Class Action Lawsuit Over Apple DRM Stumbles Because Plaintiffs Aren't Actually In The Class

Here is another article "Why Attorneys are Scum Bags".

I have written a few times about the long-running class action lawsuit against Apple alleging that its use of DRM on music (the "FairPlay" system) violated antitrust laws by locking users into Apple's platform. The case is interesting on a few different levels – including the question of whether or not DRM could lead to antitrust violations (very interesting…) and showing how quickly the technology world changes (music DRM is basically long gone). However, with the trial being held this week, a new stumbling block arose late in the game. Apple lawyers have pointed out to the judge in the case, Yvonne Gonzalez Rogers, that neither of the two women named as plaintiffs actually qualify to be in the class.
As you might imagine, that makes for a difficult class action lawsuit, when you don't have any actual plaintiffs.

Specifically, after testimony this week, Apple realized that the iPod that one of the plaintiffs owned was purchased outside of the period of time covered by the class action lawsuit. Apple stopped using Fairplay in March 2009, so the class action lawsuit only applies to iPods bought between September 2006 and March 2009. That's a problem when the main plaintiff actually bought hers in… July 2009.

> *After plaintiff Marianna Rosen testified on Wednesday, Apple attorneys said they checked the serial number on her iPod Touch and found it was purchased in July 2009. In a letter*

> *sent to the court late Wednesday night, Apple lawyer William Isaacson said it appears the other plaintiff, Melanie Wilson, bought iPods outside the relevant time frame or, in one instance, purchased a model that didn't have the specific version of software at issue in the case.*
>
> *Isaacson, who suggested the lawsuit can't proceed without a plaintiff, said he's asked for proof that either woman had purchased an iPod covered by the case. Plaintiffs' attorney Bonny Sweeney said her side is checking for other receipts. She conceded that Wilson's iPods may not be covered, but she also noted that an estimated 8 million consumers are believed to have been purchased the affected iPods.*

In other words, the class action lawyers are admitting that they may not have a plaintiff, but say it doesn't matter because they can find another one without too much trouble.

And of course, this just reinforces what a total scam so many class action lawsuits are. I have written about this for years. While the basic idea may seem sound, the reality is that most class action lawsuits are just about ways for class action lawyers to get super wealthy. They seek out anything they can sue over, find a stand-in plaintiff whose only job is basically to be the name on the lawsuit, and then when the final payout comes, the lawyers take a huge chunk, the stand-in plaintiff gets a small amount, and the rest of the class splits a further tiny amount. It's not about righting wrongs. It's about enriching class action lawyers. The very fact that the lawyers in this case admit that they can toss out their plaintiffs and bring in others seems to highlight what a total joke this whole thing is.

Still, someone really, really, screwed up on the lawyers' side. How the hell do you set up a class action lawsuit without first confirming that your plaintiff is in the class? That seems like a total and complete fuck up.

Thankfully, Judge Rogers seems to recognize that this is not a good situation:

> *"I am concerned that I don't have a plaintiff. That's a problem," the judge said in court Thursday afternoon at the end of the trial's third day of testimony in Oakland.*

As interested as I am in the idea that DRM might be anticompetitive, I'm still troubled by the abuse of class action lawsuits (and related antitrust efforts in general as well). This particular case just seems like a total mess.

How EA's jet-setting founder avoided $26 million in taxes

"I bought a private jet because I thought it would make me more efficient in my work."

In the early 2000s, William "Trip" Hawkins—founder of video game publisher Electronic Arts—was living the good life. He owned a private jet, two multi-million-dollar homes, sent his kids to private school, had four vehicles between himself and his wife, held San Francisco Giants season tickets, and employed a private staff.

Hawkins appeared to be flush with cash. He once had an estimated worth of $100 million while manning the video game company that has long produced best-sellers like the *Madden NFL* franchise, and he cashed out company stock repeatedly. He

sold $24.4 million of EA stock in 1996. The following year, he sold $3.7 million more. In 1998, he sold $38.76 million.

But Hawkins had a peculiar way of keeping his cash flow up; he wasn't paying all the taxes connected to the proceeds of some of his stock sales. Instead, he participated in a tax sheltering setup designed to produce on-paper "monetary losses" to offset the gains. The scheme was all done through accounting firm KPMG, which used convoluted Swiss and Cayman Islands deals that eventually raised the eyebrows of Internal Revenue Service (IRS) tax auditors. The IRS and the California Franchise Tax Board eventually cried foul.

In 2002, the IRS notified Hawkins' lawyers that the tax shelters, accounting for about $60 million in claimed losses, wouldn't be allowed for the tax years 1997 to 2000. This meant that Hawkins would be on the hook for millions in back taxes on all those EA stock profits.

Still, Hawkins continued living a jet setter's life until around the time he filed for bankruptcy protection in 2006. For instance, a government legal filing [PDF] said that Hawkins' private jet had cost $11.8 million in 2000 and had an "operating" cost of $1 million annually. Hangar fees were $100,000 monthly, the filing added. The jet was allegedly used for trips, some personal, to Hawaii, England, Russia, Italy, Aspen, San Diego, and Long Beach.

"Debtors continued to purchase Giants season tickets each year commencing with the 2000 season. By the 2003 season, debtors were paying $7,487.76 for their season tickets and $1,415 for their parking pass," the government said. In 2002, the government said that Hawkins bought a newly built "vacation home" in the upscale La Jolla section of San Diego for $2.6 million.

Hawkins, for his part, disputes that he spent outrageously in the lead-up to his bankruptcy.

“I didn’t retire, build a home, or buy a bunch of luxury items other than one obvious indulgence,” the 60-year-old wrote in a comment appended to a recent *Forbes* piece about his financial trouble. “I bought a private jet because I thought it would make me more efficient in my work. That was really stupid, too.” (Hawkins sold his jet in 2003 for “approximately $5 million,” according to the government.) Hawkins went on to say the one thing he was guilty of was “stupidity” for trusting accountants who promised him legitimate tax shelters.

Hawkins did eventually pay more than $10 million toward his tax debt, but $26 million still remained. Because of Hawkins’ continued high spending, a federal bankruptcy court refused to give him the usual bankruptcy benefit of wiping his tax burden.

But Hawkins appealed this ruling—and he doesn’t have to pay those taxes, at least not for now. A recent decision [PDF] by a three-judge panel for the 9th US Circuit Court of Appeals in San Francisco sided 2-1 with Hawkins despite objections from a dissenting appellate judge who said that Hawkins didn’t deserve a break because he was engaged in “profligate spending.”

The appeals court concluded that it didn’t matter whether Hawkins bought a private jet or lived the high life, so long as he wasn’t willfully scheming to evade his tax burden. The majority opinion concluded [PDF] that the law was on Hawkins’ side and that “bankruptcy law must apply equally to rich and poor alike.”

Hawkins’ ongoing legal push to be relieved of his tax obligations is merely the latest chapter in a long story. His saga provides a glimpse into the murky world of tax shelters, the principles of bankruptcy law, and the spendy lifestyles of the tech sector’s elite. And, in this instance, it just happens to involve the man who started one of the world’s most popular video game companies.

Tax shelters for sale

Hawkins, a Harvard University and Stanford University grad, was among the earliest Apple employees. He left his post as an Apple marketing director in 1982 to found Electronic Arts. In addition to the *Madden* franchise, EA has produced *The Sims*, *FIFA,* and a slew of other video games. Hawkins later formed 3DO, a gaming company that issued its first console in 1993. Despite at least $12 million in loans from Hawkins, 3DO filed for Chapter 11 bankruptcy protection in 2003.

His Linkedin profile lists Hawkins now as the co-founder and CEO of If You Can, a company that makes children's learning tools. Through his attorney, Hawkins declined to comment to Ars.

The tax saga began with accountants at KPMG advising Hawkins to shelter his proceeds from the sales of EA stock in vehicles called a Foreign Leveraged Investment Portfolio (FLIP) and an Offshore Portfolio Investment Strategy (OPIS). The government said Hawkins' reported investment failures "were not real economic losses." [PDF]

The appeals court described Hawkins' tax shelters as a convoluted web "designed to generate large paper losses":

> *To execute the FLIP transaction, Trip purchased shares of the Union Bank of Switzerland ("UBS") for $1.5 million and an option to acquire shares of Harbourtowne, Inc., a Cayman Islands corporation. Harbourtowne then contracted with UBS to purchase shares of UBS for $30 million, with UBS receiving an option to repurchase the shares before the sale closed. UBS exercised the option, and the UBS shares were never transferred to Harbourtowne. Hawkins then received a letter from KPMG stating that he could add to the tax basis of his UBS shares the $30 million that Harbourtowne had contracted to pay for its UBS shares. The opinion letter stated that UBS's repurchase of its shares would likely be considered a*

> *distribution to Harbourtowne (which was nontaxable because Harbourtowne was a foreign corporation), and that Harbourtowne's basis in its UBS shares should be treated as a transferred to Hawkins's basis in his UBS shares.*
>
> *OPIS worked in a similar way. Hawkins purchased shares of UBS for $1.99 million and an option to acquire an interest in Hogue, Investors LP, a Cayman Islands limited partnership. Hogue contracted to purchase shares of UBS treasury stock, with UBS retaining a call option to repurchase the shares before transfer. UBS exercised the option. KPMG issued an opinion letter to Hawkins stating that he could add the Hogue shares to his basis in the UBS stock.*

The appellate court said that Hawkins sold "various quantities of UBS stock" and claimed losses connected to that stock of "approximately $6 million on his 1996 federal tax return, $23.4 million on his 1997 return, $20.5 million on his 1998 return, $3.5 million on his 1999 return, and $8.2 million on his 2000 return."

Hawkins wasn't the only one to climb aboard the KPMG tax-sheltering train. In 2005, the IRS announced what it labeled the "largest criminal tax case ever filed"—dinging KPMG with a $456 million fine in connection with a "multi-billion dollar criminal tax fraud conspiracy" through the sale of "fraudulent tax shelters." FLIP, OPIS, and other KPMG vehicles helped generate $11 billion in phony tax losses that cost the US Treasury $2.5 billion, the IRS said.

The accounting firm was never prosecuted but instead became the benefactor of what is known as a "deferred prosecution," meaning it could be charged if it didn't reverse course. [PDF] Two KPMG accountants were later successfully prosecuted, and a KPMG partner was acquitted in 2008. But taxpayers discovered to have taken advantage of these shelters

like Hawkins weren't facing charges. They had opinion letters from KPMG saying the shelters were legit.

Bankruptcy for the rich, poor

Though safe for the moment, Hawkins isn't completely off the tax hook. The 9th US Circuit Court of Appeals decision from September 15 does not put the bankruptcy case to bed. The majority opinion, by Judge Sidney Thomas (a Bill Clinton appointee) and Judge Andrew Kleinfeld (a George H.W. Bush appointee), said that for the taxes to stick, the government must prove that Hawkins' monthly spending—which court records say was between $16,750 and $78,000 more than his monthly income—was something more than "simply living beyond one's means."

> *A mere showing of spending in excess of income is not sufficient to establish the required intent to evade tax; the government must establish that the debtor took the actions with the specific intent of evading taxes. Indeed, if simply living beyond one's means, or paying bills to other creditors prior to bankruptcy, were sufficient to establish a willful attempt to evade taxes, there would be few personal bankruptcies in which taxes would be dischargeable. Such a rule could create a large ripple effect throughout the bankruptcy system. As to discharge of debts, bankruptcy law must apply equally to the rich and poor alike, fulfilling the Constitution's requirement that Congress establish "uniform laws on the subject of bankruptcies throughout the United States."*

The government had attempted to show that Hawkins' actions *were* a willful attempt to evade taxes, and its evidence did convince appeals court Judge Johnnie Rawlinson, also a Clinton appointee. As Rawlinson wrote in a dissent, "There is little doubt, if any, that William Hawkins deliberately decided to spend money extravagantly rather than pay his duly assessed

state and federal taxes. Hawkins now seeks to discharge these taxes in bankruptcy."

For evidence, Rawlinson noted that in 2004 Hawkins had acknowledged owing more than $20 million in taxes during child support proceedings:

> *Even after acknowledging the tax debt, Hawkins maintained a home worth well over $3.5 million, and an ocean-view condominium worth well over $2.6 million. Although there were only two drivers in the family, Hawkins purchased a fourth vehicle that cost $70,000.00. At the family court hearing, Hawkins' bankruptcy attorney "testified that Hawkins' intent was not to pay the tax debt, but to discharge it in bankruptcy…" This testimony is a strong indication of a willful intent to avoid the payment of taxes by hook or by crook. Indeed, the bankruptcy court noted that the personal living expenses of the Hawkins family during the period in question were "truly exceptional." Incredibly, the family "spent between $16,750 and $78,000 more" each month than their income. The bankruptcy court determined that the wasting of assets through profligate spending indicated willful evasion of tax payments.*

On the other hand, within months of filing for Chapter 11 bankruptcy protection in 2006, Hawkins did sell his primary residence in an upscale Atherton, California, neighborhood for $6.5 million and his La Jolla, California, beachfront condo for $3.5 million. The proceeds were used to lower his tax bill, the court said. (Court documents said he eventually moved to San Mateo, California, and was renting a $2.5 million house owned by his parents for $7,500 a month.)

Hawkins' attorney, Wendy Smith, wrote [PDF] in a court filing that neither tax officials nor the lower courts ever claimed the Hawkins family "increased their spending, or that the *reason* they didn't reduce food costs, mow their own yard, or

buy a cheaper car was to evade or defeat taxes." She said the lower courts did not "explain why a debtor's failure to reduce living costs quickly enough following some event signalizing the finalization of tax liability proves intent to evade or defeat a tax."

A. Lavar Taylor, a California tax attorney, wrote a blog post about the uncertainty wealthy clients in Hawkins' position could face when courts start scrutinizing their spending—and how quickly they needed to draw down their spending.

"For those debtors who are living a good lifestyle but are greeted by an overwhelmingly large tax liability, how long do they have to reduce their expenditures before their pre-existing level of expenditures becomes 'unnecessary?' Six months? A year?" he asked. "If they attempt to sell their expensive house and find no buyers at a reasonable price after a year, are debtors required to sell at a fire sale or to stop paying their mortgage?"

"Profligate spending"

According to Hawkins, he's a victim in all this—not a tax dodger.

"Tax code seems to me to be about as complicated as brain surgery and I don't pretend to tell either tax experts or surgeons how to do their thing and I would bet you would feel the same," he commented on the *Forbes* piece. "You ask them to do all the forms and you trust what they do. If they say they know a way to legally save money on a good investment or deduction you do what they say. We all make mistakes trusting people, it is just that the higher you are the further you are going to fall."

"Yes, before I clearly understood and accepted that I had tax problems and obligations, I did spend too much money because I presumed, like most people, that my money was my money and

that I was an American living in the USA," he added. "The biggest luxury, of course, was 3DO. Mostly I just wanted to re-invest my money in whatever business I was trying to build; in my history I don't generally buy 'stuff' or spend much on myself—I invest, personally, in my businesses—much more so than typical founders and CEOs."

As for the legal case, the appellate court has kicked it back to the federal bankruptcy court so that Hawkins' tax liabilities can be analyzed under the newly articulated standard for "intent to evade tax."

Justice Department spokeswoman Nicole Navas said in an e-mail that the authorities are reviewing the appellate court's decision and are "exploring options on how the government will proceed." Those options include asking the same three judges to reconsider the ruling, petitioning the court to revisit the case *en banc* with 11 judges, appealing to the Supreme Court, or letting the ruling stand.

Health Insurance in the United States

I have health insurance.

After years of not having health insurance I have health insurance through my employer since October 1st, 2014. For me not having health insurance was just cheaper than having it. I am basically a healthy guy. I saved every month something to cover the health expenses and my doctor is a good guy, he gives me his services at a very reasonable rate. But now it is

the law in the United States to be health insured or else the IRS will fine you every year.

I gave in.

I have health insurance now. I pay $400 every month. This is by all means much more what I did spend for my health in the past years. Oh yea, dental is not included (you see, dental I really need). Since a few days I don't feel so well. Today I came home from work and I told my wife that I feel sick, that I am thinking of going to the doctor. I did not even finish saying that as I ran the numbers in my mind. My paycheck is now much smaller because of health insurance, but the insurance does not cover everything and makes everything health related usually just cheaper. Not like in Germany where the heath insurance covers everything. It is more like a discount card. After I was done running the numbers I realized that I cannot go to the doctor. I cannot afford it. I have not enough money left after paying for health insurance to pay the "discounted" rates for the doctor and medicine. My doctor prescribed me a few months ago pills for my heart. He said that he does not like how my heart sounds. Those pills are generics, I can afford them without health insurance just paying for them out of my pocket. But now with health insurance I have to stop taking those pills. I cannot afford them anymore with health insurance.

> *I have health insurance. Now I cannot afford anymore to go to the doctor and I cannot afford anymore my medicine. Was this not supposed to work somehow in a different way?*

In December 2014, during "Open Enrollment" my health insurance payment will go up about 20%. I guess from December on I have to cut back on food or move into a cheaper apartment (maybe in Compton or Inglewood) for a health coverage which makes it impossible for me to use any health services. By the way, I am 6'1″ and weigh 158lbs with clothes. Its not like I could use

to lose some weight.

P.S.: If you tell me now I should check into one of those health programs for the poor, save it. I am not poor. I checked. I make too much money to qualify. I am middle class.

Update: I signed up for dental insurance. I have for a week now excruciating toothaches. The dental insurance basically covers nothing. Two cleanings a year are free. Nothing else. As I am writing these lines I am in pain. I don’t have money to go to a dentist. I pay a lot for taxes and for health insurance. There is no money left to actually see a doctor. What is the United States government doing with all the tax revenue? Are they just using it to bomb little brown people in Irak and Afghanistan? Making the rich in the United States along that way richer and richer? The United States healthcare system does not meet minimum humanitarian standards.

> *A few years ago I went to a dentist in Sherman Oaks, California. I had no health insurance at this time. I went there to have a root canal done. I told the girl at the reception that I don’t have health insurance but that I am prepared to pay for the root canal out of pocket. She led me to one of these “dentist rooms” with a dentist chair in it. I took a seat on it. The dentist came and asked me ONLY if it is true that I don’t have health insurance. He said “okay” and left. 10 to 15 minutes later a rather strong build man entered the room, asked me to get up and leave. Which I did. They threw me out of the dentists office despite the pain I was in. A few days later I received from the dentists office a bill of $150 for a “doctors consult”. Later I had the tooth pulled by another “dentist”. I actually don’t know if this guy was really a dentist. I took the cheapest plan he had, which means pulling the tooth without ANY pain medication, nothing to numb the area where the tooth was to be pulled. I did it anyways. One of the most horrifying and painful experiences in my life. When it comes to healthcare the United States is really a big shit hole.*

While I was sitting here in pain I was watching the Michael Moore documentation “Sicko”. If you have not seen it, watch it. Critics (usually scumbags and assholes like Right-Wing Republicans) say that this documentation is only propaganda. I am a German citizen. Everything is true what Michael Moore describes in his documentation about the healthcare system in Europe. In Europe you will be provided with the healthcare you need, not with the healthcare you can afford. There nobody is profiting from healthcare.

Comments or questions are welcome.

* indicates required field

Name:*

Email:*

Subject:*

Message:*

Submit

Los Angeles Attorney Faces Suspension For Fake Photoshops With Dozens Of Celebrities

This is part of my “Why Attorneys are Scumbags” series

Los Angeles attorney has been recommended for a six-month suspension for posting digitally doctored photos to her official website.

The case concerns Svitlana Sangary, who for two years featured dozens of realistic images of her posing at parties with the likes of President Obama, the Clintons, vice president Joe Biden, former California governor Arnold Schwarzenegger, and Nick Lachey on her site. (The link to the page has since been removed, but is still accessible here.)

The photos show Sangary hobnobbing with George Clooney, Donald Trump, Woody Allen and Alec Baldwin, among other boldface names. The thumbnail-sized images show her wearing different outfits, smiles and poses that resemble the celebrity she appears to be with.

Sangary has been charged with four counts of misconduct. In the decision, State Bar Court judge Donald Miles writes that she “willfully violated” the rules of professional conduct by engaging in “deceptive advertising.”

According to the State Bar Court’s decision, since the images belonged to an “advertisement and solicitation for future work,” they fall under the definition of “false and deceptive” advertising. The Bar launched an investigation in January on the false photos.

Indeed, it’s a strange case made stranger by the fact that, on January 27, 2014, when the charges were brought before her, Sangary responded with a “16-page soliloquy with little to no rational connection to the charges at hand,” writes Miles. You

can read the snippets of Sangary's response for yourself here (PDF):

Download (PDF, Unknown)

Among the references are a comparison to Natalie Portman's controversial final performance in the film *Black Swan*, and a mention that President Obama once emailed Sangary to "chip in $3 or more."

The Photoshops are rather convincing, too, and I thought they were real at first blush. ("At first!".) The State Bar Court's recommendation for a six-month suspensions is currently pending approval by the California Supreme Court.

According to the State Bar of California, Sangary graduated from Pepperdine University's School of Law. She was admitted to the State Bar in 2004. On Yelp and legal forum, Avvo, she has received poor reviews with users calling her "scum," an "unethical crook" and "incompetent" – mostly for excessive billing and failure to file responses and motions on time. Sangary has not publicly commented on the allegations.

See all of the Photoshoped pictures below:

Exhibit A | Click to expand

German Government Tries To

Censor Publication Of Its List Of Censored Websites

A few weeks ago, an anonymous internet user was able to acquire and subsequently extract a website blacklist used by Germany's Federal Department of Media Harmful to Young Children (Bundesprüfstelle für jugendgefährdende Medien [BPjM]). This un-hashed list was posted to the user's Neocities blog, along with some analysis of the blacklist's contents and a rundown on the minimal protective efforts used for the list.

The actual blacklist is much more extensive than what's published here. In fact, as is noted in the post, a majority of the list is publicly viewable.

> *The censorship list ("index") is split into various sublists:*
>
> *Sublist A: Works that are harmful to young people*
> *Sublist B: Works whose distribution is prohibited under the Strafgesetzbuch (German Criminal Code) (in the opinion of the BPjM)*
> *Sublist E: Entries prior to April 1, 2003*
> *Sublist C: All indexed virtual works harmful to young people whose distribution is prohibited under Article 4 of the Jugendmedienschutz-Staatsvertrag*
> *Sublist D: All indexed virtual works, which potentially have content whose distribution is prohibited under the Strafgesetzbuch.*
>
> *The sublists A, B and E contain about 3000 movies, 400 games, 900 printed works and 400 audio recordings. That sublists are quarterly published in the magazine "BPjM-aktuell" which can be read in any major library in Germany.*

Sublists C and D are what's been withheld from the public, even as these URLs are distributed once a month to software and hardware companies. As of the time of the posting, there were more than 3,000 URLs on the blacklist.

The leaker spotted some unusual things in the list of banned URLs. To begin with, it appears that there's very little effort being made to keep the blacklist current.

> *On only about 50-60% of the domains on the list the questionable content is still accessible: About 10% of the domains are not registered at all, another 10% are parked domains, and about 20% don't provide any content at all (either no DNS A record, no webserver on port 80 or a redirect to another domain).*

Beyond that, the government body building the list seems to be suffering from technical ineptitude, resulting in supposedly blocked sites not being blocked at all.

> *The domain "homo.com" offers a wildcard domain which echoes anything that is entered as a subdomain on the website, eg. visiting "Fritz.homo.com" results in a webpage "Haha, Fritz is gay!". On the BPjM list there is a entryirgend.ein.name.homo.com – the German "Irgend ein Name" stands for "any name". Contrary to the belief of the BPjM public servants this doesn't work as a wildcard – just this specific domain will be blocked…*
>
> *several URLs with a wrong trailing slash:*
>
> *Death.html/*
> *welcome.htm/*
> *free/index.html/*
> *freecontent.html/*
>
> *A URL path with a trailing slash means that the part before the slash is a directory and not a file. The examples above*

> *are filenames. The entries on the list with the trailing slash are invalid and return a 404 file not found error. The correct URLs without the trailing slashes won't match the hash and are not blocked. Explanation here…*

As is inevitable when entities pursue bulk website blocking, non-offending content is part of the collateral damage.

> *[T]he complete sell list of leading online music database Discogs. Probably at one point in time there was a listing of a music album which is forbidden in Germany – this was enough to block access to the "eBay of music" for years…*

> *[A]ccording to archive.org the domain facegoo.com is since at least 3 years not an porn website anymore. Now it is the website of an iPhone App for fun picture manipulation. The startup has no chance to be listed in German search engine results at all…*

This is on top of strange and very arbitrary blockages, like a listing for the videogame Dead Island at amazon.co.uk and a few offending YouTube accounts whose account pages are blocked, but not the offending videos themselves.

Beyond that, the list covers a wide variety of offensive-to-the-German-government (and in some cases, offensive to nearly everyone) content, including "normal porn, animal porn, child/teen porn, violence, suicide, nazi or anorexia." Notably, the Wikipedia page quoted in this post points out that BPjM is an anomaly in the "free" world.

> *Germany is the only western democracy with an organization like the BPjM… **The rationales for earlier decisions to add works to the index are, in retrospect, incomprehensible reactions to moral panics**.*

With its secret list exposed, the German government has gone

after Neocities in a belated attempt to keep its no-longer-secret list secret. Neocities has complied, but not without protest.

> *An anti-censorship activist, concerned citizen and security researcher has proved that the hashes are very easily reversible, and published the disclosure, including a plain-text list of the censored sites on a Neocities page. Now the German government is pressuring Neocities to take the site down, and are claiming we were breaking German (and possibly US) law by hosting a copy of the list of sites that they distribute.*

The letter from KJM (Commission for the Protection of Minors in the Media) makes some rather odd statements.

> *Two lists (containing URLs) were published on one of your blogs, namely https://bpjmleak.neocities.org/. The list of URLs contains child sexual abuse material (CSAM), animal pornography, nazi propaganda, minors in poses involving unnatural sexual emphasis and content inciting hatred, just to name a few. All of the URLs are illegal under German law. Since CSAM is also illegal under US law, we are of the opinion that this site violates the laws applying to your service and also violates your terms of conditions.*

More properly stated, the *websites* contain the offensive material, not the URLs themselves. And, as was pointed out by the person researching the list, much of what's in the list is out of date (i.e., the URL no longer contains the illegal content, domain is expired, etc.) or is ineptly targeted (typos, invalid URLs, etc.), which means the list isn't nearly as useful as the government believes.

And, if the statement about violating two countries' laws wasn't (theoretically) frightening enough, KJM goes on to claim that posting this content violates Neocities own mission

statement. (No. Really.)

> *The KJM sees that neocities values anonymity and states to be uncensored. But the KJM thinks that https://bpjmleak.neocities.org/ is not what your service is intentionally for as your website states: "But our goal is clear: to enable you to harness the creativity, beauty, and power of creating your own web site. To rebuild the web we lost to monotony, and make it fun again."*

The statement is truly wondrous in its inanity, approaching the level of non sequitur. At no point does the mission statement encourage the stripping of anonymity or encourage censorship. Neocities is a platform for website construction, something KJM believes is somehow contrary to sticking up for its users and their content. Leave it to a government agency to craft one of the emptiest paragraphs to ever grace an official takedown request.

The biggest issue is the list itself, the one the government wants to keep out of the hands of the public, as Neocities points out.

> *There is apparently no legal way to challenge the list. It is decided by fiat in secret by a German government agency, and there is little or zero recourse for those falsely condemned.*

By keeping it secret – ostensibly to prevent the public from accessing illegal content – website owners are kept in the dark about the German government's censorious efforts. This sort of power is dangerous without accountability. The list is outdated and composed carelessly. Sites like Discogs are blocked off while true offenders remain uncensored because the "for the children" agency can't be bothered to ensure its slash marks are properly used or that the URL is free of typos.

Neocities has discussed this unofficially with the EFF but, as the post notes, the legal implications of this leaked list are still very murky. As a precaution the list has been removed. (It survives, for now, at the Internet Archive. In case that archive ever gets deleted I have posted the contents below. Lets see if the German government is blocking my Blog for people living in Germany, Lol)

Download (PDF, Unknown)

And, if given notification that the posting of the list does not violate US law, the BPjM blacklist will be reposted. Either way, Neocities states that it will not punish the end user in any way and that his/her access to the site will remain intact.

The ultimate stupidity of this debacle is the fact that the German government thinks it can undo what's been done. By acting in this fashion, it's only drawn more attention to the list it wants to remain a secret. Worse, it's drawn more attention to the blog post highlighting the many failures of the list itself. It's one thing to want to prevent access to clearly illegal material. It's quite another to slap together a list composed of dead sites, mistyped URLs and a variety of bizarre blockings based on "incomprehensible reactions to moral panics."

Comments or questions are welcome.

* indicates required field

Name:*

Email:*

Subject:*

Message:*

Submit

Solidarity Surcharge (Solidaritaetszuschlag) in Germany

The solidarity surcharge (Solidaritaetszuschlag) is an additional fee on income tax, capital gains tax and corporate tax in Germany. This means that the solidarity surcharge is to be paid by every natural and legal person that owes one of the above-mentioned taxes in Germany.

Why did the German Government come up with that fee (it is not a tax, it is a fee, Lol)? As West and East Germany united, it was clear that the poor communist East Germany could not sustain itself. So the West-German Government decided that every natural and legal person in West-Germany (only) has to pay this fee to help those poor guys in East-Germany. These are the same people who for over 40 years threatened West-Germans, harassed the West-Germans and West-Berliners. Remember Berlin blockade? And now West-Germans have to pay Trillions of Euros to these people to help them rebuild East-

Germany. Why did they not rebuild their country after the war during their 40 years in existence? In West-Germany nobody wanted to be united with the East-Germans, but the West-German Government under Chancellor Helmut Kohl did it anyways.

> *Don't forget, the German democracy is an "indirect democracy" which basically means that the German Government does whatever it wishes without asking the people it represents what the people desire, the German people are at the mercy of the government and its authorities. The separation of powers, which is the criterion of a rule of law and therefore democracy – has long become a farce in Germany, an illusion. All three branches of government – legislative, executive and judicial – are determined by the ruling parties. The respective coalition determines the laws, the executive branch is dominated by the ruling parties, the highest judicial positions are negotiated between the parties. The German people have no say in any of these matters.*

German politicians are parasites. German politicians are acting out of a sense of pure preservation, stay in place at any cost. It only matters to them their own personal survival. Politicians like Angela Merkel never leave. She is since nine years chancellor of the Federal Republic of Germany. The system is not designed to cleanse itself from politicians. They stay and hold on to power beyond the time they should and in so doing bring corruption to everything while they remain. They need to be pushed. In a democratic system the people do the pushing, but in an indirect democracy like in Germany the people cannot push, have no vote, no say. A previous chancellor in Germany, Helmut Kohl, was in office for 16 years. His 16-year tenure was the longest of any German chancellor since Otto von Bismarck. Even Adolf Hitler was only for 12 years chancellor in Germany. In a real democracy such a long tenure would be impossible. It is evident that the

political system did not change from Nazi-Germany to West-Germany. Only out of this sense of pure self preservation the enacted the unification of West and East-Germany. There was no vote in West-Germany about the unification (officially the government talks about a RE-unification. As if the Federal Republic of Germany and the German Democratic Republic were ever once one country. They were not! The country both countries emerged from died in May 1945). The politicians in West-Germany just saw the votes of these 22 Million East-Germans in their pockets when they make them over night citizens of the Federal Republic of Germany. Votes which don't mean shit. Many in Germany did not agree with this course of action but in a pseudo democracy like in Germany these voices were not heard. Therefore the unification and the people in West-Germany had to pay the price for this union in the form of the solidarity surcharge and many more sacrifices. At this point I don't want to start the discussion that at the time how the unification was enacted was unconstitutional. Again in the name of pure self preservation of the German politicians. Today the politicians rewrote the German constitution, again without voting of the German people, without any input from them.

The solidarity surcharge was introduced in 1991 and was mostly justified by the costs of German unification, but also additional costs for the then Gulf War (Operation Desert Storm) and its consequences as well as support for countries in central, eastern and southern Europe.

For a long time now there has been a controversial discussion in Germany about ending the solidarity surcharge. It has also often been the subject of proceedings before the Federal Financial Court (Bundesfinanzhof) and the Federal Constitutional Court (Bundesverfassungsgericht), where its constitutionality was always confirmed even with regard to a permanent existence. Since there is no political unity regarding a termination, we should not expect it to be ended

soon, although it was introduced as a temporary additional tax.

Now the German Government want to end this fee. They want just simply add this fee to the normal income tax and therefore make it a permanent tax. Once a tax or fee is introduced the Government will never stop charging its people with this tax or fee.

Basis for taxation

The basis for applying the solidarity surcharge is the level of the tax amount to be paid from income, capital gains and corporate tax.

Rate of tax

The solidarity surcharge is 5.50 percent of the tax payment for all taxpayers. The solidarity surcharge has developed as follows in recent years:

Time period	Rate
1 July 1991 – 30 June 1992	7.5 %
1 July 1992 – 31 December 1994	0.0%
1995 – 1997	7.5 %
1998 – present	5.5 %

Reporting and payment

There is no special tax return required for reporting and paying the solidarity surcharge to the tax office. This is always done in parallel with the tax type upon which it is charged as an additional tax.

Comments or questions are welcome.

* indicates required field

Name:*

Email:*

Subject:*

Message:*

Submit

Follow the ALS Ice Bucket Challenge Money

How does the ALS Association spend its millions?

As the nation sweated out summer 2014, scores of people took to the supposedly charitable act of dumping ice water on their heads to raise awareness about ALS, a neuro-degenerative disease.

In truth, the act of dumping cold water on one's head was not really a charitable act, since doing so is merely an excuse to get out of being "obligated" to donate $100 to the ALS Association (ALSA), the charity behind this phenomenally successful sensation.

While many people were eager to take the ice bath and forgo the donation, the ALSA reported that from July 29 to August 27 it received $94.3 million in donations, compared to $2.7 million during the same period last year. This 3300% growth in

fundraising was courtesy of donations from both existing donors and 2.1 million new ones.

Controversy arose when the ALSA released additional figures showing only 27% of its funds went directly to research last year, while 7% went to administrative costs, 14% to fundraising, 19% to patient and community services, and 32% to public and professional education.

Some, like Politifact, were quick to defend the ALSA, noting that its stated goal is not solely to fund research into ALS, but also "to provide educational and other services to patients and their families, health care professionals, legislators, and local communities."

It is still a bit peculiar that a secondary purpose—education—received about $1.3 million more in funding than research.

This is not to say that the ALSA should have awarded larger grants or more grants if that would have been inappropriate or wasteful, but the fact remains that the group's stated and most well-understood primary goal of research does not receive the majority of its funds.

Reviewing the group's 2013 tax returns reveals that from approximately $24 million in revenues, 48% of it (or roughly $11.5 million) was spent on labor costs. These costs included compensation of nearly $5 million, non-employee compensation of $4 million, travel expenses of $1.3 million, employee benefits of nearly half a million, among other items.

Additionally, nearly $1 million was spent on "Lobbying" and $6.2 million went to "Grants and other assistance to governments and organizations in the United States."

The highest paid employee of the ALSA last year was then-CEO Jane Gilbert, whose salary was $339,475. There were ten other employees with six-figure salaries. Salary information on the current CEO, Barbara Newhouse, could not be found, but will become available when the organization files its return for this year.

The point in mentioning salaries is not to stoke up class warfare. What Gilbert and Newhouse are paid is not *unfair*, because their salaries are derived from voluntary giving, much like how the CEOs of private corporations earn their high salaries because consumers voluntarily buy their companies' products and services. (Plus, regardless of one's opinion of the Ice Bucket Challenge, it was a brilliant marketing strategy.) Furthermore, one's salary is determined by the market, and a high salary is indicative of a competitive wage market.

However, there seems to be a particular and pertinent distinction between a private business, whose fundamental goal is to make profits, and a charity, whose fundamental goal is to relinquish as much of its funds to those in need.

An email inquiry to the ALSA regarding issues like the high labor costs was met with the group's standard literature and FAQ-like materials.

Still, the ALSA has another problem brewing under in the form of its balance sheet.

On September 5, it was reported that Newhouse sent letters to three major charity rating organizations asking them not to penalize ALSA for having too much cash in the bank as it figures out how to spend its $100+ windfall coming from the Ice Bucket Challenge campaign. According to that same report by Biz Journals, the ALSA is currently rated a "B+" by Charity Watch, a charity corruption watchdog organization, but having so much stagnant cash could result in an "F" grade.

It is perhaps because of the specter of poor institutional reviews that could really tarnish the organization's credit that some charities seek to spend as much money as possible without sufficient discern for where that spending is going.

Apple Unveils the Apple Watch

So the industry has been waiting to see if Apple can make "wearable tech" a thing. Apple has two advantages in this regard:

1. The company places a very high value on aesthetics, and there's no avoiding the fact that watches are generally understood to not merely be functional, but a form of jewelry. So maybe Apple can design a fake digital watch that you wouldn't be embarrassed to wear.
2. **Apple's customers are slavish idiots and will buy dog feces if Apple puts them in a unibody aluminum casing.**

Looking at the watch in Apple's video, it appears, at least in the glamour-shots, that the watch is at least *plausible.* That is, it may not be the most attractive watch in the world, and it may not actually be a work of real art like some real watches are, but it is, maybe, at least attractive enough to be *plausible* as a fashion choice.

The Nerd-King presents the new Apple Watch (Actual Size)

The watch has a slew of functions, including telling you what time it is, which is a new tech with some good Disrupt capacity.

No but really it has inboard sensors so it can serve as a heartbeat/health monitor.

There are two difference sizes of the watch (Mens, Womens, though they don't call them that, because that would be Gendered), and it comes in three different metals of advancing cost, stainless steel, aluminum (the "Sport" version), and "hardened gold." More important, probably, is that there are six different watchbands you can buy for it, ranging from the cheap and techy-looking rubber to the more-real-watch-like leather or stainless steel.

Incidentally, those watchbands are *proprietary*, of course: Apple will not just allow you to slap *any* watchband on their device. You must pledge your loyalty to the Apple Ecosystem.

But I'm sure the companies that make non-official Apple cases and stuff will put out their own watchbands, too.

Oh the other thing is that it comes loaded with Apple Pay, their attempt to get people to accept wireless payments.

Eh, I have no idea if this will catch on. But it's not horrible-looking. This article shows what the iWatch actually is compared to what people guessed it might look like; Apple at least exceeded expectations.

I don't think I'd ever wear this but at least I wouldn't *judge* people who did.

California top court says red light camera photos are evidence

Red light machines are not human, and therefore their images can't be hearsay.

The California Supreme Court upheld the admissibility of images taken from red light cameras as evidence of traffic violations in the Golden State.

The unanimous decision in the case, known as *The People of California v. Goldsmith*, marks the end of a five-year-old legal odyssey. Fines issued as the result of a red light camera in California are by far the highest nationwide ($436 in this case)—typically they're in the $100 range in the rest of the country.

The decision (PDF) comes amid a flurry of challenges to the red light cameras before other state high courts: the Louisiana Supreme Court recently declined to hear such a case, letting stand a lower court ruling that challenged cameras in

New Orleans. The Illinois Supreme Court heard oral arguments against such cameras in Chicago in May 2014. A decision in a similar case currently before the Ohio Supreme Court is expected before the end of the year.

What's more, some 26 states have already banned the cameras outright or do not have them at all, including Maine, Kentucky, Arkansas, Massachusetts, and many Midwestern states.

The California case involved a woman named Carmen Goldsmith, who was driving a BMW through Inglewood, a Los Angeles suburb, when she ran a red light. She instantly became one of countless people nationwide ticketed by a red light camera. The California woman challenged her citation in a trial court, where she was found guilty and fined $436. She appealed and lost, and then appealed to the state's highest court.

She based her argument in part on the fact that courts had previously overturned two other red light camera cases in Southern California. In those, appellate courts agreed that a testifying officer had no personal knowledge of how the automated data was collected or whether the camera was working properly at the time. So the evidence of traffic violations was thrown out.

In its 23-page decision, California's top court countered Goldsmith's primary argument that the images produced by the automated traffic enforcement system (ATES) were not admissible.

> *Here the ATES evidence was offered to show what occurred at a particular intersection in Inglewood on a particular date and time when the traffic signal at the intersection was in its red phase. The ATES evidence was offered as substantive proof of defendant's violation, not as demonstrative evidence supporting the testimony of a percipient witness to her alleged violation. We have long approved the substantive use of photographs as essentially a "silent witness" to the*

> *content of the photographs.*

Goldsmith's attorneys argued that the evidence against her was hearsay, specifically calling out Redflex, a large red light camera contractor that operates the Inglewood cameras, among others across California.

The question of hearsay is an important one: American law does not recognize secondary witnesses—people who say that someone else told them something—to establish admissible evidence.

But the court was clear: machine-created evidence is not hearsay.

> *The ATES-generated photographs and video introduced here as substantive evidence of defendant's infraction are not statements of a person as defined by the Evidence Code. (§§ 175, 225.) Therefore, they do not constitute hearsay as statutorily defined. (§ 1200, subd. (a).) Because the computer controlling the ATES digital camera automatically generates and imprints data information on the photographic image, there is similarly no statement being made by a person regarding the data information so recorded. Simply put, —[t]he Evidence Code does not contemplate that a machine can make a statement.*

Goldsmith's attorneys also argued that, because the Redflex technician in charge of preparing evidence didn't show up at her trial, the images could not be admitted. What's more, Goldsmith's attorneys said that she had the constitutional right to face her accuser. In this case, her accuser is a machine.

She also challenged the character of Redflex, which has a prior record of falsifying speed camera documents (PDF) in Arizona.

The court didn't bite on that argument, either.

> *It would be pure conjecture to conclude that all evidence generated by Redflex ATES technology and handled by Redflex employees for Inglewood is suspect because of the actions of a single errant notary public in a different state regarding a different type of technology and documentation. We have denied defendant's request for judicial notice and reject her argument that the involvement of Redflex in this case requires a different constitutional conclusion.*

If All These Countries Are So Outraged By Revelations Of US Spying On Them, Why Aren't They Offering Snowden Asylum?

Glenn Greenwald makes some really good points in a Guardian column (one of his last) discussing the reactions to the latest revelations about the NSA surveillance on citizens and (mainly) top politicians in other countries. The key one being, if these countries are really so outraged by these revelations, shouldn't they be offering Ed Snowden asylum, since they appear to be admitting that these revelations are important?

> *All of these governments keep saying how newsworthy these revelations are, how profound are the violations they expose, how happy they are to learn of all this, how devoted they are to reform. If that's true, why are they allowing the person who enabled all these disclosures – Edward Snowden – to be targeted for persecution by the US government for the "crime"*

> *of blowing the whistle on all of this?*
>
> *If the German and French governments – and the German and French people – are so pleased to learn of how their privacy is being systematically assaulted by a foreign power over which they exert no influence, shouldn't they be offering asylum to the person who exposed it all, rather than ignoring or rejecting his pleas to have his basic political rights protected, and thus leaving him vulnerable to being imprisoned for decades by the US government?*

Of course, when put in the context of how it's really just about cutting off the power of American hypocrisy, this situation makes more sense, even as it highlights the hypocrisy of those other countries.

The reality is that none of these leaders expressing outrage are *actually* shocked by this. Everyone knew this was going on. They're reacting this way because it's all part of the theater, in which they have to act shocked and to condemn the US, but it's really just about the information being revealed. When looked at under that light, of course they have no interest in offering Snowden asylum. He's the one who created the "shock" by revealing this information which all those officials almost certainly knew about, while pretending not to.