

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO**

AMERICAN BOOKSELLERS FOUNDATION  
FOR FREE EXPRESSION *et al.*,

Plaintiffs,

V.

JIM PETRO *et al.*,

Defendants.

Case No. C3-02-210  
(Judge Rice)

ATTORNEY GENERALS OFFICE

AUG 8 2003

RECEIVED  
CONSTITUTIONAL OFFICES

**AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Now come Plaintiffs, who for their complaint against Defendants, state as follows:

**PRELIMINARY STATEMENT**

1. This is an action brought pursuant to state and federal law, including the First and Fourteenth Amendments to the United States Constitution, the Federal Commerce Clause, and Article I, Section 11 of the Ohio Constitution, alleging that the State of Ohio, by and through its legislative and executive bodies, has enacted an overly broad and unconstitutional statutory scheme which improperly criminalizes the dissemination of material that is defined to be "harmful to juveniles" on the Internet. This legislation improperly burdens the exercise of the rights to free expression and promotes self-censorship by enacting a chilling effect upon the sale, display, exhibition, and dissemination of legitimate, constitutionally protected speech and expression.

2. Application of the restrictions to the Internet violates both the First Amendment to and the Commerce Clause of the United States Constitution. The United States Supreme Court invalidated a similar federal law on First Amendment grounds in Reno v. ACLU, 521 U.S. 844

(1997), aff'g 929 F. Supp. 824 (E.D.Pa. 1996), and the Third Circuit enjoined enforcement of a second federal law on First Amendment grounds in ACLU v. Reno, 322 F.3d 240 (3<sup>rd</sup> Cir. 2003). In addition, six laws containing similar content-based restrictions have now been struck down or enjoined as unconstitutional. See ACLU v. Johnson, 194 F.3d 1149 (10<sup>th</sup> Cir. 1999), aff'g 4 F. Supp. 2d 1024 (D.N.M. 1998); PSINet, Inc. v. Chapman, 167 F. Supp. 2d 878 (W.D. Va. 2001), certified question sent to Virginia Supreme Court, 317 F.3d 413 (4<sup>th</sup> Cir. 2003); Cyberspace Communications, Inc. v. Engler, 238 F.3d 420 (6<sup>th</sup> Cir. 2000), aff'g 55 F. Supp. 2d 737 (E.D. Mich. 1999) (grant of preliminary injunction); 142 F. Supp. 2d 827 (E.D. Mich. 2002) (summary judgment and permanent injunction); American Libraries Association v. Pataki, 969 F. Supp. 160 (S.D.N.Y. 1997); ACLU v. Napolitano, \_\_\_ F. Supp. 2d \_\_\_, Civ. No. 00-506 (D. Az. Feb. 19, 2002); American Booksellers Fdn. for Free Expression v. Dean, \_\_\_ F. Supp. 2d \_\_\_ (D. Vt. Apr. 18, 2002).

3. In addition, the Internet restriction includes unconstitutionally vague and indefinite language, including the following: “directly,” “electronic method of remotely transmitting information,” and “method of mass distribution.” Use of such vague and undefined terms renders the entirety of the statutory scheme fatally unconstitutional.

4. On May 6, 2002, the State of Ohio enacted a broad censorship law that was unconstitutional in a multitude of ways.

A. It defined “harmful to juveniles” in a manner that violates the First Amendment in that it criminalized, when sold, disseminated to, or available for perusal by, a person under 18 the following without requiring that the material be taken as a whole:

- a. material which displays, describes or represents extreme, or bizarre violence, cruelty or brutality;
- b. material which displays, describes, or represents human bodily functions of elimination;
- c. material which makes repeated use of foul language;
- d. material which displays, describes, or represents in lurid detail violent physical torture, dismemberment, destruction, or death of a human being;
- e. material which displays, describes, or represents criminal activity which tends to glorify or glamorize the activity, which has a dominant tendency to corrupt;
- f. sexually graphic material having serious literary, artistic, political, or scientific value to a minor; and
- g. material which displays, describes, or represents sexual activity, masturbation, sexual excitement, or nudity even though it does not appeal to the prurient interest of minors.

(collectively the “Harmful to Juveniles Definition”).

- B. It imposed severe content-based restrictions on the availability, display, and dissemination of constitutionally protected speech on the Internet by making it a crime to “furnish, disseminate, provide, exhibit or present” a variety of materials “appearing on a computer monitor . . . [or a] device used as a computer monitor” that are “harmful to juveniles” (the “Internet Restriction”).

5. This action was originally brought on May 6, 2002. On August 30, 2002, this Court found the Harmful to Juveniles Definition unconstitutional and preliminarily enjoined its enforcement.

6. On November 6, 2002, defendants appealed said ruling to the U.S. Court of Appeals for the Sixth Circuit.

7. On December 6, 2002, the Ohio legislature amended both the Harmful to Juveniles Definition and the Internet Restriction. These amendments were signed into law by Governor Taft on January 2, 2003 and are scheduled to take effect on January 1, 2004.

8. Subsequent to the enactment of the amendments, by order dated June 18, 2003, the Sixth Circuit remanded the matter to this Court.

9. Unless enforcement of the recent amendments to O.R.C. §§ 2907.01, 2907.31 and 2907.32 (the "Revised Internet Restriction") are enjoined by this Court, the amendments will take effect on January 1, 2004.

10. Since all speech on the Internet is accessible in Ohio, regardless of the geographical location of the person who posted it, the Revised Internet Restriction threatens Internet users nationwide and even worldwide.

11. Plaintiffs herein do not challenge the power of State of Ohio to regulate obscenity, child pornography, speech used to entice or lure minors into inappropriate activity, or harassing speech.

12. The Revised Internet Restriction, however, regulates more than just obscenity or child pornography on the Internet. The Internet represents the most participatory marketplace of mass speech yet developed. It is in many ways a far more speech-enhancing medium than radio, television, print, the mails, or the proverbial village green. Hundreds of millions of people can

now engage in interactive communication on a national and global scale via computer networks that are connected to the Internet. The Internet enables average citizens, with a few simple tools and at a very low cost, to participate in local or worldwide conversations, publish an online newspaper, distribute an electronic pamphlet, and communicate with a broader audience than ever before possible. The Internet also provides millions of users with access to a vast range of information and resources. Internet users are far from passive listeners — rather, they are empowered by the Internet to seek out exactly the information they need and to respond with their own communication if desired.

13. Because of the way the Internet works, the Revised Internet Restriction’s prohibition on distributing to minors material “appearing on a computer monitor” and that is “harmful to juveniles” effectively bans distribution of that same material to adults.

14. In doing so, the Revised Internet Restriction targets speech that is constitutionally protected for adults and juveniles. This includes, for example, valuable works of literature and art, news reports as to crime and current events, historical non-fiction, safer sex information, examples of popular culture, and a wide range of robust human discourse about current issues and personal matters that may include provocative, violent, or sexually oriented language and images.

15. The inevitable effect of the Revised Internet Restriction, if permitted to stand, will be that Internet content providers will limit the range of their constitutionally protected speech. Internet content providers will be forced to self-censor their speech because there are no reasonable technological means that enable users of the Internet to ascertain the age of persons who access their communications, or to restrict or prevent access by minors to certain content.

Consequently, the Revised Internet Restriction reduces adult speakers and users in cyberspace to reading and communicating only material that is suitable for young children.

16. In addition, the Revised Internet Restriction prohibits speech that is valuable and constitutionally protected for minors, especially older minors.

17. The Revised Internet Restriction also violates the Commerce Clause of the United States Constitution because it regulates commerce occurring wholly outside of the State of Ohio, because it imposes an impermissible burden on interstate and foreign commerce, and because it subjects interstate use of the Internet to inconsistent state regulations. An online user outside of Ohio cannot know whether someone in Ohio might download his or her content posted on the Web; consequently, the user must comply with Ohio law or face the threat of criminal prosecution.

18. Plaintiffs include and represent a broad range of individuals and entities who are speakers, content providers, and access providers on the Internet. Plaintiffs post and discuss content including resources on AIDS prevention, visual art and images, literature, and books and resources for gay and lesbian youth.

19. Revised Internet Restriction violates the First, Fifth, and Fourteenth Amendment rights of Plaintiffs, their members, their users, and tens of millions of other speakers and users of the Internet and threatens them with irreparable harm. The Revised Internet Restriction also violates the Commerce Clause of the United States Constitution as set forth in Paragraph 17.

20. By this complaint, Plaintiffs seek to have the Revised Internet Restriction declared facially unconstitutional and void and to have the State enjoined from enforcing the Revised Internet Restriction by reason of the First, Fifth, and Fourteenth Amendments to, and the Commerce Clause of, the United States Constitution.

## **JURISDICTION AND VENUE**

21. This case arises under the United States Constitution and the laws of the United States and presents a federal question within this Court's Article III jurisdiction. As such, jurisdiction is proper pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(3), given that this action seeks remedies under 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. §§ 1983 and 1988, and F.C.R.P. 65.

22. Venue is proper in this district under 28 U.S.C. § 1391(b).

## **THE PARTIES**

23. Plaintiff AMERICAN BOOKSELLERS FOUNDATION FOR FREE EXPRESSION ("ABFFE") was organized as a not-for-profit organization by the American Booksellers Association in 1990 to inform and educate booksellers, other members of the book industry, and the public about the dangers of censorship, and to promote and protect the free expression of ideas, particularly freedom in the choice of reading materials. ABFFE is incorporated in Delaware and has its principal place of business in New York City. ABFFE, most of whose members are bookstores in the United States, sues on its own behalf, on behalf of its members who use online computer communications systems, and on behalf of the patrons of their member bookstores in Ohio and elsewhere.

24. Plaintiff ASSOCIATION OF AMERICAN PUBLISHERS, INC. ("AAP") is the national association of the United States book publishing industry. AAP's approximately 300 members include most of the major commercial book publishers in the United States, as well as smaller and non-profit publishers, university presses, and scholarly associations. AAP members publish hardcover and paperback books in every field and a range of educational materials for the elementary, secondary, post-secondary, and professional markets. Members of AAP also

produce computer software and electronic products and services. AAP is incorporated in New York and has its principal places of business in New York City and in the District of Columbia. AAP represents an industry whose very existence depends on the free exercise of rights guaranteed by the First Amendment. AAP sues on its own behalf, on behalf of its members whose books are offered in Ohio through the Internet or who use online computer communications systems, and on behalf of the readers of its members' books.

25. Plaintiff FREEDOM TO READ FOUNDATION, INC. ("FTRF") is a non-profit membership organization established in 1969 by the America Library Association to promote and defend First Amendment rights, to foster libraries as institutions fulfilling the promise of the First Amendment for every citizen, to support the rights of libraries to include in their collections and make available to the public any work they may legally acquire, and to set legal precedent for the freedom to read on behalf of all citizens. FTRF is incorporated in Illinois and has its principal place of business in Chicago. FTRF sues on its own behalf, on behalf of its members who use online computer communications systems, and on behalf of the patrons of its member libraries.

26. Plaintiff NATIONAL ASSOCIATION OF RECORDING MERCHANTISERS ("NARM") is an international trade association whose more than 1,000 members include recorded entertainment retailers, wholesalers, distributors, and manufacturers, many of whom conduct business over the Internet. NARM is incorporated in Delaware and has its principal place of business in Marlton, New Jersey. NARM sues on its own behalf, on behalf of its members who use online computer communications systems, and on behalf of their consumers.

27. Plaintiff OHIO NEWSPAPER ASSOCIATION ("ONA") is a trade association representing all 84 of Ohio's daily and an additional 90 weekly newspapers. ONA is

incorporated in Ohio and has its principal office in Columbus, Ohio. ONA sues on its own behalf and on behalf of its members who use online communications systems.

28. Plaintiff THE SEXUAL HEALTH NETWORK, INC., (“the Sexual Health Network”) is a small, Internet-based company incorporated in the State of Delaware. It maintains a Web site at <http://www.Sexualhealth.com>. The Sexual Health Network was founded in May 1996 by Dr. Mitchell Tepper while he was working on his doctoral dissertation at the University of Pennsylvania Program in Human Sexuality Education. Dr. Tepper also has a Master in Public Health degree from the Yale University School of Medicine. Mr. Tepper is currently the President of the Sexual Health Network. The Sexual Health Network is dedicated to providing easy access to sexuality information, education, and other sexuality resources for people with disability, chronic illness, or other health-related problems. The Sexual Health Network sues on its own behalf and on behalf of users of Sexualhealth.com on the World Wide Web.

29. The VIDEO SOFTWARE DEALERS ASSOCIATIONS (VSDA) is the trade association for the home video industry. It represents more than 1,700 member companies in North America and 12 countries worldwide, including retailers of motion picture videos and video games, the home video divisions of major and independent motion picture studios, and other associated businesses that comprise the home video entertainment industry. VSDA is incorporated in the state of Delaware and its principal business location is in Encino, California. VSDA sues on its own behalf, on behalf of its members who use online communications systems, and on behalf of the customers of its members.

30. Defendant JIM PETRO is the Attorney General of the State of Ohio and is sued in his official capacity as such. He is the chief law officer of the State of Ohio with authority in both civil and criminal matters.

31. The remaining Defendants are the county prosecutors of each county in the State of Ohio. The county prosecutors have the duty to prosecute crimes, including violations of the Revised Internet Restriction.

## **FACTS**

### **The Internet Generally**

32. The Internet is a decentralized, global medium of communication that links people, institutions, corporations, and governments around the world. It is a giant computer network that interconnects innumerable smaller groups of linked computer networks and individual computers. While estimates are difficult due to its constant and rapid growth, the Internet is currently believed to connect more than 220 countries and close to 580 million users worldwide. In addition, approximately 93% of all Internet users use e-mail. In 2001, approximately 12 billion e-mail messages were sent each day, a figure which is expected to climb to 35 billion by 2005.

33. Because the Internet merely links together numerous individual computers and computer networks, no single entity or group of entities controls the material made available on the Internet or limits the ability of others to access such materials. Rather, the range of digital information available to Internet users — which includes text, images, sound, and video — is individually created, maintained, controlled and located on millions of separate individual computers around the world.

34. The Internet presents extremely low entry barriers to anyone who wishes to provide or distribute information or gain access to it. Unlike television, cable, radio, newspapers, magazines, or books, the Internet provides the average citizen with an affordable means for communicating with, accessing, and posting content to a worldwide audience.

#### **How People Access the Internet**

35. Individuals have several easy means of gaining access to computer communications systems in general and to the Internet in particular. Many educational institutions, businesses, and local communities maintain a computer network linked directly to the Internet and enable users to easily gain access to the network.

36. In addition, many libraries provide their patrons with free access to the Internet through computers located at the library. Some libraries also host online discussion groups and chat rooms. Many libraries also post their card catalogs and online versions of material from their collections.

37. Internet service providers (“ISPs”) also allow subscribers to dial onto the Internet by using a modem and a personal computer to access computer networks that are linked directly

to the Internet. Some ISPs charge a monthly fee ranging from \$15 to 50 per month, but some provide their users with free or very low-cost Internet access.

38. National “commercial online services,” such as America Online, serve as ISPs and also provide subscribers with additional services, including access to extensive content within their own proprietary networks.

### **Ways of Exchanging Information on the Internet**

39. Most Internet users select user names, e-mail addresses, or both that allow them to log on to the Internet and to communicate with other users. Many user names are pseudonyms or pen names that often provide users with a distinct online identity and help to preserve their anonymity and privacy. By way of example, America Online allows every subscriber to use up to six different “screen names,” which may be used for different family members or for separate pseudonyms by an individual. The user name and e-mail address are the only indicators of the user’s identity; that is, persons communicating with the user will only know them by their user name and e-mail address unless the user chooses to reveal other personal information.

40. Once an individual signs on to the Internet, there are a wide variety of methods for communicating and exchanging information with other users.

### **E-Mail**

41. The simplest and perhaps most widely used method of communication on the Internet is via electronic mail, commonly referred to as “e-mail.” Using one of dozens of available “mailers” — software capable of reading and writing an e-mail — a user is able to address and transmit via computer a message to a specific individual or group of individuals who have e-mail addresses.

### **Discussion Groups, Mailing Lists, and Chat Rooms**

42. Online discussion groups are another of the most popular forms of communication via computer network. Discussion groups allow users of computer networks to post messages onto a public computerized bulletin board and to read and respond to messages posted by others in the discussion group. Discussion groups have been organized on many different computer networks and cover virtually every topic imaginable. Discussion groups can be formed by individuals, institutions, organizations, or by particular computer networks.

43. "USENET" news groups are a very popular set of bulletin board discussion groups available on the Internet and other networks. Currently there are USENET news groups on more than 30,000 different subjects, and over 100,000 new messages are posted to these groups each day.

44. Similarly, users also can communicate within a group by subscribing to automated electronic mailing lists that allow any subscriber to a mailing list to post a particular message that is then automatically distributed to all of the other subscribers on that list. These lists are sometimes called "mail exploders" or "list servs."

45. "Chat rooms" also allow users to engage in simultaneous conversations with another user or group of users by typing messages and reading the messages typed by others participating in the "chat." Chat rooms are available on the Internet and on commercial online services. Although chat rooms are often set up by particular organizations or networks, any individual user can start an online "chat."

46. Online discussion groups, mailing lists, and chat rooms create an entirely new global public forum — a cyberspace village green — where people can associate and communicate with others who have common interests and engage in discussion or debate on every imaginable topic.

### **The World Wide Web**

47. The World Wide Web (the “Web”) is the most popular way to provide and retrieve information on the Internet. Anyone with access to the Internet and proper software can create “Web pages” or “home pages” which may contain many different types of digital information — text, images, sound, and even video. The Web comprises millions of separate “Web sites” that display content provided by particular persons or organizations. Any Internet user anywhere in the world with the proper software can create her own Web page, view Web pages posted by others, and then read text, look at images and video, and listen to sounds posted at these sites.

48. The Web serves in part as a global, online repository of knowledge, containing information from a diverse array of sources, which is easily accessible to Internet users around the world. Though information on the Web is contained on individual computers, each of these computers is connected to the Internet through Web protocols that allow the information on the Web to become part of a single body of knowledge accessible by all Web users.

49. Many large corporations, banks, brokerage houses, newspapers, and magazines now provide online editions of their publications and reports on the Web or operate independent Web sites. Many government agencies and courts also use the Web to disseminate information to the public. For example, Ohio Governor Bob Taft and Defendant Attorney General Jim Petro have posted Internet Web sites containing information available to the public. In addition, many individual users and small community organizations have established individualized home pages on the Web that provide information of interest to members of the particular organization, communities, and other individuals.

50. To gain access to the information available on the Web, a person generally uses a Web “browser” — software such as Netscape Navigator or Internet Explorer — to display, print,

and download documents that are formatted in the standard Web formatting language. Each document on the Web has an address that allows users to find and retrieve it.

51. Most Web documents also contain “links.” These are short sections of text or image that refer and link to another document. Typically the linked text is blue or underlined when displayed, and when selected by the user on her computer screen, the referenced document is automatically displayed wherever in the world it actually is stored. Links, for example, are used to lead from overview documents to more detailed documents on the same Web site, from tables of contents to particular pages, and from text to cross-references, footnotes, and other forms of information.

52. Links may also take the user from the original Web site to another Web site on a different computer connected to the Internet, a computer that may be located in a different area of the country, or even the world.

53. Through the use of these links from one computer to another, from one document to another, the Web for the first time unifies the diverse and voluminous information made available by millions of users on the Internet into a single body of knowledge that can be searched and accessed.

54. A number of “search engines” and directories — such as Yahoo, Google, WebCrawler, and Lycos — are available free of charge to help users navigate the World Wide Web. Once a user has accessed the search service, he or she simply types a word or string of words as a search request and the search engine provides a list of sites that match the search string.

55. As can be seen from the various ways that people can exchange information and communicate via this new technology, the Internet is “interactive” in ways that distinguish it

from traditional communication media. For instance, users are not passive receivers of information as with television and radio; rather, a user can easily respond to the material he or she receives or views online. In addition, “interactivity” means that Internet users must actively seek out with specificity the information they wish to retrieve and the kinds of communications in which they wish to engage. For example, a user wishing to read articles posted to a newsgroup must log on to the Internet and then connect to a USENET server, select the relevant group, review the relevant header lines — which provide brief content descriptions — for each message, and then access a particular message to read its content. Similarly, to gain access to material on the World Wide Web, a user must know and type the address of a relevant site or find the site by typing a relevant search string in one of several available search engines or by activating a Web site link.

#### **The Range of Content Available on the Internet**

56. The information made available on the Internet is as diverse as human thought. Content on the Internet is provided by the millions of Internet users worldwide, and the content ranges from academic writings to humor to art to literature to medical information to music to news to movie clips and to human sexuality. For example, on the Internet one can view the full text of the Bible, all of the works of Shakespeare, and numerous other classic works of literature. One can browse through paintings from museums around the world, view in detail images of the ceiling of the Sistine Chapel, or hear selections from the latest rap music albums. At any one time, the Internet serves as the communication medium for literally hundreds of thousands of global conversations, political debates, and social dialogues.

57. Although the overwhelming majority of the information on the Internet does not involve nudity or sexual activity, such material is available on the Internet. For example, an

Internet user can read online John Cleland's eighteenth-century novel, Fanny Hill: Memoirs of a Woman of Pleasure; view the digital photography of Diane Fenster; receive instructions on how to practice safer sex; participate in a question and answer forum on methods for enhancing sexual experiences; and exchange e-mail about a popular new rap music lyric. Much of this material is similar, if not identical, to material that is routinely discussed in cafes and on the street corners, and that is distributed through libraries, bookstores, record stores, and newsstands.

### The Statutory Language at Issue

58. On January 2, 2003, Governor Bob Taft signed into law House Bill 490, effective January 1, 2004, part of which repeals O.R.C. §§ 2907.1, 2907.31 and 2907.35 and substitutes new provisions in their place. These amendments, referred to in this Complaint as "the Revised Internet Restriction," provide as follows:

**Sec. 2907.01.** As used in sections 2907.01 to 2907.37 of the Revised Code:

(A) "Sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

(B) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

(C) "Sexual activity" means sexual conduct or sexual contact, or both.

(D) "Prostitute" means a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.

(E) "Harmful to juveniles" means that quality of any material or performance describing or representing nudity, sexual conduct,

sexual excitement, or sado-masochistic abuse in any form to which all of the following apply:

(1) The material or performance, when considered as a whole, appeals to the prurient interest in sex of juveniles;

(2) The material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles;

(3) The material or performance, when considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles.

(F) When considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply:

(1) Its dominant appeal is to prurient interest;

(2) Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite;

(3) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality;

(4) Its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose;

(5) It contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.

(G) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(H) "Nudity" means the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.

(I) "Juvenile" means an unmarried person under the age of eighteen.

(J) "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, or tape, or other tangible thing capable of arousing interest through sight, sound, or touch and includes an image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape, or similar data storage device.

(K) "Performance" means any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience.

(L) "Spouse" means a person married to an offender at the time of an alleged offense, except that such person shall not be considered the spouse when any of the following apply:

- (1) When the parties have entered into a written separation agreement authorized by section 3103.06 of the Revised Code;
- (2) During the pendency of an action between the parties for annulment, divorce, dissolution of marriage, or legal separation;
- (3) In the case of an action for legal separation, after the effective date of the judgment for legal separation.

(M) "Minor" means a person under the age of eighteen.

(N) "Mental health client or patient" has the same meaning as in section 2305.51 of the Revised Code.

(O) "Mental health professional" has the same meaning as in section 2305.115 of the Revised Code.

(P) "Sado-masochistic abuse" means flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained.

**Sec. 2907.31. (A)** No person, with knowledge of its character or content, shall recklessly do any of the following:

(1) Directly sell, deliver, furnish, disseminate, provide, exhibit, rent, or present to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles any material or performance that is obscene or harmful to juveniles;

(2) Directly offer or agree to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles any material or performance that is obscene or harmful to juveniles;

(3) While in the physical proximity of the juvenile or law enforcement officer posing as a juvenile, allow any juvenile or law enforcement officer posing as a juvenile to review or peruse any material or view any live performance that is harmful to juveniles.

**(B)** The following are affirmative defenses to a charge under this section that involves material or a performance that is harmful to juveniles but not obscene:

(1) The defendant is the parent, guardian, or spouse of the juvenile involved.

(2) The juvenile involved, at the time of the conduct in question, was accompanied by the juvenile's parent or guardian who, with knowledge of its character, consented to the material or performance being furnished or presented to the juvenile.

(3) The juvenile exhibited to the defendant or to the defendant's agent or employee a draft card, driver's license, birth record, marriage license, or other official or apparently official document purporting to show that the juvenile was eighteen years of age or over or married, and the person to whom that document was exhibited did not otherwise have reasonable cause to believe that the juvenile was under the age of eighteen and unmarried.

**(C)(1)** It is an affirmative defense to a charge under this section, involving material or a performance that is obscene or harmful to juveniles, that the material or performance was furnished or presented for a bona fide medical, scientific, educational, governmental, judicial, or other proper purpose, by a physician,

psychologist, sociologist, scientist, teacher, librarian, clergyman, prosecutor, judge, or other proper person.

(2) Except as provided in division (B)(3) of this section, mistake of age is not a defense to a charge under this section.

(D) (1) A person directly sells, delivers, furnishes, disseminates, provides, exhibits, rents, or presents or directly offers or agrees to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present material or a performance to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles in violation of this section by means of an electronic method of remotely transmitting information if the person knows or has reason to believe that the person receiving the information is a juvenile or the group of persons receiving the information are juveniles.

(2) A person remotely transmitting information by means of a method of mass distribution does not directly sell, deliver, furnish, disseminate, provide, exhibit, rent, or present or directly offer or agree to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present the material or performance in question to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles in violation of this section if either of the following applies:

(a) The person has inadequate information to know or have reason to believe that a particular recipient of the information or offer is a juvenile.

(b) The method of mass distribution does not provide the person the ability to prevent a particular recipient from receiving the information.

(E) If any provision of this section, or the application of any provision of this section to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of this section or related sections that can be given effect without the invalid provision or application. To this end, the provisions are severable.

(F) Whoever violates this section is guilty of disseminating matter harmful to juveniles. If the material or performance involved is harmful to juveniles, except as otherwise provided in this division, a violation of this section is a misdemeanor of the first degree. If the material or performance involved is obscene, except as otherwise provided in this division, a violation of this section is a felony of the fifth degree. If the material or performance involved is obscene and the juvenile to whom it is sold, delivered, furnished, disseminated, provided, exhibited, rented, or presented, the juvenile to whom the offer is made or who is the subject of the agreement, or the juvenile who is allowed to review, peruse, or view it is under thirteen years of age, violation of this section is a felony of the fourth degree.

**Sec. 2907.35. (A)** An owner or manager, or agent or employee of an owner or manager, of a bookstore, newsstand, theater, or other commercial establishment engaged in selling materials or exhibiting performances, who, in the course of business:

(1) Possesses five or more identical or substantially similar obscene articles, having knowledge of their character, is presumed to possess them in violation of division (A)(5) of section 2907.32 of the Revised Code;

(2) Does any of the acts prohibited by section 2907.31 or 2907.32 of the Revised Code, is presumed to have knowledge of the character of the material or performance involved, if the owner, manager, or agent or employee of the owner or manager has actual notice of the nature of such material or performance, whether or not the owner, manager, or agent or employee of the owner or manager has precise knowledge of its contents.

(B) Without limitation on the manner in which such notice may be given, actual notice of the character of material or a performance may be given in writing by the chief legal officer of the jurisdiction in which the person to whom the notice is directed does business. Such notice, regardless of the manner in which it is given, shall identify the sender, identify the material or performance involved, state whether it is obscene or harmful to juveniles, and bear the date of such notice.

(C) Sections 2907.31 and 2907.32 of the Revised Code do not apply to a motion picture operator or projectionist acting within the scope of employment as an employee of the owner or manager of a theater or other place for the showing of motion pictures to the general public, and having no managerial responsibility or financial interest in the operator's or projectionist's place of employment, other than wages.

(D)(1) Sections 2907.31, 2907.311, 2907.32, 2907.321, 2907.322, 2907.323, and 2907.34 and division (A) of section 2907.33 of the Revised Code do not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's control, including having provided capabilities that are incidental to providing access or connection to or from the electronic method of remotely transferring the information not under that person's control, including having provided transmission, downloading, intermediate storage, access software, or other related capabilities that are incidental to providing access or connection to or from a computer facility, system, or network, and that do not include the creation of the content of the material that is the subject of the access or connection.

(2) Division (D)(1) of this section does not apply to a person who conspires with an entity actively involved in the creation or knowing distribution of material in violation of section 2907.31, 2907.311, 2907.32, 2907.321, 2907.322, 2907.323, 2907.33, or

defense for prosecutions under the Revised Internet Restriction with respect to speech on the Internet. Even if online speakers had the ability to determine whether someone accessing their content was a minor, they would have no way of knowing whether the minor was accompanied by a parent or legal guardian; therefore, subsection (B)(2) also fails as a viable defense. The defense provided in subsection (C)(1) is equally unworkable because it applies only to a limited number of speakers. As such, the vast majority of online speakers are faced with the threat of criminal prosecutions against which they have no affirmative defenses.

61. O.R.C. § 2907.35(F) of the Revised Internet Restriction sets forth an additional affirmative defense that the defendant “has taken, in good faith, reasonable, effective, and appropriate actions under the circumstances to restrict or prevent access by juveniles to [Internet] material that is harmful to juveniles, including any method that is feasible under available technology.”

62. As other federal courts have found, “there are no good faith, reasonable, effective and appropriate actions to restrict or prevent access of minors” to Internet communications that do not unduly impact on the First Amendment rights of adults. ACLU v. Johnson, 4 F. Supp. 2d 1029, aff’d, 194 F.3d 1149 (10th Cir. 1999).

63. A violation of the Revised Internet Restriction is punishable by imprisonment of not more than 6 months or a fine of not more than \$1,000, or both, or, if the material is found to be obscene, is punishable by imprisonment for a period of 6 to 12 months or a fine of not more than \$2,500, or both.

#### **The Revised Internet Restriction’s Impact on Internet Speech**

64. Revised Internet Restriction bans certain constitutionally protected speech among adults and juveniles.

2907.34 of the Revised Code or who knowingly advertises the availability of material of that nature.

(3) Division (D)(1) of this section does not apply to a person who provides access or connection to an electronic method of remotely transferring information that is engaged in the violation of section 2907.31, 2907.311, 2907.32, 2907.321, 2907.322, 2907.323, 2907.33, or 2907.34 of the Revised Code and that contains content that person has selected and introduced into the electronic method of remotely transferring information or content over which that person exercises editorial control.

(E) An employer is not guilty of a violation of section 2907.31, 2907.311, 2907.32, 2907.321, 2907.322, 2907.323, 2907.33, or 2907.34 of the Revised Code based on the actions of an employee or agent of the employer unless the employee's or agent's conduct is within the scope of employee's or agent's employment or agency, and the employer does either of the following:

(1) With knowledge of the employee's or agent's conduct, the employer authorizes or ratifies the conduct.

(2) The employer recklessly disregards the employee's or agent's conduct.

(F) It is an affirmative defense to a charge under section 2907.31 or 2907.311 of the Revised Code as the section applies to an image transmitted through the internet or another electronic method of remotely transmitting information that the person charged with violating the section has taken, in good faith, reasonable, effective, and appropriate actions under the circumstances to restrict or prevent access by juveniles to material that is harmful to juveniles, including any method that is feasible under available technology.

(G) If any provision of this section, or the application of any provision of this section to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of this section or related sections that can be given effect without the invalid provision or application. To this end, the provisions are severable.

59. O.R.C. §§ 2907.31(B) and (C) seemingly provide defenses to liability under the Revised Internet Restrictions, as set forth above, where the online speaker has attempted to determine the age of the recipient or to assess parental permission.

60. Since there is no way for online speakers to check age-verifying documents of persons who access their content on the Internet, O.R.C. § 2907.31(B)(3) provides little or no

65. The United States Congress and the States of Michigan, New Mexico, Virginia, Arizona, and Vermont previously enacted laws similar to the Internet Restrictions, all of which were either held unconstitutional or enjoined on First Amendment grounds. Reno v. ACLU, 521 U.S. 844; ACLU v. Reno, 322 F.3d 240; Johnson, 194 F.3d 1149; PSINet, Inc., 167 F.Supp.2d 878; Cyberspace Communications, 238 F.3d 420; Napolitano, Civ. No. 00-506; American Booksellers, D. Vt. Apr. 18, 2002.

66. Speech on the Internet is generally available to anyone with access to this technology. Anyone who posts content to the Web, chat rooms, mailing lists, and discussion groups makes it automatically available to all users worldwide, including minors. Because minors have access to all of these forums, any “harmful to juveniles” communication in these fora could be punishable under the Revised Internet Restriction. Knowledge that the recipient is a specific minor is not required under the Revised Internet Restriction. Due to the very nature of the Internet, virtually every communication on the Internet may potentially be received by some minor and therefore may potentially be the basis for prosecution.

67. Because many of the terms in the Revised Internet Restriction are overbroad, the Revised Internet Restriction will further chill the speech of content providers on the Web. For example, the Revised Internet Restriction fails to distinguish between material that is “harmful” for older-as opposed to younger minors.

68. Further, the reference to “prevailing standards in the adult community with respect to what is suitable for juveniles” is overbroad because, due to the borderless nature of the Internet, it effectively imposes the standards of the most conservative county in Ohio on content providers and users in all other states even if other states have more liberal standards regarding what is considered “harmful to juveniles.” As a consequence, content providers and users of the

Web will likely err on the side of caution and not post content on the Web that they would otherwise have posted. In this way, the Revised Internet Restriction chills speech on the Web and thus causes irreparable harm to the First Amendment freedoms of online speakers.

69. Most of the millions of users on the Internet are speakers and content providers subject to the Revised Internet Restriction. Anyone who sends an e-mail, participates in a discussion group or chat room, or maintains a home page on the Web potentially is subject to the Revised Internet Restriction because his or her communication might be accessed by a minor in the State of Ohio. Given the technology of the Internet, there are no reasonable means for these speakers to ascertain the age of persons who access their messages, or for restricting or preventing access by minors to certain content. From the perspective of these speakers, the information that they make available on the public spaces of the Internet either must be made available to all users of the Internet, including users who may be minors, or it will not be made available at all.

70. For instance, when a user posts a message to a USENET discussion group, it is automatically distributed to hundreds of thousands of computers around the world, and the speaker has no ability to control whom will access his or her message from those computers. Similarly, users who communicate on mailing lists have no way to determine the ages of other subscribers to the list. Finally, content providers on the Web have no reasonable way to verify the age of persons who access their Web sites. For these reasons, there is no practical way for content providers to withhold material that may be “harmful to juveniles” — as prohibited by the Revised Internet Restriction — from people younger than 18 years old.

71. Because Internet speakers have no means to restrict minors in Ohio from accessing their communications, the Revised Internet Restriction effectively requires almost all

discourse on the Internet — whether among citizens of Ohio or among users anywhere in the world — to be at a level suitable for young children. The Revised Internet Restriction therefore bans an entire category of constitutionally protected speech between and among adults on the Internet.

72. In addition, any person who disagrees with or objects to sexual content on the Internet could cause a speaker to be prosecuted under the Revised Internet Restriction by having a minor view the online speech, resulting in a “heckler’s veto” of Internet speech. Further, any person who objects to sexual content on the Internet could cause a speaker to fear prosecution under the Revised Internet Restriction by claiming to be a minor, whether or not the person actually is one.

73. The Revised Internet Restriction also prohibits older minors from communicating and accessing protected speech. Even if some depictions or discussions of nudity and sexual conduct may be considered by some to be inappropriate or “harmful” for younger minors, many depictions and discussions — including safer sex resources — are valuable, at least for older minors.

74. Even if there were means by which speakers on the Internet could ascertain or verify the age of persons who receive their content (and there are no such means), requiring users to identify themselves and to disclose personal information in order to allow verification of age would prevent Internet users from maintaining their privacy and anonymity on the Internet.

**The Revised Internet Restriction’s Burden on Interstate Commerce**

75. The Revised Internet Restriction impacts the speech of online speakers across the nation — not just in the State of Ohio — because it is impossible for Internet users to determine the geographic location of persons who access their information. Internet users elsewhere have

no way to determine whether information posted to the Web, discussion groups, or chat rooms will be accessed by persons residing in the State of Ohio. The various sites on the Internet can be accessed by anyone in the world; therefore, there is no way for speakers to ensure that residents of Ohio will not receive their communications. Thus, all users, even if they do not reside in Ohio or intend to communicate with residents of Ohio, must comply with the Revised Internet Restriction.

76. The Revised Internet Restriction unjustifiably burdens interstate commerce and regulates conduct that occurs wholly outside the State of Ohio. The Revised Internet Restriction chills speakers outside of Ohio and curtails speech that occurs wholly outside the borders of Ohio, thereby causing irreparable harm. Like the nation's railways and highways, the Internet is by its nature an instrument of interstate commerce. Just as goods and services travel over state borders by train and truck, information flows across state and national borders on the Internet. Internet content providers that are located outside of Ohio, such as The Sexual Health Network, as well as people participating in chat rooms, newsgroups, or mail exploders, have no feasible way to determine whether their information will be accessed or downloaded by someone who is located in Ohio. Just as a user of the Internet cannot identify the age of another user of the Internet, one also cannot identify where a particular user or speaker resides, or from where a particular user may be accessing or downloading information on the Internet. Due to the nature of the technology, a non-Ohioan, even if he or she has no desire to reach anyone in Ohio, will be forced to self-censor his or her speech on the Internet in order to comply with the Revised Internet Restriction and avoid the possibility that a minor from Ohio will gain access to this information, thereby subjecting the speaker to prosecution in Ohio. Therefore, the Revised

Internet Restriction interferes significantly with the interstate flow of information and with interstate commerce.

77. Given the transient nature of the Internet, interstate and international computer communications networks, like the nation's railroads, need to be uniformly regulated across jurisdictions.

78. Because the definition of "harmful to juveniles" in O.R.C. § 2907.01(E) depends in part upon "prevailing standards in the adult community," the Revised Internet Restriction effectively imposes regulations on interstate speech that conflict with the community standards of other states and their local communities. If each state implements its own regulations, as Ohio has done, regarding what information can be legally distributed via this new technology, interstate commerce will be greatly inhibited and disrupted as persons around the world try to discern what can and cannot be communicated in the many different jurisdictions connected to these networks.

**The Ineffectiveness of the Revised Internet Restriction**  
**and the Effectiveness of Alternative Means**

79. Because of the global nature of the Internet, Defendants cannot demonstrate that the Revised Internet Restriction is likely to reduce the availability in Ohio of material that may be "harmful to juveniles" on the Internet.

80. It is estimated that approximately 40% of the content provided on the Internet originates abroad. All of the content on the global Internet is equally available to all Internet users worldwide and may be accessed as easily and as cheaply as content that originates locally. Because it is not technologically possible to prevent content posted abroad from being available

to Internet users in the State of Ohio, the Revised Internet Restriction will not accomplish its purported purpose of keeping inappropriate content from minors in Ohio.

81. Conversely, there are many alternative means that are more effective in assisting parents to limit a minor's access to certain material on the Internet if desired.

82. For example, commercial online services like America Online provide features that subscribers may use to prevent children from accessing chat rooms and to block access to Web sites and news groups based on keywords, subject matter, or specific newsgroup. These services also offer screening software that blocks messages containing certain words, and tracking and monitoring software to determine which resources a particular online user, including a child, has accessed. They also offer children-only discussion groups that are closely monitored by adults.

83. Online users can also purchase special software applications, known as user-based blocking programs, that enable them to control access to online resources. These applications allow users to block access to certain resources, to prevent children from giving personal information to strangers by e-mail or in chat rooms, and to keep a log of all online activity that occurs on the home computer.

84. User-based blocking programs are not perfect, both because they fail to screen all inappropriate material and because they inadvertently block valuable Internet sites. However, a voluntary decision by concerned parents to use these products for their children constitutes a far less restrictive alternative than the Revised Internet Restriction's imposition of criminal penalties for protected speech upon the universe of Internet users.

### **The Revised Internet Restriction's Impact on the Plaintiffs**

85. Plaintiffs interact with and use the Internet in a wide variety of ways, including as content providers, access providers, and users. The Revised Internet Restriction burdens Plaintiffs in all of these capacities. Plaintiffs who are users and content providers are subject to the Revised Internet Restriction. These Plaintiffs fear prosecution under the Revised Internet Restriction for communicating, sending, displaying, or distributing material that might be deemed by some to be "harmful to juveniles" under the Revised Internet Restriction. They also fear liability for material posted by others to their online discussion groups, chat rooms, mailing lists, and Web sites. Plaintiffs have no way to avoid prosecution under the Revised Internet Restriction and are left with two equally untenable alternatives: (1) risk prosecution under the Revised Internet Restriction, or (2) attempt to engage in self-censorship and thereby deny adults and older minors access to constitutionally protected material.

### **American Booksellers Foundation for Free Expression**

86. Plaintiff ABFFE has hundreds of bookseller members who are located from coast to coast, as well as in the State of Ohio. ABFFE's members are not "adult bookstores." Many member bookstores use the Internet and electronic communications to obtain information and excerpts of books from publishers, which may include nudity and which deal frankly with the subject of human sexuality. For example, member booksellers may review current popular titles such as Nymph by Francesa Lia Block, Pictures & Passion: A History of Homosexuality in the Visual Arts by James W. Saslow, and American Pastoral by Philip Roth, which include passages or images describing nudity and sexual conduct. Some member bookstores also have their own Web pages that discuss the contents of books sold in stores.

87. ABFFE members' right to offer and sell in Ohio a full range of mainstream materials, and learn about, acquire, and distribute material containing nudity and sexual conduct, and their patrons' right to purchase such materials, will be seriously infringed by the Revised Internet Restriction if it is not enjoined because ABFFE members and the publishers with whom they transact business will be forced to self-censor or risk prosecution under the Revised Internet Restriction.

**Association of American Publishers, Inc.**

88. Plaintiff AAP sues on behalf of its members who are providers of mainstream books and other materials to retailers in Ohio, as well as those who are content providers and users of the Internet. Although their businesses are primarily based on print publishing, AAP's members are very actively involved in the Internet. AAP's members create electronic products to accompany and supplement their printed books and journals; create custom educational material on the Internet; communicate with authors and others, receive manuscripts, and edit, typeset, and design books electronically; transmit finished products to licensed end-user customers; communicate with bookstores and other wholesale and retail accounts; and promote authors and titles online.

89. Many of AAP's members have Web pages and provide information to the world on the Internet. Some of the content provided by AAP's members contains nudity or sexual conduct. Many of the efforts to ban books in various communities have been directed at books published by AAP's members. AAP fears that the Revised Internet Restriction will spawn similar efforts directed at AAP's online publishing. If the Revised Internet Restriction is not enjoined, AAP members will be forced either to risk criminal liability or to stop providing online access to constitutionally protected books and other related materials.

**Freedom to Read Foundation, Inc.**

90. Plaintiff FTRF and its public and private library and librarian members serve as both access and content providers at physical libraries in the State of Ohio and on the Internet. Because the Internet offers their patrons a unique opportunity to access information for free, many libraries provide their patrons with facilities that patrons can use to access the Internet. Many libraries also have their own Web sites on the Internet and use the Internet to post card catalogues, to post information about current events, to sponsor chat rooms, to provide textual information or art, or to post online versions of materials from their library collections. Patrons can, for example, access the Web site of certain libraries from anywhere in the country to peruse the libraries' card catalogues, review an encyclopedia reference, or check a definition in the dictionary.

91. Some of the materials provided or made available by libraries contain nudity or sexual conduct. For example, FTRF member libraries' online card catalogues include such works as Forever by Judy Blume, Women on Top by Nancy Friday, Changing Bodies, Changing Lives by Ruth Bell, Our Bodies, Our Selves by the Boston Women's Health Collective and It's Perfectly Normal by Robie Harris.

92. If the Revised Internet Restriction is not enjoined, libraries will be inhibited from both posting and providing access to materials on the Internet that contain nudity or sexual conduct. Adult library patrons and Internet users would thus be deprived of access to these constitutionally protected library materials

**The National Association of Recording Merchandisers**

93. NARM's members sell sound recordings in the State of Ohio. Further, some of NARM's members are online music retailers who market their recordings by permitting Internet

users to download music samples before making a purchase with their credit cards. Permitting users to sample music before identifying themselves is an important feature of this marketing strategy. NARM members are concerned that they may be exposed to criminal liability under the Revised Internet Restriction simply for misjudging what may be deemed “harmful to juveniles” under an ambiguous and overbroad standard.

**Ohio Newspaper Association**

94. All the daily and most of the weekly newspapers in Ohio are members of ONA. Given the nature of the news they print and provide online, which often describes death, torture, cruelty, and crime in ways, ONA members may be considered by some to provide material that is “harmful to juveniles.” Unless the Revised Internet Restriction is enjoined, much of this news must be self-censored.

**The Sexual Health Network, Inc.**

95. Plaintiff The Sexual Health Network’s Web site (Sexualhealth.com) includes a wide array of sex education materials for people with disabilities and chronic diseases. Some resources are written specifically for The Sexual Health Network, while other materials are adapted from a variety of sources. Topics covered include both general matters (such as information about the effects of aging on sexuality or ideas to help increase women’s sexual pleasure), to disability-specific issues (such as sexual positions that may enhance intercourse for individuals with particular disabilities or advice on dealing with low sexual self-esteem that may accompany a disability).

96. The articles and other information available on Sexualhealth.com necessarily involve the use of sexually explicit language and visual images. Frank, detailed explanations are given in order for the information that the site provides to be useful to its viewers.

97. Sexualhealth.com also includes forums where individuals may ask each other questions and share information. This interactive feature helps to keep people coming back to the site because it provides constantly changing content and allows individuals who may be geographically isolated from others with similar disabilities or illnesses to experience a “support group” environment.

98. The Sexual Health Network’s Web site also provides links to other sexuality-related sites such as the Sinclair Intimacy Institute (producers of explicit educational videos designed to help couples improve their sex lives).

99. The Sexual Health Network fears that making the materials on the Sexualhealth.com site available online could be alleged to constitute “distribution” of “harmful to juveniles” material and thus subject it to prosecution under the Revised Internet Restriction.

100. If the Revised Internet Restriction is not enjoined, the Sexual Health Network must choose between risking criminal prosecution or curtailing its speech by removing from its site any material that could be alleged to be “harmful to juveniles.”

#### **Video Software Dealers Association.**

101. Members of Plaintiff VSDA produce the vast majority of video recordings in the United States, some of which include sexually frank, violent or otherwise provocative scenes. Some of those videos are available to the public on the Internet.

102. VSDA members are concerned that the act requires them to censor their videos. For this reason, VSDA believes that the act imposes unconstitutional press censorship that substantially limits the potential to enhance the diversity, availability, timeliness, quality, and utility of motion pictures on video.

103. If the Revised Internet Restriction is not enjoined, VSDA members might be criminally liable for constitutionally protected content if they do not self-censor.

## **CAUSES OF ACTION**

### **COUNT I**

#### **Violation of Adults' Rights Under the First and Fourteenth Amendments to the United States Constitution**

104. Plaintiffs repeat and re-allege paragraphs 1 through 103 as if set forth in their entirety.

105. The Revised Internet Restriction violates the rights of Plaintiffs, their members, and their users under the First and Fourteenth Amendments of the United States Constitution on its face and as applied because it effectively bans constitutionally protected speech by and between adults and the dissemination of such speech to adults.

106. The Revised Internet Restriction violates the rights of Plaintiffs, their members, and their users under the First and Fourteenth Amendments to the United States Constitution because it is not the least restrictive means of accomplishing any compelling governmental purpose.

107. The Revised Internet Restriction violates the rights of Plaintiffs, their members, and their users under First and Fourteenth Amendments to the United States Constitution because it is substantially overbroad.

## **COUNT II**

### **Violation of Minors' Rights Under the First and Fourteenth Amendments to the United States Constitution**

108. Plaintiffs repeat and re-allege paragraphs 1 through 107 as if set forth in their entirety.

109. The Revised Internet Restriction violates the rights of Plaintiffs, their members, and their users under the First and Fourteenth Amendments to the United States Constitution because it interferes with the rights of minors to access and view material that to them is protected by the First Amendment.

110. The Revised Internet Restriction is unconstitutional because it defines as harmful to juveniles, and therefore prohibits dissemination to minors of, material protected by the First Amendment as to them.

## **COUNT III**

### **Unconstitutional Vagueness Under the Fifth and Fourteenth Amendments to the United States Constitution**

111. Plaintiffs repeat and re-allege paragraphs 1 through 110 as if set forth in their entirety.

112. The Revised Internet Restriction violates the rights of Plaintiffs, their members, and their users in that it is unconstitutionally vague and indefinite because it fails to provide fair notice as to what constitutes a criminal offense.

#### **COUNT IV**

##### **Violation of the Right to Communicate and Access Information Anonymously Under the First and Fourteenth Amendments to the United States Constitution**

113. Plaintiffs repeat and re-allege paragraphs 1 through 112 as if set forth in their entirety.

114. The Revised Internet Restriction violates the rights of Plaintiffs, their members, and their users under the First and Fourteenth Amendments to the United States Constitution to communicate and access information anonymously, insofar as it effectively requires Internet users to identify themselves in order to gain access to constitutionally protected speech.

#### **COUNT V**

##### **Violation of the Commerce Clause of the United States Constitution**

115. Plaintiffs repeat and re-allege paragraphs 1 through 114 as if set forth in their entirety.

116. The Revised Internet Restriction violates the rights of Plaintiffs, their members, and their users under the Commerce Clause because it constitutes an unreasonable and undue burden on interstate and foreign commerce.

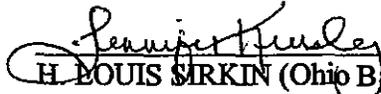
117. The Revised Internet Restriction violates the rights of Plaintiffs, their members, and their users under the Commerce Clause because it subjects interstate use of the Internet to inconsistent regulations.

**PRAAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request that the Court:

- A. Declare that the Revised Internet Restriction violates the First, Fifth, and Fourteenth Amendments to and the Commerce Clause of the United States Constitution;
- B. Preliminarily and permanently enjoin Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction, from enforcing those provisions;
- C. Award Plaintiffs their reasonable costs and fees pursuant to 42 U.S.C. § 1988; and
- D. Grant Plaintiffs such other and further relief as the Court deems just and proper.

Respectfully submitted,



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