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Contact:

David Horowitz, Executive Director, Media Coalition
212-587-4025 / cell: 917-701-5552 / horowitz@mediacoalition.org

Michael A. Bamberger, SNR Denton US LLP
212-768-6756 / cell: 917-626-1117 / michael.bamberger@snrrenton.com

John Mejia, Legal Director, ACLU of Utah
801-521-9862 x108 / cell: 801-680-9575 / jmejia@acluutah.org

Brock N Meeks, Director of Communications, Center for Democracy & Technology
202-407-8814 / cell: 703-989-3547 / brock@cdt.org

Utah Federal Court Protects Free Speech By Restricting Internet Law

SALT LAKE CITY May 18, 2012 — People cannot be prosecuted for posting content constitutionally protected for adults on generally-accessible websites, and are not required by law to label such content that they do post, U.S. District Judge Dee Benson held yesterday. Judge Benson's order was issued in a lawsuit challenging a Utah law that threatened the free speech rights of online content providers and Internet users. Plaintiffs included a Utah artist; trade associations representing booksellers, publishers, graphic and comic books, and librarians; and the ACLU of Utah.

In 2005, the Utah legislature extended to electronic communications its existing law regulating the distribution of "harmful to minors" content—that is, speech that adults have a First Amendment right to receive but that minors do not. Plaintiffs filed this lawsuit that year, arguing that the broadly worded Utah law violates the First Amendment by prohibiting lawful adult-to-adult communications on the Internet simply because a webpage or blog may be seen by a minor, while also compelling online speakers to label or rate such content. Similar overbroad statutes in other states have been held unconstitutional, or have been limited by the courts in a manner similar to the judgment entered in this case.

Plaintiffs' counsel worked out an agreement with Utah Attorney General Mark Shurtleff on how the law would be implemented. Yesterday's order makes clear that the only people who

can be prosecuted under the statute for electronic communications are those who intentionally send “harmful to minors” materials to a specific individual known or believed to be a minor, or who send such material to a minor having negligently failed to determine the age of the recipient. The order also narrowed the mandatory labeling provision in light of advances in Internet filtering software since the statute was enacted in 2005. The Utah Attorney General Mark Shurtleff acknowledged that the requirement of labeling has been rendered unnecessary by more advanced software.

“This is a critical victory for free speech,” said David Horowitz, Executive Director of Media Coalition, an organization that represents the trade associations of booksellers; publishers; graphic and comic books; and librarians. “This declaratory judgment makes clear that adult-to-adult communications on the Internet, and through other electronic means, cannot be restricted simply because minors also access the Internet and other electronic communications.”

“Judge Benson’s order removes the cloud cast over internet speech that Utah’s broadly worded statute had created,” said John Mejia, Legal Director of the ACLU of Utah. “With this declaration, the ACLU of Utah can continue to make information such as our ‘Know Your Rights’ materials for students and LGBT youth available online without fear of possible prosecution for doing so.”

“This judgment brings the Utah law into line with 15 years of legal precedent protecting the constitutional rights of adults to access lawful content online,” said Emma Llansó, Policy Counsel at the Center for Democracy & Technology. “It also underscores that the best approaches to protecting children online rely on user empowerment tools.”

“We are grateful to Attorney General Shurtleff for recognizing that this narrow construction of the statute fully serves Utah’s interest in protecting minors, while also protecting our First Amendment rights,” said Michael Bamberger, of SNR Denton US LLP, lead counsel for plaintiffs. “The resolution by agreement of the parties would not have been possible without the assistance of Judge Benson.”

Plaintiffs included Nathan Florence, American Booksellers Foundation for Free Expression; Association of American Publishers; Comic Book Legal Defense Fund; Freedom to Read Foundation; and the ACLU of Utah. They were represented by Michael Bamberger and

Richard Zuckerman of SNR Denton US LLP, which is general counsel to Media Coalition and by the ACLU of Utah and the Center for Democracy & Technology.

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