

FOR IMMEDIATE RELEASE

June 9, 2005

Contacts: Wesley D. Felix
Bendinger, Crockett,
Peterson, Greenwood &
Casey
801-533-8383

Michael A. Bamberger
Sonnenschein Nath &
Rosenthal LLP
212-768-6756

John B. Morris, Jr.
Center for Democracy &
Technology
202-637-9800

Margaret D. Plane
ACLU of Utah Foundation
801-521-9862

Utah Businesses, National Trade Associations and Individuals Commence Federal Court Challenge to Unconstitutional Restrictions on Internet Speech

SALT LAKE CITY--Citing free speech and interstate commerce violations, a broadly-based group of Utah bookstores, artistic and informative websites, Internet service providers and national trade associations filed a federal lawsuit today challenging the constitutionality of a Utah law meant to restrict children's access to material on the Internet.

"This law has nothing to do with the laudable goal of protecting children," said Wesley Felix, a shareholder at the Salt Lake City law firm of Bendinger, Crockett, Peterson, Greenwood & Casey and co-counsel for the plaintiffs. "Not only does it not accomplish its stated objective, but it casts such a wide net that a lot of valuable and perfectly legal speech will be censored."

Betsy Burton, owner of The King's English Bookshop in Salt Lake City and the lead plaintiff in the lawsuit, is worried about the effect the law will have on her business's website that features descriptions and jacket art from a wide variety of books for children and for adults. "Unless I limit the website to children's books or attempt to exclude children from our website, I risk the danger of a criminal charge. Both of these alternatives are incompatible with the nature of a general community bookstore such as The King's English," she said.

Burton also noted that the law does not outline any sort of appeals process, and wondered, "If I found out that my site is considered harmful to minors, how would I challenge this designation?"

Michael Bamberger of Sonnenschein Nath & Rosenthal LLP, New York, NY, co-counsel in the case, notes the chilling effect the law has on the speech of people like Burton. "It is very likely that some Web publishers may try to avoid problems altogether by not posting speech they think *might* be considered in violation of the law," said Bamberger. "Courts have repeatedly rejected laws that lead to this sort of self-censorship."

The new law, passed by the 2005 session of the Utah legislature, has three primary components:

- 1) Utah Internet content providers must evaluate and rate their speech, at the risk of criminal punishment.
- 2) The Utah Attorney General must create a public registry of Internet sites worldwide containing “material harmful to minors” — speech that is unlawful to intentionally distribute to minors but that is constitutionally protected for adults.
- 3) It extends existing criminal restrictions on distribution of “harmful” materials to distribution on the Internet. Similar provisions have been uniformly held unconstitutional under the Commerce Clause and the First Amendment by federal courts across the nation.

The lawsuit also challenges a provision that may lead to the blocking of a significant number of innocent websites simply because they have the same Internet protocol addresses as targeted sites.

“To comply with the law, Internet Service Providers are authorized to block access to certain content, and this would almost unavoidably lead to the blocking, and thus the censorship, of innocent websites,” said co-counsel John Morris of the Center for Democracy and Technology. “Also troubling is the fact that the publishers of these sites may never realize they’re being blocked.”

Plaintiffs Utah Progressive Network and Andrew McCullough have websites that are hosted on shared IP addresses with unrelated sites, some of which contain material likely harmful to minors. They fear that because of the new law, their sites and their constitutionally-protected speech will be blocked.

“Unfortunately, legislators chose to pass a convoluted bill, despite warnings that courts have consistently struck down laws like this because they violate the First Amendment and the Commerce Clause,” said ACLU of Utah staff attorney Margaret Plane.

The name of the case is *The King’s English v. Shurtleff*; it challenges Utah Code § 67-5-19, §§ 76-10-1205 through 1206, and §§ 76-10-1230 through 1233. Plaintiffs are The King’s English, Inc.; Sam Weller’s Zion Bookstore; Nathan Florence; W. Andrew McCullough; Computer Solutions International, Inc.; Mountain Wireless Utah, LLC; the Sexual Health Network, Inc., Utah Progressive Network Education Fund, Inc.; the American Booksellers Foundation for Free Expression; the American Civil Liberties Union of Utah; the Association of American Publishers; the Comic Book Legal Defense Fund; the Freedom to Read Foundation; and the Publishers Marketing Association.

--end--