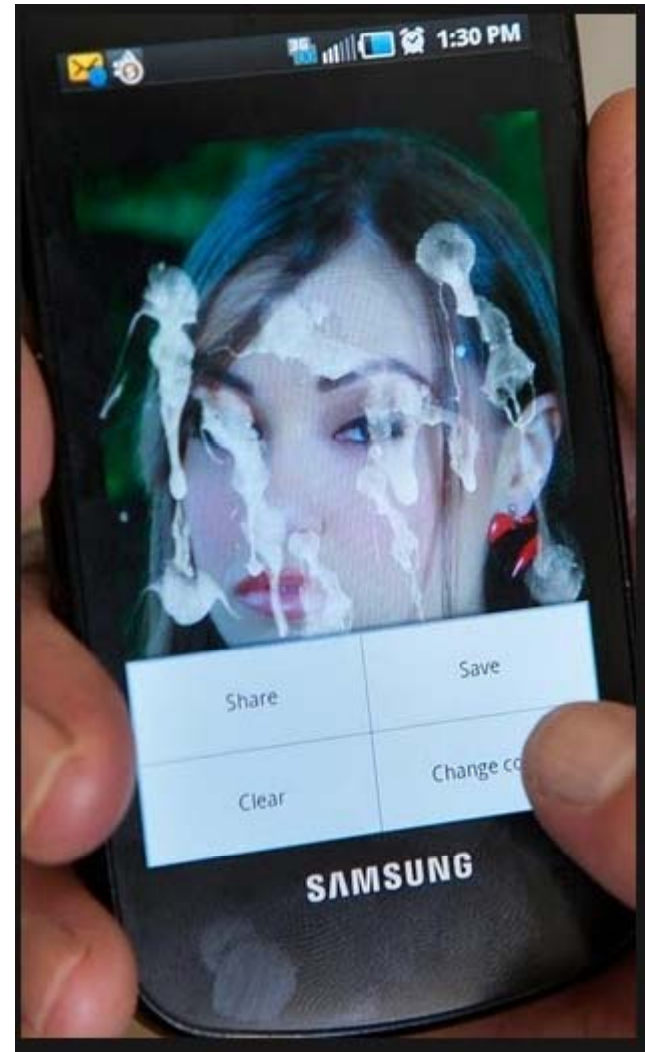
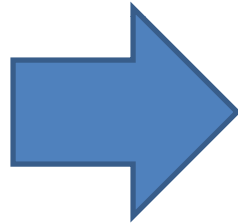
There Really Might Be An App For *That*

7.2 Google Takedowns. While Google does not undertake an obligation to monitor the Products or their content, if Google is notified by you or otherwise becomes aware and determines in its sole discretion that a Product or any portion thereof or your Brand Features; (a) violates the intellectual property rights or any other rights of any third party; (b) violates any applicable law or is subject to an injunction; (c) is pornographic, obscene or otherwise violates Google's hosting policies or other terms of service as may be updated by Google from time to time in its sole discretion; (d) is being distributed by you improperly; (e) may create liability for Google or Authorized Carriers; (f) is deemed by Google to have a virus or is deemed to be malware, spyware or have an adverse impact on Google's or an Authorized Carrier's network; (g) violates the terms of this Agreement or the Developer Program Policies for Developers; or (h) the display of the Product is impacting the integrity of Google servers (i.e., users are unable to access such content or otherwise experience difficulty), Google may remove the Product from the Market or reclassify the Product at its sole discretion. Google reserves the right to suspend and/or bar any Developer from the Market at its sole discretion.

- Apple “rejects.”
- Google “Takes down.”
- Which explains...







There Really Might Be An App For *That*

- Peter North's "Decorator"

- "Have you ever dreamed of being able to cum like porn Legend Peter North? You ever wanted to "Decorate" the face of hundreds, even thousands of women like the "KING of Ejaculation" has done for the last 25 years?

Well now you can!!!!

Introducing "The Decorator" an Android app that allows you to do just that... "The Decorator" is an APP that allows you to ejaculate countless times over saved pictures in your "Gallery" or any picture taken from the camera... you'll hear peters clever one liners as man juice decorates the awaiting victims..... its LOADS of fun. literally."

- <https://market.android.com/details?id=com.postdawn.decorator>

ANDROID



There Really Might Be An App For *That*

- Peter North's "Decorator"
 - Probably violates the official Android marketplace's Developer Program Policies, but until someone complains, the app will stay available.



There Really Might Be An App For *That*

- <http://www.android.com/us/developer-distribution-agreement.html>
- <http://www.android.com/market/terms/developer-content-policy.html>



There Really Might Be An App For *That*

- Android Market Developer Distribution Agreement

5.4 You grant to the user a non-exclusive, worldwide, and perpetual license to perform, display, and use the Product on the Device. If you choose, you may include a separate end user license agreement (EULA) in your Product that will govern the user's rights to the Product in lieu of the previous sentence.

4.11 **Restricted Content.** Any Product you distribute on the Market must adhere to the [Developer Program Policies](#).



There Really Might Be An App For *That*

- **Android Market Developer Program Policies**
 - **Sexually Explicit Material:** We don't allow content that contains nudity, graphic sex acts, or sexually explicit material. Google has a zero-tolerance policy against child pornography. If we become aware of content with child pornography, we will report it to the appropriate authorities and delete the Google Accounts of those involved with the distribution.
 - **Violence and Bullying:** Depictions of gratuitous violence are not allowed. Applications should not contain materials that threaten, harass or bully other users.
 - **Hate Speech:** We don't allow the promotion of hatred toward groups of people based on their race or ethnic origin, religion, disability, gender, age, veteran status, or sexual orientation/gender identity.
 - **Gambling:** We don't allow content or services that facilitate online gambling, including but not limited to, online casinos, sports betting and lotteries.

ANDROID



There Really Might Be An App For *That*

- Alternate Android marketplaces

- MiKandi

- <http://www.mikandi.com>
 - <http://developer.mikandi.com/>

- AdultAppMart

- <http://www.adultappmart.com>
 - <http://www.adultappmart.com/aam/devel>

- Amazon Appstore for Android

- <http://www.amazon.com/appstore>
 - <https://developer.amazon.com/help/faq.html>



But, Do You NEED An App For That?

- Mobile versions of sites – Apple hasn't (yet) restricted the Internet.
- Not really software “apps.”
- See: FuckedApps.com; SexAppShop.com



More Dumb





FEDERAL TRADE COMMISSION
Protecting America's Consumers





FEDERAL TRADE COMMISSION

Protecting America's Consumers



2011 – The FTC Discovers Apps

- <http://onguardonline.gov/articles/0018-understanding-mobile-apps> (September 2011)

Mobile App User Reviews

Can I trust all the user reviews I read about an app?

Most app stores include user reviews that can help you decide whether to download. But some app developers and their marketers have posed as consumers to post positive comments about their own products. In fact, the Federal Trade Commission recently sued a company for posting fake comments about the apps it was paid to promote.



2011 – The FTC Discovers Apps

- Privacy:
 - Very first FTC mobile apps case
 - <http://www.ftc.gov/opa/2011/08/w3mobileapps.shtm>
 - COPPA violation for iOS apps: Emily's Girl World, Emily's Dress Up, etc. (Not what you think...)
 - “The Emily apps encouraged children to email “Emily” their comments and submit blogs to “Emily’s Blog” via email, such as “shout-outs” to friends and requests for advice.”
 - “The FTC alleges that the defendants collected and maintained thousands of email addresses from users of the Emily apps”



2011 – The FTC Discovers Apps

- Marketing Claims:

INSTRUCTIONS:

Begin by choosing a light from the tab bar below.
Blue & Red alternating light is the recommended option.

Rest the iPhone against your skin's acne-prone areas for 2 minutes daily to improve skin health without prescription drugs.

Blue Light: fights bacteria.
Red Light: helps heal skin.



2011 – The FTC Discovers Apps

- Marketing Claims
 - Holding a flashlight to your face does NOT fight bacteria or heal skin.
 - <http://www.ftc.gov/opa/2011/09/acnecure.shtm>



2011 – The FTC Discovers Apps

- Reviews related to apps also subject to the FTC Act.
- FTC released Revised Endorsement Guides in 2009: <http://business.ftc.gov/documents/bus71-ftcs-revised-endorsement-guideswhat-people-are-asking>.
- <http://www.ftc.gov/opa/2010/08/reverb.shtm>
 - Fake game reviews on iTunes App Store



2011 – The FTC Discovers Apps

- Unfair & Deceptive Practices:
 - Peer-to-peer app automatically shared files from Android-based smartphones and tablets.
 - Unsharing or otherwise controlling what was shared was counterintuitive and laborious.
 - “a significant number of consumers using Frostwire for Android could not reasonably avoid the unwitting public sharing of their private files.”
 - <http://www.ftc.gov/opa/2011/10/frostwire.shtm>



Takeaways

- Know the Marketplace
- Know the Terms
- Know the Workarounds
- Know the FTC



Takeaways

- Know the Marketplace
- Know the Terms
- Know the Workarounds
- Know the FTC
- Know It When You See It





Presented by: Kevin W. Wimberly
kevin@firstamendment.com

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