

IN THE COURT OF COMMON PLEAS OF ARMSTRONG COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA)	
)	
VS.)	No. CP-03-CR-0000040-2025
)	
MICHAEL WILLIAM DIEBOLD,)	
Defendant.)	

MEMORANDUM

PANCHIK, P.J.

Before the court is Defendant's Omnibus Pretrial Motion and Amended Omnibus Pretrial Motion. For the reasons set forth below, the court will grant Defendant's motions.

Facts and Procedural History

This case has its origin in another case involving Defendant; both cases involve the registration requirements of the Sex Offender Registration Notification Act (SORNA). In Case No. CP-03-CR-0000158-2020, Defendant pled guilty on October 6, 2021 to Failing to Provide Accurate Registration Information;¹ he had failed to register a particular user name and e-mail address. He was sentenced on February 22, 2022 to 18 to 36 months incarceration.

¹ 18 Pa.C.S.A. § 4915.1(a)(1).

More than two years later, Defendant filed a Petition for Writ of Habeas Corpus challenging his conviction and sentence on several constitutional grounds. As part of his argument, Defendant challenged the ostensible requirement that an individual report specific websites used. The petition was denied as a matter of law, and is currently on appeal in Superior Court.

During the November 21, 2024 hearing on his petition, Defendant produced a list of 66 websites he has used, one of which was Craigslist.org. He also produced an e-mail exchange with another Craigslist user regarding a brush cutting job.

His production of these documents prompted the Commonwealth to charge Defendant in the instant case on January 9, 2025 with Failing to Provide Accurate Registration Information.² In the Affidavit of Probable Cause, Pennsylvania State Police (PSP) Trooper Anthony Vaccaro stated that he was contacted to verify that Craigslist was on Defendant's "internet identifiers" (it was not disclosed and provided to Megan's Law or the Pennsylvania State Police; only one site had been registered). Trooper Vaccaro consulted Megan's Law,³ who advised that every site and app that is used with an identifier is to be registered, and a person is required to update within three

² 18 Pa.C.S.A. § 4915.1(a)(3).

³ Trooper Vaccaro did not identify the person he spoke to. He may have been referring to the Megan's Law Section of the PSP.

business days any removal or addition of information. As of 12/5/24, Defendant had yet to register any of the 65[sic] sites and apps.⁴

Defendant filed an Omnibus Pretrial Motion on April 11, 2025, and later filed an Amended Omnibus Pretrial Motion. The court heard argument on October 16, 2025, and at the request of the court, Defendant and the Commonwealth filed post-hearing briefs.

Discussion

Defendant asserted seven grounds for dismissing his case:

1) Petition for Writ of Habeas Corpus - Motion to Dismiss Charges for Lack of Prima Facie Evidence; 2) Violation of Due Process - Motion to Dismiss Charges; 3) Motion to Dismiss Charges Due to Commonwealth's Failure to Establish the Necessary Mens Rea; 4) Motion to Dismiss - Fourteenth Amendment Due Process Violation; Vagueness; 5) Motion to Dismiss Charge Filed; De Minimis Violation; 6) Motion to Dismiss - Failure to Comply with Order of Court; and 7) Motion to Dismiss Due to the Commonwealth's Malicious Prosecution of the Defendant.

⁴ Notably, in the first case, the Commonwealth directly contradicted Trooper Vaccaro. In response to Defendant's Petition for Writ of Habeas Corpus and during argument thereon, the Commonwealth acknowledged that the statute does not require registrants to register every website they use or every online account identifier they create.

The court need not address each ground Defendant asserts, because one issue is dispositive - the meaning of "internet identifiers," or more specifically, "designations used in Internet communications or postings," "designations or monikers used for self-identification in Internet communications or postings," and "designation used by the individual for purpose of routing or self-identification in Internet communications or postings" as used in the registration statutes.

The statute under which Defendant was charged⁵ reads as follows:

An individual who is subject to registration under 42 Pa.C.S. § 9799.13 (relating to applicability) commits an offense if he knowingly fails to:

. . .
(3) provide accurate information when registering under 42 Pa.C.S. § 9799.15, 9799.19 or 9799.25.

Under 42 Pa.C.S.A. § 9799.15(g)(8), a registrant must appear at an approved registration site within three business days to provide current information relating to an addition, change in or termination of e-mail address, instant message address or any other designations used in Internet communications or postings.

The establishment of the Commonwealth-wide registry of sexual offenders is set forth in 42 Pa.C.S.A. § 9799.16, and specifies what information a registrant must provide, to be

⁵ 18 Pa.C.S.A. § 4915.1(a)(3).

included in the registry. Two categories of information are pertinent to this case:

Primary or given name, including an alias used by the individual, nickname, pseudonym, ethnic or tribal name, regardless of the context used and any designations or monikers used for self-identification in Internet communications or postings.
42 Pa.C.S.A. § 9799.16(b) (1).

Designation used by the individual for purpose of routing or self-identification in Internet communications or postings.
42 Pa.C.S.A. § 9799.16(b) (2).

Notably, neither § 9799.16(b) (1) nor (b) (2) is referred to in either the charged statute (18 Pa.C.S.A. § 4915.1(a) (3)) or any of the three statutes (18 Pa.C.S. § 9799.15, § 9799.19 and § 9799.25) referred to in the charged statute or the charging Information. However, the wording of the Affidavit of Probable Cause refers to "any designation or moniker used for routing or self-identification in internet communications or postings." This is the language used in § 9799.16(b) (2). "[A]ny designations or monikers used for self-identification in Internet communications in Internet communications or postings" is the language used in § 9799.16(b) (1).

The Commonwealth appears to have blended the specific wording of the statutes into a general designation of "internet identifiers."

During the January 22, 2025 preliminary hearing, Trooper Vaccaro testified that Assistant District Attorney Bernstein

contacted him and asked him to verify that Craigslist was on Defendant's internet identifiers; he asserted that Craigslist is an internet identifier, and confirmed that Megan's Law said that all apps and websites do need to be registered. When asked to identify where the "all apps and websites" requirement is stated, Trooper Vaccaro responded "that's in the Megan's Law requirements."

Trooper Vaccaro testified that "internet identifier" is a tab on Megan's Law that all internet registration is put. "It can be e-mails, websites, accounts, apps, anything that has to deal with going on the internet and a self-identifier."

While Trooper Vaccaro believes that a registrant must register every website visited, the Commonwealth has acknowledged that is not the case. In its opposition to Defendant's Petition for Habeas Corpus in the first case,⁶ the Commonwealth stated that "[t]he statute does not require registrants to register every website they use and does not require a registrant to register every online account identifier they create; rather, they must only register identifiers they use to actively communicate or post." The Commonwealth confirmed this during the habeas corpus hearing, and the Court

⁶ CP-03-CR-0000158-2020.

so ruled in its Rule 1925(a) Opinion. As the court stated in its 1925(a) Opinion:

The statute does not require a registrant to identify specific websites - it requires a registrant to identify *his* own designation. If a registrant uses the identifier "John Doe I" and uses that identifier to visit 20 websites, the statute requires only the registration of "John Doe I," not each of the 20 websites he visited.

Yet in this case, the Commonwealth seems to argue that registering every website is required. During the hearing on Defendant's Omnibus Motion, the Commonwealth stated:

But the sites for which he has a user name, does he need to say what sites those user names go to, and the Commonwealth believes that he does. . . . You have to say what website that user name goes to for it to have any meaning for the state police to actually be able to verify anything.

The Commonwealth cannot have it both ways.

Should Superior Court in Case No. CP-03-CR-0000158-2020 affirm the court's decision on whether websites need to be registered, the Commonwealth would be collaterally estopped from using all websites visited as a basis for prosecution in this case.

During the preliminary hearing, Trooper Vaccaro also described how Craigslist works as follows:

[W]hen you post something on Craigslist for a service, like brush cutting, it generates a random e-mail for safety reasons, for security reasons. When you look at that correspondence [the Craigslist e-mail exchange between Defendant and another individual regarding brush cutting] that was provided to the courts back in November, there's a 10-digit post ID number there. . . . So by him going on and

the individual posting something, they create this identifier and they are using Craigslist which is a requirement for Megan's Law. . . . It gets generated by Craigslist. And when you are a user of that, that's part of the requirements of Megan's Law.

What Trooper Vaccaro is saying is that the "identifier" generated by Craigslist (in this case, cd83b1f7e6383ec1a2fd4ed5d388ee4c@gigs.craigslist.org) must be registered with the PSP within three business days, and should the user receive another reply to his post,⁷ which will prompt Craigslist to create yet another gibberish e-mail address, Defendant will have three business days to register it.

During the hearing on the omnibus motion here, the Commonwealth also suggested that registering the gibberish e-mail is required. The Commonwealth stated:

The email address [the gibberish e-mail address], it is a designation. It designates him, right, to any other user that he might be interacting with. It would designate him to the Pennsylvania State police if they had received it. It's used by the defendant in his usage of Craigslist, and it's actually used for routing. What happens is he posts something. Somebody else replies. Their email gets change[d] to a reply email So [an]other email gets changed, goes to an email associated with the defendant that's different, and that ends up coming to the defendant, himself, it would seem. That is routing, right, per the statute. It is being routed through this email address. That is a designation associated with him. It's also his email address. It's self-identification.

⁷ Defendant created his post using his mdiebold95@gmail.com e-mail address, which had been properly registered with the PSP.

In short, it was obvious to the court that the Commonwealth struggled to explain just what a registrant is required to register when it comes to internet use.

The court, too, is at a loss as to what the statutory language or the term "internet identifier" (to use the Commonwealth's terminology) means.

The internet-related registration requirements are unconstitutionally vague, both facially and in their application.

It may appear that the court diverges from the court's Rule 1925(a) opinion in Case No. CP-03-CR-0000158-2020 ("the first case"). Not so. In his vagueness challenge in the first case, Defendant argued that the registration statutes do not specify which websites a registrant must identify; the court concluded that the statutes do not require a registrant to identify specific websites - it requires a registrant to identify *his own* designation. As an example, the court stated that if a registrant uses the identifier "John Doe I" and uses that identifier to visit 20 websites, the statutes require only the registration of "John Doe I," not each of the 20 websites he visited. The court was thus presented with a very narrow vagueness challenge. Here, however, Defendant is charged with not registering a particular website and a particular "relay e-

mail address." These so-called "internet identifiers" require a different vagueness analysis.

The registration statutes refer to "designations used in Internet communications or postings,"⁸ "designations or monikers used for self-identification in Internet communications or postings,"⁹ and "designation used by the individual for purpose of routing or self-identification in Internet communications or postings".¹⁰ Those terms are not defined in the statutes.

A statute is constitutionally void only if it is so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application.¹¹

The court believes it is safe to say that a person of common intelligence would think that under these statutes, an individual's e-mail address(es), and perhaps user names, would have to be registered. Beyond that, a person of common intelligence would have to guess what else is required.

To prosecute someone for failing to register all websites visited and gibberish relay e-mails that he or she did not generate (such as the gigs email created by Craigslist), as the Commonwealth urges, is absurd.

⁸ 42 Pa.C.S.A. § 9799.15(g) (8).

⁹ 42 Pa.C.S.A. § 9799.16(b) (1).

¹⁰ 42 Pa.C.S.A. § 9799.16(b) (2). Subsection (b) (3) applies similar language to telephonic communications; however, telephonic communications are not at issue in this case.

¹¹ *Commonwealth v. Cotto*, 562 Pa. 32, 37, 753 A.2d 217, 220 (2000) (citations omitted).

In its post-hearing brief, the Commonwealth tries to explain how the facts of this case fit the internet-related registration requirements.

Registering Websites

With respect to registering websites visited, the Commonwealth asserts:

- the defendant needs to give sufficient information to make his internet designations meaningful for sites on which he communicates or posts;
- simply giving a username without a corresponding website renders the username useless, and makes it such that the PSP cannot designate said username as belonging to a registrant;
- requiring a username AND its associated website allows the state police to know if it is actually the defendant who is associated with a username.

Yet the Commonwealth also asserts that it is not stating that the defendant needs to notify the PSP about every website he visits.

So which is it? Yes, each website visited must be registered? No, only websites visited where the defendant has a user name? Incidentally, "user names" had not been raised before, so the court is perplexed as to why the Commonwealth mentioned it in its post-trial brief.

The Commonwealth claims that registering websites associated with user names makes it easier to track registrants'

online activity. With the vast resources available to law enforcement, both federal and state, through its subpoena power and technical capabilities, the court cannot take the Commonwealth's assertion at face value. Furthermore, it is not a registrant's responsibility to facilitate law enforcement investigations when the applicable statutes do not state specifically that registering websites visited is required.

Registering "Relay E-mails"

In its post-trial brief, the Commonwealth attempts to justify the requirement to register "relay e-mails" (such as the gigs email created by Craigslist) by asserting:

- The Gigs email is a designation, as it refers to the defendant. As part of his usage of Craigslist, he received an email at this address. The Gigs email, therefore, designates *the defendant's identity*.
- The email is used for purposes of self-identification. Even though the defendant did not himself create the Gigs email, he knows of its existence, and he can receive emails at the address. He has identified it with himself.
- The email is also used for purposes of routing Because these emails are being used to send emails between different individuals, they are a route that the emails follow, and they are therefore used for routing.
- Sections 9799.16(b)(1) and (b)(2) only require that the individual use the designation, not that they create it, or even use it in an "active" way. Therefore, the reception of emails at an address the defendant knows exists, and which is identified with him, means that he is *using* the designation for communications and/or postings.

The application of the internet-related registration statutes to relay e-mail addresses defies common sense. The Craigslist relay e-mail in this case is 32 characters long; if Defendant receives 20 more replies to his initial post for brush-cutting services, Craigslist will generate 20 more relay e-mail addresses. Following the Commonwealth's logic, each of those relay e-mail addresses would have to be registered. Furthermore, surely Craigslist is not the only website that generates relay e-mail addresses.

Of course the registrant would have to insure that the lengthy relay e-mail addresses he registers are exact, character by character, lest he be prosecuted for failing to register accurate information.

The Commonwealth's interpretation of the internet-related statutes defies the rules of statutory construction and imposes an onerous burden on registrants.

The Statutory Construction Act of 1972 provides that the object of all statutory interpretation is to ascertain and effectuate the intention of the General Assembly.¹²

The plain language of the statute provides the best indication of legislative intent. If the statutory language is clear and unambiguous in setting forth the intent of the General

¹² 1 Pa.C.S.A. § 1921(a).

Assembly, then a court cannot disregard the letter of the statute under the pretext of pursuing its spirit.¹³ Here, the internet-related language is anything but clear, and the Commonwealth cannot save it by citing the legislature's policy considerations in enacting SORNA. Even so, the Commonwealth has failed to explain how registration of websites and the Craigslist gibberish e-mail address furthers the legislature's intent.

The court's independent research has uncovered no uniform definition of the internet-related language in the SORNA statutes, or the Commonwealth's "internet identifier" term, and neither Defendant nor the Commonwealth has cited any authority defining those words. As one commentator put it, "Does 'Internet identifier' just mean an email address or a user name, with or without a password? Does it mean the IP address or original source of where online activity is coming from? . . . What about someone who sets up a smart refrigerator, which connects directly to the manufacturer through the Internet for twenty-four-seven support? And what happens if one must create a new 'Internet identifier' for work, school or other (legal)

¹³ *Commonwealth v. Lehman*, 311 A.3d 1034, 1044 (Pa. 2024).

personal purposes, such as a workplace online username which can only be accessed at the job site?"¹⁴

"Internet identifiers" is defined in the federal SORNA statutes as "electronic mail addresses and other designations used for self-identification or routing in Internet communication or posting,"¹⁵ language quite close to 18 Pa.C.S. § 9799.16(b)(1) and (b)(2). To the court, this "definition," whether in the Pennsylvania or federal statutes, is no definition at all, and it suffers from the same constitutional infirmity of vagueness.

Finally, the court assumes that in enacting the internet-related provisions, the legislature did not intend a result that is absurd, impossible of execution or unreasonable.¹⁶ Yet that is the result if the Commonwealth's interpretation is correct.

Adopting the Commonwealth's position would mean that a registrant must register every user name, and thus every website visited (because the Commonwealth believes that user names are useless without identifying associated websites), every gibberish e-mail address generated by someone else, every application used, every account, and any other supposed "internet identifier" - all within three business days.

¹⁴ See Gabriel Aderhold, Note, *Sex Offenders and Internet Speech: First Amendment Protections for America's Most Reviled Outcasts*, 49 MITCHELL HAMLINE L. REV. 892 (2023)

¹⁵ 34 U.S.C.A. § 20916(e)(2).

¹⁶ See 1 Pa.C.S.A. § 1922(1).

To illustrate the absurdity of the Commonwealth's position, a registrant visiting multiple, discrete websites every day would likely have to appear *in person* every day or at least every third day to register those websites. A registrant spending two weeks on vacation in California who wants to visit websites for information on sightseeing tours would not be able to appear in person to register those websites within the three business day window, thus exposing himself to prosecution.

To expect a frequent internet user to comply with these requirements is absurd and clearly unreasonable.

If the Commonwealth is so concerned about law enforcement's ability to track registrants' internet activity, then the Commonwealth should, with input from law enforcement, petition the legislature to write laws that put registrants on notice of what types of information must be registered. To leave a vague statute in place leaves it up to registrants to guess what is required, risks arbitrary enforcement by law enforcement, and violates a registrant's due process rights.

The internet identifier language is unconstitutionally vague, but the remainder of the statutes remains valid.

The provisions of every statute shall be severable.¹⁷ While the court concludes that the internet-related statutory language of the statutes is unconstitutionally vague, those provisions

¹⁷ 1 Pa.C.S.A. § 1925.

can be severed from the remainder of the statutes, which, at least for the time being, remain valid.

Conclusion

The "internet identifier" language in its various forms in the SORNA registration statutes is unconstitutionally vague. Persons of common intelligence must necessarily guess at its meaning and differ as to its application. Indeed, even the Commonwealth is not consistent as to its meaning or application, as evidenced by the testimony of PSP Trooper Vaccaro during the January 22, 2025 preliminary hearing, compared with the papers and arguments by the Commonwealth in both the "first" case and this case.

The Commonwealth's interpretation of the "internet identifier" language runs counter to the rules of statutory construction and imposes an unreasonable, next to impossible burden on registrants.

For the foregoing reasons, the court will grant Defendant's Omnibus Motions with respect to his motion to dismiss, with prejudice.

An appropriate order follows.

COMMONWEALTH OF PENNSYLVANIA)
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vs.) No. CP-03-CR-0000040-2025
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MICHAEL WILLIAM DIEBOLD,)
Defendant.)

**My Commission Expires
First Monday of January 2028**