

NCMEC CyberTipline Reports and the Fourth Amendment
A Primer and Checklist on Defending CSAM Cases
Maryland Criminal Defense Attorneys' Association
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Outline of Useful Cases

NCMEC is a Government Agency and a Government Entity

United States v. Ackerman, 831 F.3d 1292 (10th Cir. 2016).

ESPs are not government agents simply because they have a mutual interest with the government in eradicating CSAM materials

United States v. Ringland 966 F.3d 731 (8th Cir. 2020) (Google)

United States v. Reddick, 900 F.3d 636 (5th Cir. 2018) (Microsoft)

United States v. Miller, 982 F.3d 412 (6th Cir. 2020) (Google)

United States v. Stevenson, 727 F.3d 826 (8th Cir. 2013) (AOL)

United States v. Cameron, 699 F.3d 621 (1st Cir. 2012) (Yahoo)

United States v. Sykes, 65 F. 4th 867 (6th Cir. 2023) (Facebook)

United States v. Richardson, 607 F.3d 357 (4th Cir. 2010) (AOL)

United States v. Rosenow, 50 F.4th Cir. 715 (9th Cir. 2022) (Yahoo and Facebook)

Reasonable expectation of privacy in emails sent through commercial email provider

United States v. Warshak, 631 F.3d 266, 283-88 (6th Cir. 2010).

United States v. Maher, 120 F.4th 297, 307-08 (2d Cir. 2024)

United States v. Ackerman, 831 F.3d 1292, 1304 (10th Cir. 2016)

Vista Mktg., LLC v. Burkett, 812 F.3d 954, 970 (11th Cir. 2016).

United States v. Hamilton, 701 F.3d 404 (4th Cir. 2012) (in dicta).

United States v. Ali, 870 F.Supp.2d 10, 39 n. 39 (D.D.C. 2012)

Reasonable Expectation of privacy in social media private messages

R.S. ex rel. S.S. v. Minnewaska Area School Dist., 894 F.Supp.2d 1128, 1142 (D.Minn. 2012).

United States v. Zelaya-Veliz, 94 F.4th 321, 333 (4th Cir. 2024).

No reasonable expectation in images uploaded for sharing with strangers online

United States v. Rosenschein, 136 F.4th 1247, 1257 (10th Cir. 2025).

Rebutting the Terms of Service argument

Byrd v. United States, 584 U.S. 395 (2018) (car rental contract does not control driver's reasonable expectation of privacy in leased vehicle).

United States v. Stokes, 733 F.3d 438, 443 n.7 (2d Cir. 2013) (hotel guests still have privacy expectations even if maids clean the rooms).

Third Party Doctrine May Not Have Life in the Digital Age

Carpenter v. United States, 585 U.S. 296 (2018) (Cell site location data).

But see Smith v. Maryland, 442 U.S. 735 (1979) (phone records).

United States v. Miller, 425 U.S. 435 (1976) (bank records).

Private Search Doctrine cases

United States v. Jacobsen, 466 U.S. 109 (1984) (FedEx cocaine package, field tested).

Walter v. United States, 447 U.S. 649 (1980) (mislabeled pornographic film in canister).

Private search doctrine allows police to open files that third party had opened without getting a warrant

United States v. Rivera-Morales, 916 F.3d 1 (1st Cir. 2020).

United States v. Runyan, 275 F.3d 449, 463-64 (5th Cir. 2001)

Rann v. Atchison, 689 F.3d 832, 836-37 (7th Cir. 2012)

United States v. Goodale, 738 F.3d 917, 921 (8th Cir. 2013)

United States v. Phillips, 32 F.4th 865, 875 (9th Cir. 2022)

United States v. Benoit, 713 F.3d 1, 8-11 (10th Cir. 2013)

United States v. Castaneda, 997 F.3d 1318, 1326-29 (11th Cir. 2021)

Police cannot open files if ESP only hash-matched and did not open – exceeds scope of private search

United States v. Maher, 120 F.4th 297 (2d Cir. 2024)

United States v. Wilson, 13 F.4th 961 (9th Cir. 2021)

United States v. Holmes, 121 F.4th 727 (9th Cir. 2024).

United States v. Braun, 798 F.Supp.3d 916 (E.D. Wisc. 2025).

ESP hash matching – followed by police or NCMEC opening of files ok because does not exceed scope of private search:

United States v. Miller, 982 F.3d 412, 438-31 (6th Cir. 2020).

United States v. Reddick, 900 F.3d 636 (5th Cir. 2018)

United States v. Ambrose, 2025 WL 3153495 (M.D. Fla. Nov. 12, 2025).

Walker v. State, 669 S.W.3d 243, 254 (Ark. App. Ct. 2023).

Leading Maryland Case on Particularity Requirement:

Richardson v. State, 481 Md. 423 (2022).

Dost Lasciviousness Factors

- 1) whether the focal point of the visual depiction is on the child's genitalia or pubic area;
- 2) whether the setting of the visual depiction is sexually suggestive, i.e., in a place or pose generally associated with sexual activity;
- 3) whether the child is depicted in an unnatural pose, or in inappropriate attire, considering the age of the child;
- 4) whether the child is fully or partially clothed, or nude;

- 5) whether the visual depiction suggests sexual coyness or a willingness to engage in sexual activity;
- 6) whether the visual depiction is intended or designed to elicit a sexual response in the viewer.

United States v. Dost, 636 F. Supp. 828, 832 (S.D. Cal. 1986), *aff'd sub nom. United States v. Wiegand*, 812 F.2d 1239 (9th Cir. 1987), and *aff'd*, 813 F.2d 1231 (9th Cir. 1987)

Cases that hold conclusory descriptions that an image is CSAM without details are insufficient to establish probable cause for issuance of a search warrant.

United States v. Doyle, 650 F.3d 460, 473 (4th Cir. 2011).

United States v. Brunette, 256 F.3d 14 (1st Cir. 2001).

United States v. Pavulak, 700 F.3d 651 (3d Cir. 2012).

United States v. Griesbach, 540 F.3d 654 (7th Cir. 2008).

United States v. Weber, 923 F.2d 1338 (9th Cir. 1990).

United States v. Battershell, 457 F.3d 1048, 1051 (9th Cir. 2006).

State v. Reisner, 253 A.3d 1273, 1280-83 (R.I. 2021).

Law reviews

Richard P. Salgado, [*Fourth Amendment Search and the Power of the Hash*](#), 119 Harv. L. Rev. F. 38 (2005).

Orin S. Kerr, [*Searches and Seizures in A Digital World*](#), 119 Harv. L. Rev. 531, 541 (2005);

Dennis Martin, [*Demystifying Hash Searches*](#), 70 Stan. L. Rev. 691, 717 (2018).

Rebekah A. Branham, [*Hash It Out: Fourth Amendment Protection of Electronically Stored Child Exploitation*](#), 53 Akron L. Rev. 217, 219 (2019)

GLOSSARY

ESP	Electronic service provider
NCMEC	National Center for Missing and Exploited Children
PhotoDNA	Image-hashing technology developed by Microsoft and Dartmouth College that creates a hash value of images and videos that can be compared against known CSAM material. Provided for free by Microsoft to ESPs and can be used to detect CSAM material. A perceptual hashing algorithm that can identify images, even if the images have been altered.
ICAC	Internet Crimes Against Children
IP address	Internet protocol address – assigned by ISP. Can change (dynamic) or stay the same. Cross reference date and time.
CEI	Child exploitation imagery
CSAM	Child sexual abuse material
CSEM	Child sexual exploitation material
CSEAI	Child sexual exploitation and abuse imagery
CSAI	Child sexual abuse imagery
MD5	Message-Digest Algorithm 5 – a cryptographic hash function that generates a 128-bit (32 character hexadecimal) checksum.
ISP	Internet service provider
IP	Internet protocol
SHA1	Secure Hash Algorithm 1 – another cryptographic hash function that generates a 160-bit (40 hexadecimal digits)
Geolocation	
ARIN	American Registry of Internet Numbers
EXIF	Exchangeable Image File Format – metadata
UTC	Coordinated Universal Time formerly known as Greenwich Mean Time , also known as Zulu time Eastern Standard Time is UTC-5 Eastern Daylight Time is UTC-4
CT/TA	Child Tracking / Technical Assistance
CSTT	NCMEC’s Child Sex Trafficking Team
CSE	Child Sexual Exploitation
CSA	Child Sexual Abuse
SG-CSAM	Self-Generated Child Sexual Abuse Material
NCII	Non-consensual Intimate Imagery
CSEI	Child Sexual Exploitation Imagery
VPN	Virtual Private Network
E2EE	End to End Encryption
ECD	Exploited Children Division of NCMEC
ISP	Internet Service Provider

CSAM Match	Perceptual hashing algorithm used by YouTube for videos.
PDQ	“Perceptual algorithm utilizing a Discrete Cosine Transform and outputting a Quality metric” Photo hashing algorithm used by Meta (Facebook/Instagram)
TMK+PDQF (TMK)	Video hashing algorithm
vPDQ	Video PDQ video hashing algorithm used to determine how similar two videos are to each other
Cryptographic hashing	One-way algorithm that produces a checksum of a file. Identical files will have identical hash values. The larger the size of the has value, the less likely that two different images or files will have the same hash value.
Perceptual hashing	Algorithm that is designed to compare similar images to determine whether an image would be perceived as the same image even if there are minor variations between two images.