



1991

# Criminal Law--International Jurisdiction--Federal Child Pornography Statute Applies to Extraterritorial Acts, *United States v. Thomas*, 893 F.2d 1066 (9th Cir. 1990)

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## Recommended Citation

14 *Suffolk Trans. L.J.* 605-614 (1991)

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**CRIMINAL LAW — INTERNATIONAL JURISDICTION —  
Federal Child Pornography Statute Applies to Extraterritorial Acts, *United States v. Thomas*, 893 F.2d 1066 (9th Cir. 1990).**

The Federal Child Pornography Statute, popularly known as the Child Protection and Obscenity Enforcement Act (“Act”), imposes criminal sanctions against persons using, employing, or otherwise enticing any minor to engage in sexually explicit conduct for the production of a visual depiction of the conduct.<sup>1</sup> The Act, however, does not expressly state whether it penalizes illegal conduct if committed by United States nationals outside the United States’ territories.<sup>2</sup> In *United States v. Thomas*,<sup>3</sup> the United States Court of Appeals for the Ninth Circuit found that Congress intended to reach extraterritorial conduct and held that a United States national could be convicted of violating the Act whether or not the illegal conduct took place in the United States.<sup>4</sup>

In December, 1986, a film developing company received

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1. 18 U.S.C. § 2251 (1988). Chapter 110 of Title 18 is entitled “Sexual Exploitation of Children.” *Id.* The statute was first referred to as the Protection of Children Against Sexual Exploitation. 18 U.S.C. § 2251 (1978). The statute’s short titles changed with each of its three subsequent amendments. 18 U.S.C. § 2251 (Supp. 1989). The first set of amendments created The Child Protection Act of 1984. *Id.* The second set of amendments was entitled The Child Abuse Victims’ Rights Act of 1986, and also in 1986, The Child Sexual Abuse and Pornography Act of 1986. *Id.* The statute as finally enacted was called the Child Protection and Obscenity Enforcement Act of 1988. *Id.* The section of the pornography statutes held to apply to extraterritorial acts reads in pertinent part:

(a) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (d), if such person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

18 U.S.C. § 2251 (Supp. 1989).

2. See *supra* note 1 and accompanying text (text of section 2251 (a)); *infra* note 8 and accompanying text (text of section 2252).

3. *United States v. Thomas*, 893 F.2d 1066 (9th Cir. 1990).

4. 893 F.2d at 1069.

several rolls of film by mail from Charles J. Thomas ("Thomas").<sup>5</sup> After developing the film, the company discovered that the film contained images of a girl, approximately thirteen years old, engaged in sexual acts with an adult male, later identified as Thomas.<sup>6</sup> The film developing company surrendered the film to the United States Postal Service, which arrested Thomas when he retrieved the film from the post office.<sup>7</sup>

Thomas was prosecuted under the Child Pornography statutes and was charged with engaging a minor in sexually explicit conduct for the purpose of creating a visual depiction.<sup>8</sup> Thomas was convicted under the Act by a jury in the United States District Court for the Southern District of California.<sup>9</sup> Thomas appealed the conviction to the United States Court of Appeals for the Ninth Circuit.<sup>10</sup> On appeal, Thomas argued that the conviction under the Act must be reversed on the

5. 893 F.2d at 1067. Clark Color Laboratories received the rolls of film in an envelope with a San Ysidro, California address. *Id.*

6. 893 F.2d at 1067. Not only was Thomas readily identifiable as the adult male in the pictures, but the pictures developed also included pictures of Thomas' wife and a blanket possessed by Thomas. *Id.*

7. 893 F.2d at 1067. The Postal Service conducted a controlled delivery of the film. *Id.* The post office box to which the controlled delivery was made was registered to Thomas. *Id.*

8. 893 F.2d at 1068. *See supra* note 1 and accompanying text (citing exact language under 18 U.S.C. § 2251 (a)). Thomas was also indicted and convicted for transporting and receiving obscene material. *Id.* *See* 18 U.S.C. § 2252 (Supp. 1989) (transporting violates section 2252(a)(1) and receiving violates section 2252(a)(2)). The sections state in relevant part:

(a) any person who-

(1) knowingly transports or ships in interstate or foreign commerce by any means including by computer or mails, any visual depiction, if-

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct; or

(2) knowingly receives, or distributes any visual depiction that has been transported or shipped in interstate or foreign commerce by any means including computer or mails or knowingly reproduces any visual depiction for interstate or foreign commerce by means of computer or mails, if-

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such depiction is of such conduct. . . .

18 U.S.C. § 2252 (Supp. 1989).

9. 893 F.2d at 1068.

10. *Id.*

basis that the alleged acts were committed in Mexico, and the Act does not apply to extraterritorial conduct.<sup>11</sup>

In 1977, Congress enacted the Protection of Children Against Sexual Exploitation Act, a child pornography statute prohibiting the use of children in sexually explicit visual materials.<sup>12</sup> By making the sexual exploitation of minors illegal, Congress hoped to reduce the abuse of children inherent in the production of prurient material.<sup>13</sup> The Act, however, is

11. 893 F.2d at 1068. *See supra* note 1 and accompanying text (statutory language in section 2251 (a)).

12. *See supra* notes 1 and 9 and accompanying text (subsequent amendments and statutory language). The subsequent amendments refining the act eliminated the "commercial purpose" requirement and amended the "Mann Act" to include minor males as well as females. *See* H.R. REP. No. 536, 98th Cong., 2d Sess., reprinted in 1984 U.S. CODE CONG. & ADMIN. NEWS 493, 494 (harm exists whether or not there is profit); H.R. REP. No. 910, 99th Cong., 2d Sess., reprinted in 1986 U.S. CODE CONG. & ADMIN. NEWS 5952 (closing loophole to cover transportation of children for purpose of child pornography even absent commercial purpose). The House report stated:

Persons who use or entice children to engage in sexually explicit conduct for the purpose of creating child pornography do not violate the 18 U.S.C. § 2251 unless their conduct is for pecuniary profit. (Although section 2251 does not contain express language of a commercial requirement, such a requirement is imposed by the definition of 'producing' in section 2252(3) which imposes a 'for pecuniary profit' requirement.)

H.R. REP. No. 536, 98th Cong., 2d Sess., reprinted in, 1984 U.S. CODE CONG. & ADMIN. NEWS 492, 493. All references in the *Thomas* court's opinion refer to 1986 version of the child pornography statutes. H.R. REP. No. 910, 99th Cong., 2d Sess., reprinted in 1986 U.S. CODE CONG. & ADMIN. NEWS 5952 (no commercial purpose requirement). *See* S. REP. No. 438, 95th Cong., 1st Sess., reprinted in 1978 U.S. CODE CONG. & ADMIN. NEWS 41 (legislative purpose to fill voids in current federal law). Congress' main concern was to address the abuse of children by attacking the vast profit potential in the production of pornography. *Id.* at 43. The need for such federal legislation was based on the following findings:

- Child pornography and child prostitution had become a highly organized, multimillion dollar industry that operates on nationwide scale.
- The use of children as prostitutes or the subjects of pornographic material is very harmful to both children and society on the whole.
- Such prostitution and the sale and distribution of such pornographic materials are carried on to a substantial extent through the mails and other instrumentalities of interstate and foreign commerce, and
- That existing Federal laws dealing with prostitution and pornography do not protect against the use of children in these areas and that specific legislation in both areas is needed.

S. REP. No. 438, 95th Cong., 1st Sess., reprinted in 1978 U.S. CODE CONG. & ADMIN. NEWS 42-43.

13. *See* S. REP. No. 438, 95th Cong., 1st Sess., reprinted in 1978 U.S. CODE CONG. & ADMIN. NEWS 40 (act designed to address child sexual abuse).

silent on the issue as to whether it applies to conduct which takes place outside the United States.<sup>14</sup>

In the absence of explicit language, legislation of Congress is construed to apply only within the territorial jurisdiction of the United States.<sup>15</sup> If a statute does not explicitly state that it applies outside the United States territories, extraterritorial application may be inferred from the nature of the offense and from congressional intent.<sup>16</sup> International law must be con-

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Although Congress clearly wanted to eradicate the use of children in pornographic materials, Congress focused its attack on the nationwide problem of transporting children between states for the purpose of producing such material. *Id.* at 42-43. Congress was so concerned with the interstate transport of children for the purpose of the production of child pornography that it amended the Mann Act to include all minor children, both male and female. *Id.* at 52. Before the 1977 legislation was enacted, the production of child pornography might have resulted in a federal offense for mailing or importing sexually explicit material. H.R. REP. No. 536, 98th Cong. 2nd Sess., reprinted in 1984 U.S. CODE CONG. AND ADMIN. NEWS 495. Child abuse was addressed by state law, but due to the interstate nature of child pornography, states requested that federal criminal child pornography laws be enacted. *Id.* The Department of Justice, Postal Service, and Federal Bureau of Investigation, prior to the enactment of federal child pornography statutes, were combatting child pornography by enforcing statutes that prohibited the mailing, importation, and interstate transportation of obscene material. S. REP. No. 438, 95th Cong., 1st Sess., reprinted in, 1978 U.S. CODE CONG. & ADMIN. NEWS 47.

14. See *supra* note 1 and accompanying text (explicit statutory language only refers to transportation involving minor in foreign commerce). The statute did not contemplate the violation of the Act outside the United States' Territories, but rather was directed at the use of minors "in any Territory or Possession of the United States." *Id.* Congress was, however, concerned with the fact that some child pornography found in the states was produced abroad, but, more commonly, that films made in the United States were sent abroad for reproduction and then returned to the United States. S. REP. No. 438, 95th Cong., 1st Sess., reprinted in 1978 U.S. CODE CONG. & ADMIN. NEWS 44.

15. See *Blackmer v. United States*, 284 U.S. 421, 437 n.2 (1932) (question of applicability of legislation to citizens abroad is one of construction). In *Blackmer*, the Court held that a United States citizen living abroad is still subject to United States law. *Id.* at 438. The *Blackmer* Court stated that the acts of Congress are construed by the courts to apply to conduct which takes place outside the United States unless contrary intent is evidenced. *Id.* The issue of its application is a question of construction, not legislative power. *Id.*

16. See *United States v. Baker*, 609 F.2d 134, 136 (5th Cir. 1980) (statute given extraterritorial application if nature of law permits and intended Congress). The *Baker* court found that with no express language in statutes, the extraterritorial jurisdiction of the statute may be inferred from the nature of the offense and Congress' other legislative efforts to eliminate the crimes involved. *Id.* See also *United States v. Bowman* 260 U.S. 94, 98 (1922) (application to specific locality can be inferred from nature of offense). The Court stated the following analysis for cases involving a question of statutory construction:

sidered when giving extraterritorial application to a statute silent on the extent of its jurisdictional power.<sup>17</sup> Congress is not bound to comply with international law when enacting legislation, but federal courts interpret statutes in a manner that would not violate international law in order to foster international comity.<sup>18</sup>

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The necessary *locus*, when not specially defined, depends upon the purpose of Congress as evinced by the description and nature of the crime and upon the territorial limitations upon the power and jurisdiction of a government to punish crime under the law of nations. Crimes against private individuals or their property, like assaults, murder, burglary, larceny, robbery, arson, embezzlement and frauds of all kinds, which affect the peace and good order of the community, must of course be committed within the territorial jurisdiction of the government where it may properly exercise it. If punishment of them is to be extended to include those committed outside of the strict territorial jurisdiction, it is natural for Congress to say so in the statute, and failure to do so will negative the purpose of Congress in this regard . . . . But the same rule of interpretation should not be applied to criminal statutes which are, as a class, not logically dependent on their locality for the Government's jurisdiction, but are enacted because of the right of the Government to defend itself against obstruction, or fraud wherever perpetrated, especially if committed by its own citizens . . . ."

United States v. Bowman, 260 U.S. 94, 98 (1922). See also *supra* note 12 and accompanying text (neither Act nor subsequent amendments specify extraterritorial application). The legislative histories of the child pornography statutes make no mention of extraterritorial application beyond transporting or receiving films from abroad for the purpose of inexpensive reproduction. S. REP. NO. 438, 95th Cong., 1st Sess., reprinted in 1978 U.S. CODE CONG. & ADMIN. NEWS 44.

17. See *Chua Han Mow v. United States*, 730 F.2d 1308, 1311 (9th Cir. 1984) (courts consider international law before giving extraterritorial application).

18. See *Chua Han Mow v. United States*, 730 F.2d 1308, 1311 (9th Cir. 1984) (courts consider whether international law permits extraterritorial jurisdiction). See *Recent Case*, 52 U. CIN. L. REV. 292, 298 (1983) (federal courts have required that to assert extraterritorial jurisdiction, must satisfy prerequisites of applicability under jurisdictional principles). There exist five alternative theories of international jurisdiction. *United States v. Smith*, 680 F.2d 255, 257 (1st Cir. 1982). The "nationality principle" bases jurisdiction on the nationality of the offender, and allows a nation to assert jurisdiction over its citizens whoever they are. *Blackmer v. United States*, 284 U.S. 421, 436 (1931). See also *United States v. King*, 552 F.2d 833, 851 (9th Cir. 1976), cert. denied, 430 U.S. 966 (1977) (country can apply statute to extraterritorial acts of nationals). The "protective principle" bases jurisdiction on a national interest and allows a country to assert jurisdiction over criminal acts outside its territory that threaten that country's security. *United States v. Smith*, 680 F.2d 255, 257 (1st Cir. 1982) (principles by which a sovereign may exercise jurisdiction). The "territorial principle" bases jurisdiction on the location of the offense and allows a sovereign complete jurisdiction within its borders. *Recent Case, supra*, at 298 n.51 (territorial principle). The "objective territorial principle" allows jurisdiction where an offender intentionally causes harmful consequences within a country, although the act itself may have occurred outside

Several federal courts have interpreted other statutes silent with respect to their extraterritorial effect to apply to acts committed outside the United States.<sup>19</sup> The first statute to be given extensive extraterritorial application was a statute outlawing drug trafficking.<sup>20</sup> Federal courts have also found other narcotic-interdiction statutes to have extraterritorial application.<sup>21</sup> The courts have justified the extraterritorial application of these statutes by finding either that the nature of the

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the state's territory. See Randall, *Universal Jurisdiction Under International Law*, 66 TEX. L. REV. 785, 787 n.8 (1988) (objective territorial principle). Fourth, the "universality principle" bases jurisdiction on physical custody of an offender, and allows states who have such custody to punish without limit certain types of offensive conduct. *Recent Case, supra*, at 298 n.52 (universality principle). See generally Randall, *supra*, at 788 (universal jurisdiction allows any nation to reach extraterritorial acts where lack of traditional connection with crime). The universality doctrine was historically developed to deal with piracy that interfered with international trade on the high seas. *Id.* Finally, the "passive personality principle" bases jurisdiction on the nationality of the victim and allows the country to assert jurisdiction over extraterritorial acts that harm citizens of that country wherever they are. *Recent Case, supra*, at 298 n.53 (passive personality principle).

19. See, e.g., *United States v. Endicott*, 803 F.2d 506, 514 (9th Cir. 1986) (jurisdiction under conspiracy and firearm statutes extends to acts intending to produce harmful effect in United States); *Leasco Data Processing Equipment Corp. v. Maxwell*, 468 F.2d 1326, 1334 (2d Cir. 1972) (Security Exchange Act intends protection against fraud whether or not committed in United States); *United States v. Aluminum Co. of America*, 148 F.2d 416, 443 (2d Cir. 1945) (Congress did not intend Sherman Act to punish acts having no consequences in United States); *United States v. Rodriguez*, 182 F. Supp. 479, 491 (S.D. Cal. 1960) (aliens found within United States may be prosecuted under territorial principle).

20. See *United States v. Baker*, 609 F.2d 134, 138 (5th Cir. 1980) (statute proscribing distribution of marijuana given extraterritorial effect under territorial principle); *United States v. King*, 552 F.2d 833, 850 (9th Cir. 1976) (conviction of United States citizen for unlawful distribution of narcotics in Japan justified under territorial principle). See also *United States v. Marino-Garcia*, 679 F.2d 1373 (11th Cir. 1982) (Coast Guard boarded vessel 300 miles off Florida coast because within criminal jurisdiction of Drug Abuse Prevention Act); *United States v. Baker*, 609 F.2d 134 (5th Cir. 1980) (statute proscribing possession with intent to distribute given extraterritorial application outside three-mile limit); 21 U.S.C. § 959 (Supp. 1989) (Drug Abuse Prevention Act); *Recent Case, supra* note 18, at 297 (international principles used to stop piracy on high seas and to combat drug traffic).

21. See *United States v. Pinto-Mejia*, 720 F.2d 248, 259 (2d Cir. 1983) (intent to distribute on stateless vessels subject to United States criminal law); *United States v. Marino-Garcia*, 679 F.2d 1373 (11th Cir. 1982) (applying jurisdiction to stateless vessels outside United States does not violate international law principles); *United States v. Smith*, 680 F.2d 255, 258 (1st Cir. 1982) (power to extend jurisdiction over stateless vessel outside United States territorial waters). See also *Recent Case, supra* note 18, at 294 (jurisdiction over stateless vessels engaged in narcotic distribution on high seas).

crime requires such a broad application, or by finding that Congress intended the statute to have extraterritorial application.<sup>22</sup> *United States v. Thomas* is the first case to consider the extraterritorial reach of the child pornography statutes based on Congress' statutory scheme to criminalize the exploitation of children.<sup>23</sup>

In *United States v. Thomas*,<sup>24</sup> the United States Court of Appeals for the Ninth Circuit addressed the question as to whether the Act applies to extraterritorial conduct.<sup>25</sup> The court first examined whether the extraterritorial application of the Act would violate the due process clause of the fifth amendment.<sup>26</sup> Finding no fifth amendment violation, the court focused on the interpretation of the Act, a statute that is

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22. See *United States v. Baker*, 609 F.2d 134, 137 (5th Cir. 1980) (nature of enactment determines extraterritorial application). In *Baker*, the court found a comprehensive statutory scheme to stop drug use in the United States by exercising control of importations of illegal drugs from foreign sources. *Id.* The court found no reason to differentiate between the importation of the controlled substances and the crime of possession with intent to distribute; both crimes were part of the same statutory framework. *Id.* at 138.

23. 893 F.2d at 1069. See *supra* notes 12 and 13 and accompanying text (statutory purpose and legislative history).

24. 893 F.2d 1066.

25. 893 F.2d 1066. The court also considered several other issues including extraterritorial application of the statute, the sufficiency of the indictment, prior bad acts under rules 403 and 404(b) of the Federal Rules of Evidence, the statute of limitations, and jury instructions. *Id.* The court held that the purpose of an indictment was to apprise the defendant of the charge against him, so that the defendant can defend against it. *Id.* Thomas, however, neither contended that he was unaware of the charge, nor that he was unable to prepare an adequate defense. *Id.* at 1069. The admission of Thomas' previous convictions for sexual molestation of a young girl did not violate the Federal Rules of Evidence because it was used to show knowledge that the girl in the photo was a minor. 893 F.2d at 1070. The court also held that the statute of limitations had not run because evidence of Thomas' incarceration from 1979 to 1984 could lead a jury to find that the acts occurred between 1984 and December 1986, within the five-year limit. *Id.* at 1071. Finally, the court's instruction that Thomas could be found to have knowingly transported or mailed pornography if he simply caused material to be mailed was correct and in compliance with 18 U.S.C. § 2(b) which states that "whoever willfully causes an act to be done . . . is punishable as a principal". *Id.*

26. 893 F.2d at 1068. See *United States v. Pinto-Mejia*, 720 F.2d 248, 259 (2d Cir. 1983) (Congress may intend to reach such conduct unless violates due process); *Leasco Data Processing Equipment Corp. v. Maxwell*, 468 F.2d 1326, 1334 (2d Cir. 1972) (Congress expressly prescribe rule to reach conduct outside United States, courts bound unless violates due process).

silent on the jurisdictional extent of its application.<sup>27</sup>

The court found that Congress' intent that the Act have extraterritorial application could be inferred from the nature of the offense and from other legislative acts designed to eliminate child pornography.<sup>28</sup> The court reasoned that since Congress intended the Act to protect children from sexual exploitation, the Act should penalize persons exploiting children outside the United States when such sexual exploitation leads to the sale of child pornography in the United States.<sup>29</sup> The court further reasoned that by punishing United States producers of child pornography made outside the United States, the court would give full effect to Congress' goal of eradicating sexual exploitation of children.<sup>30</sup> Finally, the court found that international law is not offended by the application of the Act to the extraterritorial conduct of United States citizens.<sup>31</sup>

In holding that the Act had extraterritorial application, the *United States v. Thomas* court relied heavily on Congress' statutory scheme to eradicate the sexual exploitation of children.<sup>32</sup> The court recognized the principle that, absent any express statutory language, it should examine the legislative history of the Act to determine congressional intent in enacting the statute.<sup>33</sup> The court, however, failed to examine the

27. 893 F.2d at 1068. *See supra* note 15 and accompanying text (application of statute's extraterritorial jurisdiction is question of construction).

28. 893 F.2d at 1068. *See United States v. Baker*, 609 F.2d 134, 136 (5th Cir. 1980) (absent express intent, extraterritorial application may be given if nature of offense permits it and Congress so intends). *See also supra* notes 15 and 16 and accompanying text (extraterritorial jurisdiction inferred from nature of offense).

29. 893 F.2d at 1069. *See supra* notes 12 and 13 and accompanying text (legislative history and purposes of Act).

30. 893 F.2d at 1069.

31. 893 F.2d at 1069. *See United States v. King*, 552 F.2d 833, 851 (9th Cir. 1976), *cert. denied*, 430 U.S. 966 (1977) (any principle of international jurisdiction is applicable); *supra* note 18 and accompanying text (principles of international jurisdiction).

32. *See supra* notes 1 and 8 and accompanying text (child pornography statutes and subsequent amendments). *See also* S. REP. NO. 438, 95th Cong., 1st Sess., *reprinted in* 1978 U.S. CODE CONG. AND ADMIN. NEWS, 40-45 (discussion of voids in federal law and statutes currently used to combat pornography).

33. *See supra* note 16 and accompanying text (inferences under which extraterritorial application can be construed).

legislative history which indicated Congress' intent that the Act have extraterritorial application and relied solely upon the statutory scheme.<sup>34</sup> While the court's holding may reduce the sexual exploitation of children, the legislative history does not reveal any congressional intent that the Act have extraterritorial application.<sup>35</sup>

The court's analogy to federal drug-control laws that have been interpreted to have extraterritorial effect is misplaced.<sup>36</sup> Unlike federal drug-control laws that penalize the importation of controlled substances, child pornography statutes address the national problem of using children in the production of sexually explicit materials in the United States.<sup>37</sup> Federal drug-control laws require international application to be effective because drug trafficking is international in scope, whereas child pornography can be produced entirely within the United States.<sup>38</sup> The Act, therefore, does not need extraterritorial application to be effective.<sup>39</sup>

While the court correctly found no violation of international law in the extraterritorial application of the Act, nothing in the Act indicates that Congress intended the Act to reach conduct outside the United States.<sup>40</sup> The court acted as legislator rather than interpreter in coming to the conclusion

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34. See *supra* notes 12 and 13 and accompanying text (legislative history and statutory purpose).

35. See *supra* notes 1 and 12 and accompanying text (legislative histories of statutes); See also S. REP. NO. 438, 95th Cong., 1st Sess., reprinted in 1977 U.S. CODE CONG. & ADMIN. NEWS 40 (need for federal child pornography statute to combat nationwide spread of pornography).

36. See *supra* notes 20 and 21 and accompanying text (federal cases where narcotic statutes held to have extraterritorial application).

37. See *supra* note 21 and accompanying text (cases proscribing distribution and importation of marijuana).

38. See *supra* note 16 and accompanying text (analysis for determining extraterritorial application as inferred from nature of crime).

39. See *supra* note 12 and accompanying text (congressional finding that child pornography nationwide problem).

40. See *supra* note 18 and accompanying text (principles of international jurisdiction); S. REP. NO. 438, 95th Cong., 1st Sess., reprinted in 1977 U.S. CODE CONG. & ADMIN. NEWS 40 (legislative history bereft of evidence that Act have extraterritorial application).

that the Act applied to extraterritorial conduct.<sup>41</sup> If Congress intended the child pornography statutes to reach extraterritorial conduct, Congress, not the court, should amend the act to reflect such an intent.<sup>42</sup>

In *United States v. Thomas*,<sup>43</sup> the court's heavy reliance on Congress' statutory scheme to eradicate sexual exploitation may achieve a laudable result, but the legislative history gave no clear indication that Congress intended the Act to reach extraterritorial conduct.<sup>44</sup> The court's analogy to federal drug statutes is weak, and can be clearly distinguished from child pornography statutes.<sup>45</sup> If Congress intended extraterritorial application, it would have either expressly provided for it in the Act or amended the Act to reflect such an intent.<sup>46</sup>

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41. *See supra* notes 1 and 12 and accompanying text (subsequent amendments and legislative history).

42. *See supra* notes 12 and 15-17 and accompanying text (extraterritorial application requires express language or clear congressional intent as evidenced by legislative history).

43. 893 F.2d 1066.

44. *See supra* notes 12 and 13 and accompanying text (legislative history does not indicate extraterritorial intent)

45. *See supra* note 20 and accompanying text (cases holding federal drug statutes applicable to extraterritorial conduct).

46. *See supra* notes 1 and 12 and accompanying text (statutory language and subsequent amendments).