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From the Los Angeles Times

Judge suspends L.A. obscenity trial after conceding his website had sexual images

Alex Kozinski admits he posted some of the explicit content. He says he didn't think the public could see the site, which is now blocked.

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A closely watched obscenity trial in Los Angeles federal court was suspended Wednesday after the judge acknowledged maintaining his own publicly accessible website featuring sexually explicit photos and videos.

Alex Kozinski, chief judge of the U.S. 9th Circuit Court of

Appeals, granted a 48-hour stay in the obscenity trial of a Hollywood adult filmmaker after the prosecutor requested time to explore "a potential conflict of interest concerning the court having a . . . sexually explicit website with similar material to what is on trial here."

In an interview Tuesday with The Times, Kozinski acknowledged posting sexual content on his website. Among the images on the site were a photo of naked women on all fours painted to look like cows and a video of a half-dressed man cavorting with a sexually aroused farm animal. He defended some of the adult content as "funny" but conceded that other postings were inappropriate.

Kozinski, 57, said that he thought the site was for his private storage and that he was not aware the images could be seen by the public, although he also said he had shared some material on the site with friends. After the interview Tuesday evening, he blocked public access to the site.

Kozinski is one of the nation's highest-ranking judges and has been mentioned as a possible

candidate for the U.S. Supreme Court. He was named chief judge of the 9th Circuit last year and is considered a judicial conservative on most issues. He was appointed to the federal bench by President Reagan in 1985.

After publication of an latimes.com article about his website Wednesday morning, the judge offered another explanation for how the material might have been posted to the site. Tuesday evening he had told *The Times* that he had a clear recollection of some of the most objectionable material and that he was responsible for placing it on the Web. By Wednesday afternoon, as controversy about the website spread, Kozinski was seeking to shift responsibility, at least in part, to his adult son, Yale.

"Yale called and said he's pretty sure he uploaded a bunch of it," Kozinski wrote in an e-mail to Abovethelaw.com, a legal news website. "I had no idea, but that sounds right because I sure don't remember putting some of that stuff there."

Sen. Dianne Feinstein (D-Calif.), a member of the Senate Judiciary Committee, expressed concern about Kozinski's website.

"If this is true, this is unacceptable behavior for a federal court judge," she said in a statement.

Stephen Gillers, a New York University law professor who specializes in legal ethics and has known Kozinski for years, called him "a treasure of the federal judiciary." Gillers said he took the judge at his word that he did not know the site was publicly available. But he said Kozinski was "seriously negligent" in allowing it to be discovered.

"The phrase 'sober as a judge' resonates with the American public," Gillers said. "We don't want them to reveal their private selves publicly. This is going to upset a lot of people."

Gillers said the disclosure would be humiliating for Kozinski and would "harm his reputation in many quarters" but that the controversy should die there.

He added, however, that if the public concludes the website was intended for the sharing of pornographic material, "that's a transgression of another order.

"It would be very hard for him to come back from that," he said.

Kozinski has a reputation as a brilliant legal mind and is seen as a champion of the 1st Amendment right to freedom of speech and expression. Several years ago, for example, after learning that appeals court administrators had placed filters on computers that denied access to pornography and other materials, Kozinski led a successful effort to have the filters removed.

The judge said it was strictly by chance that he wound up presiding over the trial of filmmaker Ira Isaacs in U.S. District Court in Los Angeles. Appellate judges occasionally hear criminal cases when they have free time on their calendars, and the Isaacs case was one of two he was given, the judge said.

Isaacs is on trial for distributing sexual fetish videos, featuring acts of bestiality and

defecation. The material is considerably more vulgar than the content posted on Kozinski's website.

The judge said he didn't think any of the material on his site would qualify as obscene.

"Is it prurient? I don't know what to tell you," he said. "I think it's odd and interesting. It's part of life."

Before the site was taken down, visitors to <http://alex.kozinski.com> were greeted with the message: "Ain't nothin' here. Y'all best be movin' on, compadre."

Only those who knew to type in the name of a subdirectory could see the content on the site, which also included some of Kozinski's essays and legal writings as well as music files and personal photos.

The sexually explicit material on the site was extensive, including images of masturbation, public sex and contortionist sex. There was a slide show striptease featuring a transsexual, and a folder that contained a series of photos of women's crotches in snug-fitting clothing or underwear.

Kozinski told The Times that he began saving the sexually explicit materials and other items of interest on his website years ago.

"People send me stuff like this all the time," he said.

In turn, he said, he occasionally passes on items he finds interesting or funny to others.

Among the sexually explicit material on his site that he defended as humorous were two photos. In one, a young man is bent over in a chair and performing fellatio on himself. In the other, two women are sitting in what appears to be a cafe with their skirts hiked up to reveal their pubic hair and genitalia. Behind them is a sign reading "Bush for President."

"That is a funny joke," Kozinski said.

The judge said he planned to delete some of the most objectionable material from his site, including the photo depicting women as cows, which he said was "degrading . . . and just gross." He also said he planned to get rid of a graphic step-by-step pictorial in which a woman is seen shaving her pubic hair.

Before suggesting that his son might have been responsible for posting some of the content, Kozinski told The Times that he, the judge, must have accidentally uploaded the cow and shaving images to his server while intending to upload something else. "I would not keep those files intentionally," he said. He offered to give a reporter a demonstration of how the error probably occurred.

The judge emphasized that he never used appeals court computers to maintain his site.

The presence of copyrighted music files on Kozinski's site raises other issues.

More than a dozen MP3 tracks were listed, and they were neither excerpts nor used to illustrate legal opinions, which experts said might have qualified their copying as "fair use." The artists included Johnny Cash, Bob Dylan and Weird Al Yankovic.

Uploading such files could violate civil copyright laws if friends or members of the public visited the site and downloaded the songs, according to attorneys who have litigated file-sharing cases for both copyright holders and accused infringers.

Even if no one downloaded the songs, just making them available might run afoul of the law, said Corynne McSherry, staff attorney at the nonprofit Electronic Frontier Foundation, which often argues the other side of such issues.

Late last year, three of Kozinski's Circuit Court colleagues noted in a ruling that "the owner of a collection of works who makes them available to the public may be deemed to have distributed copies of the works," a violation of copyright law if done without permission.

"For him to actually be held liable would take some further investigation, but I think it's possible," McSherry said. "It's a strange story. It's surprising to me."

Kozinski was not asked in the Tuesday interview about the music files, and he could not be reached for comment Wednesday afternoon.

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Times staff writers Joseph Menn, Andrew Blankstein, Ben Welsh and Eric Ulken contributed to this report.

