

## Case Summary

### People v. Dominguez

2004 WL 1068809 (Cal. Ct. App. May 13, 2004)

#### **Court Does Not Distinguish Between Computer Files Found on Inactive or Active Memory**

In a criminal case, the defendant appealed his conviction involving the possession of child pornography. Among the defendant's arguments was the contention that the evidence supporting his conviction was insufficient because it was discovered on the inactive memory of his computer and was only retrieved by the use of special programs that the defendant did not possess.

#### **Decision**

The court found the fact that the files were on the inactive memory of the computer to be of no consequence. During trial, the jury was instructed that there are two types of possession, actual, the person has possession of an object if he knowingly exercised direct physical control over that object, or constructive, a person has possession if he knowingly exercised control over an object or has the right to control that object.

The court reasoned that the evidence found on the inactive memory was "the result of searches conducted by appellant that resulted in child pornography being intentionally and knowingly downloaded to the active memory of his computer." As a result, the court held that the defendant "was in actual possession of those images at the time they first appeared on his machine." Consequently, the court found the evidence was sufficient to support his conviction on the child pornography related charges.

Recovered Computer Forensic Evidence