

4. United States v. Upham, 168 F.3d 532, 534-37 (1st Cir. 1999), is governing law in this circuit. Under Upham, the government did not need the second warrant because the first warrant authorized seizure of the computers and related items. Order of February 27, 2003, at 6 n.3 (Docket No. 33).¹ Therefore, the motion to suppress is **DENIED**.

So ORDERED.

DATED APRIL 9, 2003.

D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

¹ I understand that the Justice Department procedures suggest that there may be a different “strategy” for a seizure when the computer is a storage device for evidence of a crime (as here) rather than itself an instrumentality (as in an internet child pornography case). Orin S. Kerr, Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations, §§ II.B.1.a., b., U.S. Dep’t of Justice, Office of Legal Education (March 2001). The defendant urges the court to recognize the distinction here, but I see no basis for doing so. Upham notes the distinction, 168 F.3d at 536 n.2, but found it irrelevant where a warrant, like this one, authorizes seizure of the computers themselves.

U.S. District Court
District of Maine (Bangor)
Criminal Docket for Case #: 02-CR-74

UNITED STATES OF AMERICA

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