



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

WHAT TO DO IF A STATION IS THE RECIPIENT OF CHILD PORNOGRAPHY

Last week, an image captured from a video containing child pornography was widely circulated via Facebook. In an attempt to report the matter, many concerned citizens sent the image to television stations, which received the image and a link to the video via their Facebook Messenger accounts, which stations routinely use to receive news tips. Most stations appear to have received the image late Friday or on Saturday, and weekend personnel were confronted with how to deal with the situation. On Tuesday, February 6, 2018, authorities in Alabama took into custody a man suspected of engaging in the sexual acts with a minor depicted in the image and underlying video.

In connection with the current incident, we consulted with law enforcement authorities at the local, state, and federal levels, and based on those discussions, we provide the following recommendations with how stations should deal with the aftermath of this incident and with future incidents.

Possession, exhibition, or distribution of child pornography is a felony. Under no circumstances should station personnel download, forward, or take a screenshot of child pornography, including in an attempt to alert law enforcement.

A. The Current Incident

If a station received the image, it should now immediately **delete** it. Deletion in Facebook Messenger can only be done via the app and not via the account on a computer. To minimize any exhibition of the image, one individual should delete the message(s) containing the image. It may be necessary for this individual to access each Facebook Messenger account, including those of station personalities. We are aware of at least one station where the message was sent to the Messenger spam folder, so it is prudent to also check the spam folders as well.

If a station received the current image, it is not necessary to report such receipt to law enforcement.

Some stations had chosen to deactivate Messenger either prophylactically (until the immediate incident appears to have passed) or after having received the image. Messenger can now be reactivated.

B. Future Incidents

If you are the recipient of child pornography, immediately notify your News Director or GM if your ND is not available. Do not show this material to anyone.

As stated above, **do not screengrab** any of the message or video content. **Do not forward** the material to your ND or GM. **Do not forward** the material to law enforcement. **Do not click on any link** that may be included. Law enforcement may consider those actions to constitute possession, exhibition, or distribution of child pornography.

If it appears that the sender of the material is attempting to report the material as a news tip, delete the material immediately. If the material is posted to the station's public Facebook page or on Instagram, immediately **flag the material as inappropriate**, which will remove the material from public view. It is not necessary to report this type of incident to law enforcement, and we do not advise that you do so.

Since receipt of this type of message can be deleted and need not be reported to law enforcement, it is not necessary to deactivate Facebook Messenger. This will allow the station to continue to receive news tips in the normal course.

If you, in conjunction with your ND and/or GM, have reason to believe that the sender of the material is not attempting to report an incident of child abuse or child pornography but is, instead, attempting to disseminate child pornography, do not delete the material. Instead, we advise the following actions:

If the material is posted to the station's public Facebook page or on Instagram, immediately **flag the material as inappropriate**, which will remove the material from public view.

If the material is received in Facebook Messenger, via email, or in some other non-public manner, **quarantine the material** by immediately moving it to an archive, junk, or spam folder where it is unlikely that anyone else will accidentally stumble upon it. The ND or GM should then alert station personnel that they should not attempt to access any such folder. After the material is quarantined, do not at any time go back to view the material.

In this instance, where you suspect that the sender of the material is attempting to disseminate child pornography, you should contact your local FBI office. The U.S. Department of Justice has an extensive policy on how to deal with the media in these circumstances, which recognizes the important function of the media. The FBI can only take legal action through the Department of Justice, and so by reporting to the FBI, the station can be assured of treatment consistent with DOJ's policy. Although stations undoubtedly have close contacts with local law

enforcement, local law enforcement responses could vary considerably from jurisdiction to jurisdiction. We accordingly recommend that you resist your natural urge to rely on your relations with local law enforcement and to instead contact federal authorities at the FBI. You should also notify station legal counsel of what has occurred and what actions you have taken.

In the event that the station determines an incident is newsworthy, do **not** attempt to include in any news story an image of the child pornography, even blacked out, or to play any audio from a video, even with voices altered. Such actions could land you in prison and cost the station its FCC license.

In light of the recent incident, this appears to be an appropriate time for station GMs and news directors to review station policies concerning the flow of information in news departments and alerting protocols, particularly over weekends, the manner in which social media can be used and abused, and how and by whom various station accounts can be accessed and made secure.

If your station finds itself in a situation similar to any described above, please do not hesitate to call Brooks Pierce Partner Kearns Davis at 919-573-6214 (and, to reiterate, do **not** forward any material described above).

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