IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

PSINET INC., et al., Plaintiffs, v. WARNER D. CHAPMAN, Commonwealth Attorney, et al., Defendants.	)	Civil Action No. 3:99CV00111

JUDGE MICHAEL'S FINDINGS OF FACT

1. Plaintiffs represent a spectrum of businesses, membership organizations, and individuals -- including Internet service providers, organizations representing booksellers, publishers, and other media interests, online businesses, individual authors and artists, and others -- who use the Internet to communicate, disseminate, display, and to seek access to a broad range or speech.

2. Plaintiffs communicate online both within and from outside the Commonwealth of Virginia, and plaintiffs' speech is accessible both within and outside of Virginia.

3. All of the plaintiffs utilize the Internet to further their business and organizational goals.

4. Plaintiffs all fear that their online speech could be considered "harmful to juveniles" in some communities under the statute in question, even though that speech may receive full constitutional protection as to adults.

5. The Internet is a decentralized, global medium of communication that links people, institutions, corporations and governments around the world. Host computers—those storing information and relaying communications on the Internet—number in the tens of

millions, and personal computers accessing the Internet have been estimated to number in the hundreds of millions.

6. The information available on the Internet is of very diverse subject matter. At any given moment, the Internet also serves as a communication medium for literally tens of thousands of conversations, debates, and social dialogues. Content ranges from academic writings, to art and literature, to medical information, to music, to news and other information, some of which contains sexually explicit material.

7. The Internet is distinguishable from traditional media because the Internet simply links together enormous numbers of individual computers and computer networks; therefore, no single entity or group controls the content that is available on the Internet, or the access to that content. There is no centralized point from which individual Web sites or services can be blocked.

8. The almost infinite range of information available on the Internet is supplied by millions of users on millions of separate computers around the world. The Internet also differs from traditional media in that it provides users with an unprecedented ability to interact with other users and content. Communications on the Internet do not "invade" an individual's home or appear on one's computer screen unbidden. Rather, the receipt of information "requires a series of affirmative steps more deliberate and directed than merely turning a dial."

9. Individuals may obtain access to the Internet in several ways. Internet service providers ("ISPs"), such as plaintiff PSINet, offer their subscribers access to computers or networks linked directly to the Internet. Most ISPs charge a monthly fee, but some provide free or low-cost access. In addition, national "commercial online services" (such as America Online [FN3]) not only serve as ISPs, but also provide subscribers services, such as monitored chat rooms, and access to proprietary content on their own networks. Many educational institutions,

libraries, businesses, and other entities maintain computer networks linked directly to the Internet.

10. There are a variety of ways for communication and exchanging information with other users on the Internet. The primary methods include: (1) email, which enables an individual to send an electronic message generally akin to a note or letter to an individual address or to a group of addresses; (2) instant messaging, which allows an online user to address and transmit an electronic message to one or more people with little delay between the sending of an instant message and its receipt by the addresses; (3) online discussion groups, such as "chat rooms," thousands of which have been organized by individuals, institutions, and organization; and (4) the World Wide Web, which is currently the most popular way to provide and retrieve information on the Internet.

11. Anyone with access to the Internet and proper software can then be accessed by any other user anywhere in the world. The Web comprises millions of separate interconnected "Web sites" that may in turn have hundreds of separate "pages" displaying content provided by the particular person or organization that created the site.

12. There are a number of ways that Internet users can browse or search for content on the Web. First, every document on the Web has a virtual "address" that allows users to find and retrieve that document by entering the address into their browser. Second, a user may conduct a "search" for a particular site or kind of site by using one of a number of search "engines," which are free software available to help users navigate the Web. The user simply types a word or words as a search request, and the search engine provides a list of sties that match the search terms. The user must then affirmatively elect to view information on a particular site. Online users may also "surf" the Web by "linking" directly from one Web page to another. Almost all Web documents contain "links," which are short sections of text or

images that are electronically connected to another Web document. These links from one computer to another, from one document to another across the Internet, are what unify the Web into a single body of knowledge, and what makes the Web unique.

13. For most communications over the Internet, the speaker has little or no effective control over whether minors or adults are able to gain access to his communications.

14. In addition, speakers who publish on the Web generally make their materials publicly available to users around the world, regardless of age, and lack any practical or reliable means for preventing minors from gaining access to the information on their sites or for verifying the true age of users of their Web sites.

15. The Internet also is wholly insensitive to geographic distinctions, and Internet protocols were designed to ignore rather than to document geographic location. While computers on the Internet do have "addresses," they are addressed on the network rather than geographic addresses in real space. Most Internet addresses contain no geographic information at all. An Internet user who posts a Web page in one state cannot readily prevent residents of other states from viewing that page, or even discern in which state visitors to the site reside. Participants in online chat rooms and discussion groups have no way to tell when participants from another state join the conversation. There is no practical way for an Internet speaker to prevent a message from reaching residents of his own or any particular state.

16. The overwhelming majority of information on the Web is provided to users free. However, much online speech is displayed for commercial purposes where enterprises are seeking to use the Web to advance their business and organizational goals. Companies do so in a variety of ways. Some business, like ISPs, charge their customers for providing an electronic "pipeline" through which the customers may view information on the Internet, or for storing data that customers wish to place on the Web. In addition, to attract and retain subscribers, ISPs may

also provide other Internet services such as email or chat rooms, access to which is included in subscribers' fees. Other Web companies generate revenue through advertising. These businesses offer content to attract readers, and sell access to those Web users to advertisers interested in reaching that audience.

17. Many online content providers—including booksellers, music stores, and art providers—allow potential customers to browse their wares free on the Internet, similar to browsing an actual book store or art gallery. Web shoppers may view samples, summaries, or even entire works at no charge, before deciding whether to make a purchase. Even apart from the material on the Web, a great deal of communication that takes place via the Internet serves a commercial purpose. For example, may entities offer free email or chat rooms to draw users to their sites, so that the sites will be more attractive to potential customers, advertisers or paying contributors. Businesses use email to communicate more efficiently with customers, suppliers, and within their own organizations. Under these and other constantly evolving Internet business models, an enormous quantity of material on the Web that is free to the user is nonetheless displayed for commercial purpose.

18. The 1999 Act is not narrowly tailored -- it effects a total ban on the display of all "electronic file[s] or message[s[," containing "harmful" words, images or sound recordings, that juveniles may "examine and peruse.

19. Most speakers on the Internet have no way to determine the age of those who "examine and peruse" their communications. The majority of Web users also cannot segregate or label communications in a way that would block them from the screen for viewing from juveniles.

20. The 1999 Act does not provide the most effective means of preventing juveniles from viewing sexually explicit and harmful materials because, in the context of the Internet,

material posted on a computer in another state or overseas is just as available to juveniles and adults as information posted next door.

21. Less restrictive means than the 1999 Act are available to accomplish the state's goal of protecting children from harmful material. Less intrusive and more effective means of limiting online access by children to adult materials are widely available to parents and other users who wish to restrict or block access to online sites, etc., that they feel are inappropriate.

22. Unlike the law at issue here, user-based blocking and filtering tools block Web sites or other Internet materials regardless of where in the United States or world the materials are published and distributed, and they block Internet materials regardless of whether the materials are displayed or disseminated by speakers for a commercial purpose. These tools are widely available for free or low cost from ISP's, online, and in stores.

23. The 1999 Act provides no way for Internet speakers to prevent their communications from reaching minors without also denying adults access to the material. As a result, any application of the Act to prevent display of the category of speech that it was enacted to regulate -- nonobscene adult materials -- would directly contradict the First Amendment.

24. Virginia Code § 18.2-391 places restrictions on electronic commercial materials that impede the communication of said materials in all states, not just Virginia.

25. § 18.2-391 potentially subjects citizens to inconsistent state regulations.