

# Judge overturns Naughton's child porn conviction

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**A federal judge today threw out former Infoseek executive Patrick Naughton's conviction on possession of child pornography, just weeks after an appeals court found portions of the law under which he was tried unconstitutional.**

U.S. District Judge Edward Rafeedie granted a defense motion for retrial on the charge, finding that jury instructions in the case may have been tainted because they did not take into account a 9th Circuit U.S. Court of Appeals decision that invalidated two sections of the Child Pornography Prevention Act of 1996--a ruling that came one day after Naughton's conviction last month.

Today's decision means that Naughton, who is [free on bail](#), could face a retrial on three charges stemming from his arrest last year for allegedly soliciting sex from an FBI agent who posed as a 13-year-old girl. A jury last month hung on charges that he used the Internet and crossed state lines to have sex with a minor. Those two charges are [scheduled](#) for retrial March 21.

Donald Marks, Naughton's attorney, today said the judge was "compelled" to throw out [the conviction](#) because of faulty jury instructions. "We felt very strongly that the law was on our side," he said, adding that the government will face a tough time at retrial thanks to the 9th Circuit's ruling last month.

"It does impact what they can show and what they can bring to bear as evidence," he said. "It could make it more difficult" to win a conviction the second time around.

But spokesman Thom Mrozek from the U.S. attorney's office in Los Angeles argued that today's decision does not touch on the merits of the government's case.

"This ruling falls under the category of what most people would call a technicality," he said.

Last month, a 9th Circuit panel found 2-1 that the federal child pornography law [went too far](#) when it outlawed materials that either "appear to be" or "convey the impression" that they are sexually explicit pictures of children.

According to Mrozek, Rafeedie today ruled it was impossible to determine which parts of the statute the jury relied on in convicting Naughton, thus necessitating a new trial.

In addition to retrying the child porn possession charge, Mrozek said federal prosecutors in Los Angeles could reinstate the conviction by appealing Rafeedie's decision today. Officials at the

Justice Department in Washington, D.C., also have until the end of the month to decide whether to seek a rehearing in the related 9th Circuit ruling. If that decision is reversed, the conviction would stand.

A prominent Silicon Valley executive who helped develop Sun Microsystems' Java computer programming language, Naughton had most recently headed up Infoseek and Walt Disney's Go Network.

Throughout the case, Naughton has insisted he knew he wasn't talking to a real 13-year-old girl and that it was the FBI agent who kept pushing for a meeting.

Posing under the handle "krisLA," FBI agent Bruce Applin exchanged messages with Naughton in an Internet chat room called "dad&daughtersex."

The two arranged to meet on a pier in Santa Monica, Calif., where Naughton was arrested