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**UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA**

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

Plaintiffs,

v.

**DANIEL S. SULLIVAN, in his official capacity as
ATTORNEY GENERAL OF THE STATE OF ALASKA,**

Defendant.

Civil No. 3:10-cv-00193-RRB

RESPONSE TO DEFENDANT'S MOTION TO CLARIFY

Plaintiffs respectfully submit this Response to Defendant's Motion to Clarify (the "Motion to Clarify"). (Docket No. 48).

On October 20, 2010, this Court granted Plaintiffs' Motion for a Preliminary Injunction against enforcement of AS 11.61.128 (the "Act"). (Order Granting Preliminary Injunction, Docket No. 47 (the "Order")). The scope of the Order is clear on its face. It "prevents any enforcement of AS 11.61.128 until further Order of this Court, or until the parties enter into a stipulation that would eliminate the need for such an injunction." (Order at p. 9). Therefore, both investigations and prosecutions conducted under the statute are prohibited.

Nevertheless, Defendant gives two examples of situations as to which he seeks clarification:

1. Does the court's Order encompass adjudicating juveniles already under the court's jurisdiction for violating this statute?
2. Does the court's Order prevent law enforcement from continuing investigations or obtaining search warrants when reports have been made that minors have received pornographic pictures of adult genitalia?

(Motion to Clarify at 2). Despite Local Fed. R. 7.1(a), Defendant has provided nothing in support of its motion.

Regarding the first question, Plaintiffs are puzzled as to how juveniles would be under the court's jurisdiction for violating AS 11.61.128, as a violator of the Act must be "18 years of age or older." AS 11.61.128(a)(1). In any event, the Order prevents any enforcement of AS 11.61.128, including the prosecution of any person for violating the Act.

Regarding the second question, the Order clearly precludes the continuation of investigations or the issuing of search warrants if their sole basis is AS 11.61.128. (Order at 9). There are other Alaska statutes that may allow law enforcement to investigate such reports. AS 11.41.452, for example, prevents the use of a computer to entice minors to perform sexual acts. (Order at 7-8). However, law enforcement may not proceed under an unconstitutional statute.

Plaintiffs therefore respectfully request that Defendant's Motion to Clarify be denied, or in the alternative that this Court clarify that no investigations, search warrants or adjudications may proceed under AS 11.61.128 while its preliminary injunction remains in place.

Dated: October 28, 2010

Respectfully submitted,

s/ Michael A. Bamberger
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Attorneys for Plaintiffs

The undersigned certifies that a true and correct copy of the foregoing Reply Memorandum in Further Support of Plaintiffs' Motion For a Preliminary Injunction was served via electronic filing this 8th day of October, 2010, upon counsel for Defendant.

s/ Michael A. Bamberger
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