

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X
AMERICAN LIBRARY ASSOCIATION;
FREEDOM TO READ FOUNDATION, INC.;
NEW YORK LIBRARY ASSOCIATION;
WESTCHESTER LIBRARY SYSTEM;
AMERICAN BOOKSELLERS FOUNDATION
FOR FREE EXPRESSION; ASSOCIATION
OF AMERICAN PUBLISHERS, INC.;
BIBLIOBYTES, INC.; MAGAZINE
PUBLISHERS OF AMERICA, INC.;
INTERACTIVE DIGITAL SOFTWARE
ASSOCIATION; PUBLIC ACCESS
NETWORKS CORPORATION; ECHO;
NEW YORK CITY NET; ART ON THE
NET; PEACEFIRE; and AMERICAN
CIVIL LIBERTIES UNION,

Plaintiffs,

v.

GEORGE PATAKI, in his official capacity
as Governor of the State of New York; and
DENNIS VACCO, in his official capacity
as Attorney General of the State of New
York,

Defendants.
-----X

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

97 CIV. 0222
Index No.

PRELIMINARY STATEMENT

1. The State of New York has enacted a broad censorship statute that imposes severe restrictions on the availability, display and dissemination of constitutionally protected, non-obscene materials on the Internet by making it a felony to use a computer communication system to disseminate "indecent" material that is "harmful to minors."

Section 5 of 1996 N.Y. Laws 600 (codified at N.Y. Penal Law § 235.21(3)) (hereinafter the “Act”). This action seeks to have the Act declared facially unconstitutional and void, and to have the State enjoined from enforcing the Act, by reason of the First, Fifth and Fourteenth Amendments and the Commerce Clause of the United States Constitution.

2. The Act is similar to the federal Communications Decency Act (“CDA”), Pub. L. No. 104-104, § 502, 110 Stat. 133-139 (1996) (codified at 47 U.S.C. § 223). Both the CDA and the Act attempt to restrict minors from having access to certain types of “indecent,” speech that is clearly constitutionally protected among adults. Two separate three-judge federal courts have found the CDA to be unconstitutional because it restricts the communication of protected speech among adults and have entered preliminary injunctions barring enforcement of the federal statute. See Shea v. Reno, 930 F. Supp. 916 (S.D.N.Y. 1996), appeal docketed, No. 96-595 (S. Ct. 1996); ACLU v. Reno, 929 F. Supp. 824 (E.D. Pa. 1996), prob. juris. noted, 65 U.S.L.W. 3414 (S. Ct. Dec. 6, 1996) (No. 96-511). The reasoning of the opinions striking down the CDA render the Act equally unconstitutional.

3. The Act regulates speech 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 or television, print, the mails, or even the village green. Literally hundreds of millions of individuals can now engage in interactive communication on a national and global scale via computer networks that are connected to the Internet. With a few simple tools and at a very low cost, the Internet enables average citizens 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 with the tools to seek out exactly the information they need and to respond with their own information if desired.

4. Because of the way the Internet works, the Act's prohibition on certain communications with minors effectively would ban those same communications between adults. The Act targets speech that is constitutionally protected for adults, including, for example, valuable works of literature and art, 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 or sexually oriented language. There are no reasonable technological means for users of the Internet to ascertain the age of persons who access their communications, or of restricting or preventing access by minors to certain content. The Act will thus reduce the adult population in cyberspace to reading and communicating only material that is suitable for young children. In addition, because the Act makes no allowance for the varying levels of maturity of minors of different ages, the Act prohibits speech that is valuable and constitutionally protected for older minors, but that may not be appropriate for younger children.

5. The speech at issue in this case does not include obscenity, child pornography, speech used to entice or lure minors into inappropriate activity, harassing speech, or other speech lacking First Amendment protection.

6. Plaintiffs represent a broad range of individuals and entities who are speakers, content providers and access providers on the Internet. Plaintiffs include libraries, booksellers and publishers who provide content on and access to the Internet; Internet service providers who provide access to the Internet; and many individual users of and content providers to World Wide Web sites, chat rooms and discussion groups on the Internet. The Act directly violates the First Amendment rights of plaintiffs, their members and tens of millions of other speakers and users of the Internet.

7. In addition, the Act violates the Commerce Clause because it regulates commerce occurring wholly outside of the State of New York, because it imposes an impermissible burden on interstate and foreign commerce and because it subjects interstate use of the Internet to inconsistent state regulations.

JURISDICTION AND VENUE

8. This case arises under the United States Constitution and the laws of the United States and presents a federal question within this Court's jurisdiction under Article III of the federal Constitution and 28 U.S.C. § 1331 and 28 U.S.C. § 1343(3). This action is brought pursuant to 42 U.S.C. § 1983.

9. The Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.

10. The Court has the authority to award costs and attorneys' fees under 42 U.S.C. § 1988.

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

THE PARTIES

12. The named plaintiffs are briefly described below. The impact of the Act on the plaintiffs' communications is described more fully in paragraphs 88-141.

13. Plaintiff AMERICAN LIBRARY ASSOCIATION ("ALA"), founded in 1876, is a non-profit, educational organization committed to the preservation of American libraries as resources that are indispensable to the intellectual, cultural, and educational welfare of the nation. The ALA's direct membership includes over 3,000 libraries, more than 55,000 librarians, as well as other entities and individuals.

14. Plaintiff FREEDOM TO READ FOUNDATION, INC. ("FTRF") is a non-profit membership organization established in 1969 by the ALA 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. ALA and FTRF sue on their own behalf, on behalf of their members who use online computer communication systems, and on behalf of the patrons of their member libraries.

15. Plaintiff NEW YORK LIBRARY ASSOCIATION ("NYLA") is a nonprofit organization which dedicates itself to advancing the profession of librarianship and information services as well as advancing the use and understanding of libraries. NYLA has approximately 3,000 members, both individuals and institutions, including public, school, academic, and special libraries, and their librarians, trustees, and support staff. NYLA sues

on behalf of its members who use computer communication systems and the patrons of their member libraries.

16. Plaintiff WESTCHESTER LIBRARY SYSTEM (“WLS”), a state-chartered and funded, cooperative library system, serves the people of Westchester County, New York through 38 independent member public libraries in Westchester County. All WLS member libraries provide online access to information databases and the World Wide Web. In addition, WLS maintains its own site on the World Wide Web that provides local and regional information, access to the WLS card catalogue and direct links to hundreds of sites on the World Wide Web. WLS sues on its own behalf and on behalf of its member libraries and their patrons.

17. 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, most of whose members are bookstores in the United States, sues on its own behalf, on behalf of its members who use online computer communication systems, and on behalf of the patrons of their member bookstores.

18. Plaintiff ASSOCIATION OF AMERICAN PUBLISHERS, INC. (“AAP”) is a national association in the United States of publishers of general books, textbooks, and educational materials. Its approximately 200 members include most of the major commercial book publishers in the United States and many smaller or non-profit

publishers, including university presses and scholarly associations. AAP's members publish most of the general, educational, and religious books produced in the United States and are active in all facets of the electronic medium, including publishing a wide range of electronic products and services. AAP sues on its own behalf, on behalf of its members who use online computer communication systems, and on behalf of the readers of its members' books.

19. Plaintiff BIBLIOBYTES, INC. is a company that sells and produces electronic books via a World Wide Web site on the Internet. It is incorporated in New Jersey and its principal place of business is in Hoboken, New Jersey. It sues on its own behalf and on behalf of those who use its online computer communication system.

20. Plaintiff MAGAZINE PUBLISHERS OF AMERICA, INC. ("MPA") is a trade association for the consumer magazine industry. MPA has a membership of approximately 200 companies, representing almost 800 general interest consumer magazines, ranging from journals of literature, to special interest publications, to information providers, to multi-million circulation publications. Most of these magazines, in addition to being published in print form, are now or soon will be published in electronic formats available to the public on the Internet or through online service providers. MPA sues on its own behalf, on behalf of its members who use computer communication systems and on behalf of the readers of its members' publications.

21. Plaintiff INTERACTIVE DIGITAL SOFTWARE ASSOCIATION ("IDSA") is a non-profit trade association. IDSA's 45 members publish over 75% of entertainment software in the United States. Many IDSA members market their software through World Wide Web sites that often include segments of the titles referred to as

“demos.” Some IDSA members make their titles available online for play. The IDSA sues on behalf of its members who use computer communication systems and on behalf of users of its members’ software.

22. Plaintiff PUBLIC ACCESS NETWORKS CORPORATION (“Panix”) is an Internet service provider located in New York City. Panix provides access to the Internet to approximately 6,500 individual and business subscribers throughout New York City and the surrounding area. Panix also provides World Wide Web site maintenance, file storage, and server support to organizations that seek to put information on the World Wide Web. In addition to serving as an access provider, Panix provides its own Internet content and assists its customers in presenting content on the Internet; Panix also hosts online discussion groups and chat rooms. Panix sues on its own behalf and on behalf of its subscribers and other users of its services.

23. Plaintiff ECHO is an Internet service provider that offers an online community and bulletin board system for people interested in reading, writing, and conversation. ECHO offers e-mail services and online conferences, and allows subscribers to create their own home pages on the World Wide Web. Founded six years ago in New York City, Echo has over 4,000 subscribers, who come together to share their common passions in over 50 “conferences” -- online discussion groups on topics as diverse as love, media, religion, civil liberties, culture and travel. ECHO sues on its own behalf and on behalf of its subscribers and other users of its services.

24. Plaintiff NEW YORK CITY NET (“NYC Net”) is an Internet service provider for the online gay and lesbian community. Launched in 1994, NYC Net has

approximately 2,000 subscribers and is the New York City area's leading gay and lesbian online service and Internet service provider, as well as a national virtual community center for the gay and lesbian community. NYC Net provides access services and content specifically oriented to gay and lesbian interests, including a large number of online discussion groups and chat rooms. NYC Net sues on its own behalf and on behalf of its subscribers and other users of its services.

25. Plaintiff ART ON THE NET ("art.net") is a not-for-profit international artist site on the World Wide Web. Based in Menlo Park, California, Art on the Net assists over 110 artists in maintaining online studio or gallery spaces. In addition, Art on the Net hosts mailing lists for artistic communities regarding relevant issues and events and posts information about art events and artist shows. Art on the Net sues on its own behalf, on behalf of the artists who utilize its site and on behalf of users of its service.

26. Plaintiff PEACEFIRE is a non-profit organization created (i) to disseminate information about the rights of minors in the context of Internet use and censorship and (ii) to promote equal rights for minors who use the Internet. Peacefire currently has over one hundred members, most of whom are older minors. Peacefire sues on behalf of itself and on behalf of its members who use online computer communication systems.

27. Plaintiff AMERICAN CIVIL LIBERTIES UNION ("ACLU") is a nationwide, nonpartisan organization of nearly 300,000 members dedicated to defending the principles of liberty and equality embodied in the Bill of Rights. The ACLU is incorporated in the District of Columbia and has its principal place of business in New York City. The

ACLU sues on its own behalf, on behalf of others who use its online computer communication systems, and on behalf of its members who use online computer communication systems.

28. Defendant GEORGE PATAKI is the Governor of the State of New York. As the Governor, Pataki is vested with the executive power of the State of New York and must take care that the laws of the State of New York are faithfully executed. Pursuant to this executive power, Pataki signed the Act into law on November 1, 1996.

29. Defendant DENNIS VACCO is the Attorney General of the State of New York. As the Attorney General, Vacco has the duty and responsibility for the enforcement of the laws of the State of New York. He also retains general prosecutorial authority to ensure that the laws are faithfully executed.

FACTS

The Internet

30. The Internet is a decentralized, global medium of communications 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 approximately 9.4 million host computers, 159 countries, and 40 million users. By some estimates, there will be as many as 200 million Internet users by the year 1999.

31. 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.

32. 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.

33. The Internet is an invaluable information source and communication tool which is used by millions of users in innumerable ways. Minors, for example, use the Internet to do school homework, seek information, play games and communicate with others.

34. There are also computer communication systems that are independent of the Internet. For example, computer bulletin board systems ("BBSs") are stand-alone computer systems that allow subscribers to dial directly from their computers into a BBS host computer. BBSs generally offer their users a variety of information services, including e-mail, online discussion groups, and information databases. BBSs generally serve people interested in specialized subject matter or people from a particular geographic region.

How Individuals Access the Internet

35. Individuals have several easy means of gaining access to computer communication systems in general, and to the Internet in particular. Many educational institutions, businesses, and individual communities maintain a computer network linked

directly to the Internet and provide account numbers and passwords enabling users to gain access to the network.

36. 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”) offer their subscribers modem access to computers or networks linked directly to the Internet. Most ISPs charge a monthly fee, but some provide free or very low-cost access.

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

39. There are also a growing number of “cyberspace cafes,” where customers, for a small hourly fee, can use computers provided by the cafe to access the Internet.

Ways of Exchanging Information on the Internet

40. Most users of the Internet are provided with a username, password and e-mail address that allow them to log on to the Internet and to communicate with other users. Many usernames are pseudonyms or pen names often known as “handles”; these “handles” often provide users with a distinct online identity and help to preserve their anonymity and privacy. The username 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 username and e-mail address (unless the user reveals other information about herself through her messages).

41. 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

42. 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

43. Another of the most popular forms of communication over computer networks are online discussion groups. 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 or organizations, or by particular computer networks.

44. “USENET” newsgroups are a very popular set of bulletin board discussion groups available on the Internet and other networks. There are currently USENET newsgroups on more than 15,000 different subjects, and over 100,000 new messages are posted to these groups each day.

45. 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 “listservs.”

46. “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, commercial online services, and local BBSs. Although chat rooms are often set up by particular organizations or networks, any individual user can start an online “chat.”

47. Online discussion groups, mailing lists, and chat rooms create an entirely new global public forum -- analogous to the village green -- where individuals can associate and communicate with others who have common interests, and engage in discussion or debate on every imaginable topic.

The World Wide Web

48. The World Wide Web (“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 is comprised of 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.

49. The Web was created to serve 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.

50. 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. At the same time, 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 to other individuals.

51. To gain access to the information available on the Web, a person uses a Web “browser” -- software, such as Netscape Navigator, Mosaic, 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.

52. 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, for example, from tables of contents to particular pages, and from text to cross-references, footnotes, and other forms of information. For example, plaintiff ALA's Web page provides links to several other Web pages also offered by ALA, including "Libraries Online," "Library Promotional Events," the "ALA Bookstore," and others.

53. Links may also take the user from the original Web site to another Web site on a different computer connected to the Internet. For example, plaintiff BiblioBytes, an online seller of electronic books, has a Web page with a link to another bookseller, Electronic Bookaisle, that sells certain titles not carried by BiblioBytes.

54. 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 easily searched and accessed.

55. A number of "search engines" -- such as Yahoo, Magellan, Alta Vista, WebCrawler, and Lycos -- are available free of charge to help users navigate the World Wide Web. Once a user has accessed the search service, 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.

56. As can be seen from the various ways that individuals can exchange information and communicate via this new technology, the Internet is "interactive" in ways that distinguish it from traditional media. For instance, users are not passive receivers of information as with television and radio; rather, one can easily respond to the material they

receive or view 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.

The Range of Content Available on the Internet

57. The information made available on the Internet is as diverse as its users. 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 see the latest photographs transmitted by the Jupiter space probe.

58. Content on the Internet is provided by the millions of Internet users worldwide, and the content ranges from academic writings, to art, to humor, to literature, to medical information, to music, to news, to sexually oriented material. At any one time, the Internet serves as the communication medium for literally tens of thousands of global conversations, political debates, and social dialogues.

59. Although the overwhelming majority of the information on the Internet is not sexually oriented, there is material available on the Internet that might be considered

indecent in some communities. 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 from the AIDS organization ACT UP on how to practice safer sex; and discuss female genital mutilation in plaintiff ECHO's "politics conference." Much of this material is similar, if not identical, to material that is routinely distributed through libraries, bookstores, record stores, and newsstands.

60. In addition, in the course of online conversations, discussions, debates and e-mail exchanges -- just as in conversations on a park bench or street corner -- many online speakers use language that might be considered indecent.

The Statutory Language at Issue

61. In 1996, the New York Senate and State Assembly amended § 235.21 of the New York Penal Law. The Act was signed by Governor George Pataki and became effective on November 1, 1996.

62. The Act amends § 235.21 by adding a new subdivision 3, entitled "Disseminating indecent material to minors in the second degree." The Act makes it a crime for a person:

Knowing the character and content of the communication which, in whole or in part, depicts actual or simulated nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors, [to] intentionally use[] any computer communication system allowing the input, output, examination or transfer, of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person who is a minor.

63. Violation of § 235.21 is a Class E felony punishable by one to four years in prison.

64. Speech on the Internet is generally available to anyone with access to this technology. Thus, the Act restricts speech over the World Wide Web, chat rooms, mailing lists, and discussion groups. In other words, because minors have access to all of these forums, any communication in these forums could be subject to the Act because it constitutes “use [of] any computer communication system . . . to initiate or engage in . . . communication with a person who is a minor.” As the New York State Executive Chamber explained, the Act does not require “proof that the defendant knew she was communicating, or intended to communicate, with a minor.” Memorandum from the State of New York Executive Chamber filed with Senate Bill No. 210-E (Sept. 4, 1996).

65. The Act also applies to both commercial and non-commercial dissemination of material, and thus specifically applies to libraries, educational institutions, and non-profit organizations.

66. Indecent material for the purpose of the relevant section is defined as material that is “harmful to minors.” Section § 235.20(6) defines “harmful to minors” for purposes of the Act as:

that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when it:

- (a) Considered as a whole, appeals to the prurient interest in sex of minors; and
- (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
- (c) Considered as a whole, lacks serious literary, artistic, political and scientific value for minors.

67. The Act makes no distinction between material that may be “harmful” to very young minors and material that may be “harmful” to older minors, such as teenagers.

68. The Act does not define the relevant “community” for purposes of determining what is “patently offensive” in the global medium of cyberspace.

69. The Act also does not define what comprises a work “considered as a whole” in the context of the Internet, in which, for example, the World Wide Web is a seamless, interconnected set of texts, sound, graphics and games provided by different content providers and located on different computers around the world.

70. The Act provides six affirmative defenses to criminal liability under Section 235.21(3). Section 235.15(1) provides the following affirmative defense to prosecution under § 235.21(3):

In any prosecution for obscenity, or disseminating indecent material to minors in the second degree in violation of subdivision three of section 235.21 of this article, it is an affirmative defense that the persons to whom allegedly obscene or indecent material was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational, governmental or other similar justification for possessing, disseminating or viewing the same.

71. Section 235.20 provides the following four defenses to prosecution under § 235.21(3):

- (a) The defendant made a reasonable effort to ascertain the true age of the minor and was unable to do so as a result of the actions taken by the minor; or
- (b) The defendant has taken, in good faith, reasonable, effective and appropriate actions under the circumstances to restrict or prevent access by minors to materials specified in such subdivision, which may involve any appropriate measures to restrict minors from access to such communications, including any method which is feasible under available technology; or

- (c) The defendant has restricted access to such materials by requiring use of a verified credit card, debit account, adult access code or adult personal identification number; or
- (d) The defendant has in good faith established a mechanism such that the labelling, segregation or other mechanism enables such material to be automatically blocked or screened by software or other capabilities reasonably available to responsible adults wishing to effect such blocking or screening and the defendant has not otherwise solicited minors not subject to such screening or blocking capabilities to access that material or to circumvent any such screening or blocking.

72. Section 235.24 provides the following defense to § 235.21(3):

No person shall be held to have violated such provisions solely for providing access or connection to or from a facility, system, or network not under that person's control, including transmission, downloading, intermediate storage, access software, or other related capabilities that are incidental to providing such access or connection that do not include the creation of the content of the communication.

Exceptions to this defense for conspiracies and co-ownership situations and an employer liability defense are set out in subsections 235.24 (1)(a)-(b) and (2).

The Impact of the Act on the Internet

73. Because of the nature of the Internet, the Act will ban certain constitutionally protected speech among adults.

74. Most of the millions of users on the Internet are speakers and content providers subject to the terms of the Act. Anyone who sends an e-mail, participates in a discussion group or chat room, or maintains a home page on the World Wide Web is subject to the Act because their communication might be accessed by a minor in the State of New York. 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 of 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 must either be made available to all users of the Internet, including users who may be minors, or not made available at all.

75. 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 who will access 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, the overwhelming majority of content providers on the World Wide Web have no way to verify the age of persons who access their Web sites. Although some commercial content providers could require their users to provide a credit card before obtaining information, this option is simply not practical for the majority of Web sites, whether commercial or non-commercial.

76. Similarly, the vast majority of speakers on the Internet also lack any mechanism for labeling or segregating specific communications -- whether distributed by e-mail, discussion groups, mailing lists, chat rooms or Web sites -- in a way that would enable those communications to be automatically blocked or screened from minors by software or other capabilities.

77. Even if age verification, screening, or segregation were technologically or economically feasible, such requirements would fundamentally alter the nature and values of the new computer communication medium, which is characterized by spontaneous, instantaneous, albeit often unpredictable, communication by hundreds of thousands of

individual speakers around the globe and provides an affordable and often seamless means of accessing an enormous and diverse body of information, ideas and viewpoints. Pre-registration or screening requirements would undermine the unique characteristics of this new technology.

78. Finally, because online speakers have no ability to identify who accesses their messages, it also is not possible for a speaker or content provider in cyberspace to determine whether the “persons” or the “audience” to whom they are communicating have any “scientific, educational, governmental” or other justification for viewing their communications.

79. For these reasons, there is no practical way for content providers to keep sexually frank materials from minors on the Internet. Thus, none of the defenses in the Act offer an effective and reasonable means for the plaintiffs to insulate themselves from criminal liability under the Act.

80. In addition, the Act’s age verification and identification requirements would make it impossible for online users to engage in constitutionally protected anonymous speech on matters of public and private importance.

81. Moreover, the Act will impact speech across the entire Internet -- not just in the State of New York -- because it is likewise impossible for Internet users to determine the geographic location of persons who access their information. An Internet user has no way to determine whether information posted to the World Wide Web, discussion groups or chat rooms will be accessed by persons residing in the State of New York. The various sites on the Internet can be accessed by anyone in the world, and therefore there is

no way for speakers to ensure that New Yorkers will not view their communications. Thus, all users, even if they do not reside in New York or intend to communicate with New Yorkers, must comply with the terms of the Act.

82. Because it is technologically and economically infeasible for the majority of Internet speakers to restrict minors from New York from accessing their communications, the Act effectively would require almost all discourse on the Internet -- whether among New Yorkers or among users anywhere in the world -- to be at a level suitable for young children. The Act therefore would ban an entire category of constitutionally protected speech between adults on the Internet.

The Ineffectiveness of the Act and the Effectiveness of Alternative Means

83. Because of the global nature of the Internet, defendants cannot demonstrate that the Act would likely reduce the availability of sexual content on the Internet to minors in New York State.

84. As of May 1996, at least 40% of the content provided on the Internet originated abroad. All of the content on the global Internet is equally available to all Internet users worldwide and may be accessed as easily 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 New York, the Act will not accomplish its purported purpose of keeping sexually oriented content from minors in New York State. In addition, adult-oriented content providers in the United States could simply circumvent the Act by moving their content to sites located abroad.

85. Conversely, there are many alternative means that are more effective at assisting parents in limiting a minor's access to certain material if desired.

86. Commercial online services like America Online, Prodigy, and CompuServe provide features to prevent children from accessing chat rooms and to block access to Web sites and newsgroups 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 (e.g., a child) has accessed. They also offer children-only discussion groups that are closely monitored by adults.

87. Online users can also purchase special software applications, including SurfWatch and Net Nanny, 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.

Relationship of Plaintiffs to the Act

88. Plaintiffs (and the plaintiffs' members, subscribers, patrons, and customers) interact with and use the Internet in a wide variety of ways, including as content providers, access providers, and users. The Act burdens plaintiffs in all of these capacities.

89. Plaintiffs who are users and content providers are expressly subject to the Act. These plaintiffs fear prosecution under the Act for communicating, sending, displaying, or distributing material that might be deemed indecent by certain communities in New York State. 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 comply with the Act and are left with two equally untenable alternatives: (i) risk prosecution under the Act, or (ii) attempt to engage in self-censorship and thereby deny adults and older minors access to constitutionally protected material.

90. Plaintiffs who are access providers are expressly subject to the Act. Many plaintiffs who are access providers are also content providers, and they are unclear how their dual role will affect their liability under the Act. Although the Act provides a limited defense for access providers, these plaintiffs reasonably fear that the defense will not be construed and applied as broadly as is necessary to protect their rights, and they fear they may be directly subject to prosecution under the Act.

91. Due to the interstate and international flow of information via the Internet, the Act will unjustifiably burden interstate commerce and regulate conduct that occurs wholly outside the State. For instance, the Act will chill speakers outside of New York State and speech that occurs wholly outside the borders of New York State. Content providers, such as BiblioBytes and Art on the Net, which are located outside of New York State have no feasible way to determine whether their information will be accessed or downloaded by someone who is located in New York State. 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-New Yorker will be forced to self-censor her speech on the Internet if she wishes to comply with the Act. If she does not, she risks the possibility that a minor from New York will gain

access to this information and subject her to prosecution in New York State. Therefore, the Act will interfere significantly with the interstate flow of information and likewise with interstate commerce.

92. Moreover, interstate and international computer communication networks constitute an area of the economy and society that particularly demands uniform rules and regulations. If each state implements its own regulations, as New York 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.

**American Library Association (“ALA”) and
Freedom to Read Foundation, Inc. (“FTRF”)**

93. Plaintiffs ALA and FTRF and their library members serve as both access and content providers 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 World Wide Web sites on the Internet and use the Internet to post card catalogues, post information about current events, sponsor chat rooms, provide textual information or art, or 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.

94. Some of the materials provided or made available by libraries are sexually oriented. For example, ALA 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.

95. If the Act is not enjoined, libraries would be chilled from both posting and providing access to materials on the Internet that might be deemed indecent by some communities because of fear of prosecution. Adult library patrons and Internet users would thus be deprived of access to these constitutionally protected library materials. Given the global and unrestricted nature of the Internet and the past attempts by persons to ban literature and reference items from library collections, many of ALA's and FTRF's members may choose not to post a substantial amount of expressive material at all -- material that many adults might consider useful for themselves or their own children -- rather than risk prosecution for posting material that some community in New York might deem indecent.

New York Library Association ("NYLA")

96. Plaintiff NYLA and its library members also acknowledge that the Internet provides a unique and far-reaching means for libraries to make information available to the public. If not enjoined, the Act would have a chilling effect on the basic mission of NYLA's member libraries: to make available to all people the widest array of information possible and to maintain the confidentiality of the user. The Act would impede NYLA's member libraries from providing information to patrons on a confidential basis by requiring that libraries verify identification or some other proof of adult status before allowing a patron using library facilities to access sexually oriented information over the Internet and before allowing an Internet user to access similar information on these libraries' Web sites.

97. The diverse information provided or made available by NYLA's members over the Internet contains some material that is sexually oriented. For example, member patrons can use library-provided facilities to access a sexually oriented article about rap artists Dr. Dre and Snoop Doggy Dog from Rolling Stone magazine and an Elle magazine article regarding biological explanations for women's sexual infidelity.

98. If the Act is not enjoined, it would force NYLA's member libraries to avoid providing this constitutionally protected information on the Internet and to stop providing Internet access to their patrons or otherwise risk criminal prosecution under the Act. Library patrons and Internet users would thus be denied access to constitutionally protected library materials because of the Act's chilling effect on free speech.

Westchester Library System ("WLS")

99. Plaintiff WLS, as a content and access provider, offers its patrons and other Internet users access to diverse information and resources. WLS libraries maintain approximately 130 computers that, through the WLS online network, provide its patrons with access to different commercial and library databases and the World Wide Web. In addition, WLS maintains its own Web site which offers local and regional information and direct links to hundreds of sites and home pages on the World Wide Web.

100. Some of the content that can be accessed by WLS patrons might be considered indecent in some communities. For example, WLS patrons can also use the library's "NetExpress" direct link to art museums to view nude paintings by Paul Cezanne and Henri Matisse. In addition, WLS libraries provide access to the search engine Yahoo, which has a sex directory through which a WLS patron can access sexually oriented sites.

101. WLS fears that, if the Act is not enjoined, it would either have to terminate or severely limit the scope of the online services it provides to its patrons or risk criminal prosecution. WLS patrons fear that they would then be denied access to the constitutionally protected information and resources provided by WLS Internet access.

American Booksellers Foundation for Free Expression (“ABFFE”)

102. Plaintiff ABFFE has hundreds of bookseller members from coast to coast, as well as in the State of New York, many of whom sell materials that deal frankly with the subject of human sexuality although ABFFE’s members are not “adult bookstores.” For example, some member bookstores have their own Web pages that discuss the content of books sold in stores. Most member bookstores use the Internet and electronic communications to obtain information and excerpts of books from publishers. For example, member booksellers may review current popular titles such as Primary Colors by Anonymous and Sabbath’s Theatre by Philip Roth, which include sexually oriented passages.

103. ABFFE members’ right to learn about, acquire, and distribute sexually oriented materials, and their patrons’ right to purchase such sexually oriented materials, would be seriously infringed by the Act if it is not enjoined because ABFFE members and the publishers with which they transact business would be forced to self-censor or risk prosecution under the Act.

Association of American Publishers, Inc. (“AAP”)

104. Plaintiff AAP sues on behalf of its members who are content providers and users of the Internet. Although their business is 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, receiving manuscripts, and editing, typesetting, and designing books electronically; transmit finished product to licensed end-user customers; communicate with bookstores and other wholesale and retail accounts; and promote authors and titles online.

105. Many of AAP's members have Web sites and provide information to the world on the Internet. Some of the content provided by AAP's members might be considered indecent in some communities. For example, AAP member Bantam Doubleday Dell uses a Web page and e-mail to sell its catalogue of books, which includes Are You There God? It's Me Margaret by Judy Blume and The Chocolate Wars by Robert Cormier.

106. Many of the efforts to ban books in various communities have been directed at books published by AAP's members, and AAP fears that the Act will spawn similar efforts directed at AAP's online publishing. If the Act is not enjoined, AAP members would be forced either to risk criminal liability or stop providing online access to constitutionally protected books and other related materials that might be deemed indecent by some communities.

BiblioBytes, Inc.

107. Plaintiff BiblioBytes produces electronic books for sale over the World Wide Web; BiblioBytes has over a thousand titles in a variety of genres including romance novels, erotica, classics, adventure and horror stories.

108. BiblioBytes offers some books and information on its site free of charge. Users of the BiblioBytes site can also purchase electronic books by credit card or

through other payment options. BiblioBytes now offers its entire collection to all individuals, including minors. BiblioBytes fears prosecution under the Act for disseminating information that may be deemed indecent.

109. Some of the electronic publications offered by BiblioBytes contain text that is sexually oriented. For example, Bibliobytes offers a free version of the novel Fanny Hill: Memoirs of a Woman of Pleasure, by John Cleland, which has been found by one New York court to be “harmful to minors.” BiblioBytes offers for sale Love Ain’t Nothing But Sex Misspelled, a collection of short stories by Harlan Ellison which contains sexually oriented passages, and Panaflex X, a fictional account of a woman trying to get out of the pornography industry.

110. If the Act is not enjoined, BiblioBytes would have to choose between no longer offering books that might be deemed indecent or risking prosecution under the Act.

Magazine Publishers of America, Inc. (“MPA”)

111. Plaintiff MPA sues on behalf of its members, who are consumer magazines throughout the United States that, in addition to being published in print form, are now or soon will be published in electronic formats available to the public on the Internet or through online service providers. Some of these magazines contain sexually frank material that could be deemed indecent in some communities.

112. Some MPA members are concerned that the Act will require them to censor the online version of their print editions. For this reason, MPA believes that the Act imposes unconstitutional press censorship that will substantially limit the Internet’s potential to enhance the diversity, availability, timeliness, quality, and utility of magazines by creating

a powerful disincentive for publication through the use of interactive media technologies. If the Act is not enjoined, MPA members might be criminally liable for their sexually oriented content if they do not self-censor.

Interactive Digital Software Association (“IDSA”)

113. Plaintiff IDSA sues on behalf of its members, who are content providers and on behalf of users of its members’ software titles. In addition to publishing software for sale in retail outlets, IDSA members also make their entertainment software available to the public on the Internet for demonstration (“demos”), purchase and play. Some IDSA members host chat rooms on strategy and permit consumers to engage in playing games online against or with each other.

114. IDSA members are concerned that they could face criminal prosecution under the Act for online publication of software marketed and labeled for adult players or the operation of chat rooms intended for adult participants.

Public Access Networks Corporation (“PANIX”)

115. Plaintiff Panix is an access provider and content provider on the Internet; its subscribers use the Internet to communicate in a variety of ways. As an access provider and content provider, Panix fears that it is at risk of prosecution under the Act for assisting others in disseminating material that might be deemed indecent. In addition, Panix subscribers fear criminal liability for content that they post on their home pages and remarks they make in chat rooms.

116. For example, Panix sponsors two local newsgroups on women’s and homosexual issues where Panix customers discuss, often in very explicit language, such

matters as menstruation, pregnancy and safe sex practices. Panix also hosts customer Web sites that include graphic instructions for teenagers about condom use, sexually oriented pictures, and reference information about New York body piercing establishments. Panix also carries an extensive range of USENET newsgroups that include pictures and sound files depicting sexually oriented material, discussion of medical issues and sexual practices, and erotic short stories.

117. Panix and their subscribers and users fear that, if the Act is not enjoined, they would be forced either to refrain from providing or engaging in communications that some communities might find to be indecent or risk prosecution under the Act.

Echo

118. Plaintiff ECHO, an Internet service and content provider, provides a "virtual salon" for Internet users interested in reading, writing, and conversation. ECHO and its subscribers provide content on the Internet through the Web sites, including personal home pages, and over 50 "conferences" -- online discussion groups oriented to subscriber interests. ECHO subscribers have access to and provide content on a variety of sites that might be considered indecent. For example, on ECHO's "lambda conference," subscribers discuss gay and lesbian topics such as "queers and the church" and sex toys. On ECHO's "politics conference," subscribers discuss issues such as female circumcision. In addition, ECHO subscriber Cleo Odzer has a Web home page that provides a variety of sexually oriented content relating to her books and public access television show, including an excerpt

from Patpong Sisters: An American Women's View of the Bangkok Sex World, Odzer's non-fictional account of her experiences in Bangkok's red-light district.

119. As an access and content provider, ECHO fears that it is at risk of prosecution under the Act for assisting others in disseminating material that might be deemed indecent. As speakers and content providers, ECHO and its subscribers fear prosecution for communicating material that might be deemed indecent.

New York City Net ("NYC Net")

120. Plaintiff NYC Net believes that the Internet provides a critical avenue of communication for gays and lesbians worldwide, many of whom experience discrimination and harassment in their geographic communities. As an access and content provider, NYC Net serves as both an information source for gay and lesbian individuals in the New York community and as a "virtual" online community for gays and lesbians nationwide.

121. NYC NET offers Internet access services to facilitate the use of the Internet by the gay and lesbian community. In addition to offering basic access to the Internet, NYC NET hosts many discussion groups and chat lists exclusively for gay men and lesbians. Over 30 gay and lesbian community, political and professional groups offer content and resources on NYC Net.

122. Some of the content available to and provided by NYC Net subscribers might be deemed indecent by some communities. For example, NYC NET does not moderate its discussion groups but is aware that topics have included safe sex practices, erotic imagery and prostitution.

123. NYC NET does not want to restrict minors from having access to its services. In fact, a primary goal of NYC Net is to provide information and an online community to gay and lesbian teenagers, many of whom are struggling with feelings of confusion and isolation, as well as to straight youth who want information about homosexuality.

124. In addition, NYC NET believes that it is essential that people be able to access its services anonymously. Especially given the fact that gays and lesbians have historically been unfairly targeted under other censorship laws, NYC NET is fearful that the Act will be used to prosecute it and its members for disseminating material that could be deemed indecent in some communities.

125. If the Act is not enjoined, NYC Net and its subscribers would be forced either to risk criminal liability or limit the resources available to and communications exchanged by subscribers in its gay and lesbian community.

Art on the Net

126. Plaintiff Art on the Net (“art.net”) believes that the World Wide Web provides a unique and low-cost opportunity to artists to exhibit their work to the world. Over 110 international artists curate and maintain their own online studio or gallery spaces on the art.net Web site. Artists may join the art.net site by paying a small annual fee and committing to donate one piece of their art to the site. The art.net site is visited by 40,000-50,000 people daily, and often leads to art purchases or to off-line shows and exhibits.

127. Some of the art exhibited through art.net uses sexual images. For example, Michael Betancourt’s studio includes a series of photographs that use assemblages

of male and female body parts, including nude images, sexual organs and graphic sexual activity, to create abstract landscapes (related to the work of Salvador Dali and Hans Bellmer). In a discussion of the images on a USENET newsgroup, some Internet users found Betancourt's photographs to be "pornographic." Diane Fenster also maintains a studio of digital photography on the art.net site featuring "Two Running Rails of Mercury," which depicts a supine nude woman blending into railroad tracks against the background of a small town. This piece was one of three works from Fenster's "A Ritual of Abandonment" series that were removed from a Baltimore corporate exhibit because of their sexually graphic nature. In addition, art.net features poets whose work might be considered indecent; for example, Sylvia Chong's poetry on the art.net site has sexually oriented themes and metaphors.

128. In addition to providing the art.net galleries and studios, Art on the Net provides a range of other services to its member artists. The Web site posts schedules of art events and artist shows and has links to other art-related sites including artist resources, museums, and exhibits. Art on the Net also hosts mailing lists for different artistic communities on relevant events and issues; these mailing lists include artists who are not members of Art on the Net.

129. If the Act is not enjoined, Art on the Net would be obliged either to risk criminal prosecution for providing constitutionally protected artistic expression or stop featuring paintings, poems, and other art works that some communities might deem indecent.

Peacefire

130. Plaintiff PEACEFIRE believes that the Internet offers a unique opportunity for minors to communicate and to access valuable information. Peacefire was formed to protect the right of citizens under age 18 to use the Internet.

131. Peacefire's members are primarily minors who communicate over the Internet through e-mail, discussion groups, mailing lists, and Web sites. These minors are of varying ages; many are close to adulthood. They use the Internet to communicate and access a wide variety of information. Some of the online information and resources available to Peacefire's members is socially valuable and sometimes life-saving for minors, especially older minors. For example, it is critical that older minors have access on an anonymous basis to information concerning gay and lesbian human rights abuses, AIDS prevention and eating disorder recovery. This information, despite its value to older minors, might be deemed indecent, especially to younger minors.

132. Because the Act does not distinguish between material deemed harmful to younger versus older minors, Peacefire's members fear that the Act will prevent its members from accessing information that is socially valuable to them.

133. Peacefire fears that the Act's age verification and screening requirements, if they could be implemented at all, will cause many content providers to exclude minors from their sites altogether rather than to take on the arduous task of deciding which content might be "harmful" to minors and which is not, or drawing the line between what is "harmful" as to older minors and what is "harmful" as to younger minors. Thus,

the Act will have the effect of preventing older minors from having access to information that is clearly constitutionally protected even as to them.

134. Currently, there is no way on the Internet to tell whether a user is an adult or a minor. This system protects minors from aged-based discrimination, harassment, and coercion. Peacefire fears that the imposition of age verification and screening on the Internet would actually put minors at risk, rather than protecting them, by singling them out to those who might take advantage of them.

135. Peacefire maintains its own Web site to post information related to online censorship. For example, many pages of Peacefire's site discuss filtering and blocking technologies in order to educate the public and provide the organization's position on such topics. Peacefire's Web site is currently visited by as many as 300 Internet users per day. Although its site does not contain any sexually oriented material, Peacefire's Web site provides links to Web sites of other political organizations whose sites may contain sexually oriented material. Peacefire also utilizes newsgroups and mailing lists to disseminate censorship-related information.

American Civil Liberties Union ("ACLU")

136. In addition to its legal advocacy to uphold the Bill of Rights, plaintiff ACLU has long devoted considerable resources to public education about civil liberties. Since 1993, the ACLU public education efforts have included extensive online resources that offer electronic copies of ACLU publications, reports, court briefs, news releases, and other material related to the ACLU's legal, legislative, educational and advocacy work.

137. The ACLU maintains its extensive online resources through America Online and the Internet's World Wide Web. Many of the ACLU's online databases contain material which includes sexual subject matter. Examples include copies of ACLU court briefs in cases involving obscenity, arts censorship, and discrimination against gays and lesbians.

138. The ACLU also hosts unmoderated online discussion groups that allow citizens to discuss and debate a variety of civil liberties issues. These services allow online users to express their uncensored views on civil liberties issues and to interact with ACLU staff or featured speakers. Many of the communications in the ACLU's discussion groups have sexual content, for example, a discussion of masturbation in the context of the firing of former Surgeon General Jocelyn Elders; a discussion of the content of Howard Stern's best-selling book, Private Parts; a discussion of why the word "fuck" has such expressive power; and a discussion of the defense of pornography and other erotic expression under the First Amendment.

139. The ACLU does not moderate its computer communication systems because such editing or censorship would be antithetical to the ACLU's belief in freedom of speech. Furthermore, the ACLU considers minors to be an important audience for its online resources. The ability of minors to participate in chat rooms or discussion groups with other minors and with adults is a vital part of their education. It is particularly important that minors be able to access information about their rights and to learn about and debate controversial issues.

140. In addition to its own online resources, ACLU staff and members use other online services such as e-mail, outside discussion groups, and online mailing lists as an important low-cost method of communicating and sharing documents and information with each other and with those outside of the ACLU. Some of this material is also sexually oriented or contains descriptions of the human body or human reproduction.

141. If the Act is not enjoined, the ACLU would be compelled either to refrain from offering constitutionally protected civil liberties materials and from sponsoring constitutionally protected political debates or to face potential criminal prosecution.

CAUSES OF ACTION

First Cause of Action: Violation of Adults' Rights Under the First and Fourteenth Amendments of the United States Constitution

142. Plaintiffs repeat and reallege paragraphs 1-141.

143. The Act violates the First and Fourteenth Amendments of the United States Constitution on its face and as applied because it creates an effective ban on constitutionally protected speech by and to adults.

144. The Act violates the First and Fourteenth Amendments because it is not the least restrictive means of accomplishing any compelling governmental purpose.

145. The Act violates the First and Fourteenth Amendments because it is substantially overbroad.

Second Cause of Action:
Violation of Older Minors' Rights Under the First and Fourteenth Amendments
of the United States Constitution

146. Plaintiffs repeat and reallege paragraphs 1-141.

147. The Act violates the First and Fourteenth Amendments of the United States Constitution because it interferes with the rights of minors to access and view material that is not harmful to them.

148. The standard of "harmful to minors" is the statutory formulation of "obscenity" as to minors and is variable, depending on age and maturity. The Act is unconstitutional because it prohibits the dissemination of any material with sexual content that is "harmful to minors" of any age, despite the fact that the material will not be "harmful" to all minors.

Third Cause of Action:
Violation of the Right to Communicate and Access Information Anonymously
Under the First and Fourteenth Amendments of the United States Constitution

149. Plaintiffs repeat and reallege paragraphs 1-141.

150. The Act violates the First and Fourteenth Amendment right to communicate and access information anonymously.

**Fourth Cause of Action:
Vagueness in Violation of the First, Fifth, and Fourteenth Amendments
of the United States Constitution**

151. Plaintiffs repeat and reallege paragraphs 1-141.

152. The Act is unconstitutionally vague, in violation of the First, Fifth, and Fourteenth Amendments, because it fails to define the relevant “community” for determining what is harmful to minors on the global Internet and because the Act fails to distinguish between material that may be “harmful” to very young minors from material that may be “harmful” to teenagers.

**Fifth Cause of Action:
Violation of the Commerce Clause
of the United States Constitution**

153. Plaintiffs repeat and reallege paragraphs 1-141.

154. The Act violates the Commerce Clause because it regulates communications which take place wholly outside of the State of New York.

155. The Act violates the Commerce Clause because it constitutes an unreasonable and undue burden on interstate and foreign commerce.

156. The Act violates the Commerce Clause because it subjects interstate use of the Internet to inconsistent regulations.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that the Court:

- A. Declare that N.Y. Penal Law § 235.21(3) violates the First, Fifth and Fourteenth Amendments and the Commerce Clause of the United States Constitution;
- B. Preliminarily and permanently enjoin defendants from enforcing the above-noted provision;
- C. Award plaintiffs 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.

Dated: New York, New York
January 14, 1997

Respectfully submitted,



Christopher A. Hansen (CH-6776)

Ann Beeson

AMERICAN CIVIL LIBERTIES UNION

132 West Forty-Third Street

New York, New York 10036

(212) 944-9800

Arthur N. Eisenberg (AE-2012)

NEW YORK CIVIL LIBERTIES UNION

132 West Forty-Third Street

New York, New York 10036

(212) 944-9800

Michael K. Hertz (MH-5587)
Michele M. Pyle*
LATHAM & WATKINS
885 Third Avenue
Suite 1000
New York, New York 10022
(212) 906-1200

Michael A. Bamberger (MB-9577)
SONNENSCHN NATH & ROSENTHAL
1221 Avenue of the Americas
New York, New York 10020
(212) 768-6700

Attorneys for Plaintiffs

* Awaiting admission to the Bar.