

COMPLAINT  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

Civ. No. 96-963

AMERICAN CIVIL LIBERTIES UNION; HUMAN RIGHTS WATCH; ELECTRONIC PRIVACY INFORMATION CENTER; ELECTRONIC FRONTIER FOUNDATION; JOURNALISM EDUCATION ASSOCIATION; COMPUTER PROFESSIONALS FOR SOCIAL RESPONSIBILITY; NATIONAL WRITERS UNION; CLARINET COMMUNICATIONS CORP.; INSTITUTE FOR GLOBAL COMMUNICATIONS; STOP PRISONER RAPE; AIDS EDUCATION GLOBAL INFORMATION SYSTEM; BIBLIOBYTES; QUEER RESOURCES DIRECTORY; CRITICAL PATH AIDS PROJECT, INC.; WILDCAT PRESS, INC.; DECLAN McCULLAGH dba JUSTICE ON CAMPUS; BROCK MEEKS dba CYBERWIRE DISPATCH; JOHN TROYER dba THE SAFER SEX PAGE; JONATHAN WALLACE dba THE ETHICAL SPECTACLE; and PLANNED PARENTHOOD FEDERATION OF AMERICA, INC.,

Plaintiffs,

v.

JANET RENO, in her official capacity as  
ATTORNEY GENERAL OF THE UNITED STATES,

Defendant.

PRELIMINARY STATEMENT

1. This is an action for declaratory and injunctive relief challenging provisions of the "Communications Decency Act of 1996" (the challenged provisions are referred to hereinafter as "the Act"). One provision imposes criminal penalties for "indecent" but constitutionally protected telecommunications to individuals under the age of 18; another criminalizes the use of any "interactive computer service" to "send" or "display in a manner available" to a person under 18 any communication that "depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs." The plaintiffs, providers of and users of computer communication systems, assert that the Act is unconstitutional on its face and as applied because it criminalizes expression that is protected by the First Amendment; it is also impermissibly overbroad and vague; and it is not the least restrictive means of accomplishing any compelling governmental purpose.

2. In addition, plaintiffs assert that the Act violates the constitutional right to privacy encompassed in the First, Fourth, Fifth, and Ninth Amendments because it criminalizes private "e-mail" computer correspondence to or among individuals under the age of 18 if the correspondence is deemed "patently offensive" or "indecent."

3. Plaintiffs further assert that the Act in effect prohibits the right to anonymous speech, guaranteed by the First Amendment, for vast portions of the computer networks.

4. Finally, plaintiffs American Civil Liberties Union, Planned Parenthood Federation of America, Inc., and others also assert that 18 U.S.C. Sec. 1462(c), both before and after amendment, is unconstitutional on its face because it violates the First Amendment by criminalizing the distribution or reception of any information via "any express company or other common carrier, or interactive computer service" of "information . . . where, how, or of whom, or by what means any" "drug, medicine, article, or thing designed, adapted, or intended for producing abortion . . . may be obtained or made."

#### JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 28 U.S.C. Secs. 1331, 1361, and 2201. Venue is proper under 28 U.S.C. Sec. 1391(e).

6. Under Sec. 561 of the Act, this action must be adjudicated by a three-judge court convened pursuant to 28 U.S.C. Sec. 2284.

#### PARTIES

7. 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 communications, and on behalf of its members who use online communications.

8. Plaintiff HUMAN RIGHTS WATCH, INC. (HRW) is a leading international human rights organization that monitors human rights abuses in over 70 countries. It is incorporated in New York and has its principal place of business in New York City. It sues on its own behalf, on behalf of others who use its online computer communications, and on behalf of its members who use online communications.

9. Plaintiff ELECTRONIC PRIVACY INFORMATION CENTER (EPIC) is a non-profit research organization that collects and distributes information concerning civil liberties and privacy issues arising in the new communications media. EPIC is a project of the Fund for Constitutional Government, a tax-exempt organization incorporated in the District of Columbia. Both EPIC and the Fund have their principal places of business in Washington, D.C. EPIC sues on its own behalf and on behalf of others who use its online computer communications.

10. Plaintiff ELECTRONIC FRONTIER FOUNDATION (EFF) is a nationwide, nonpartisan organization of approximately 3,500 paying individual members that is committed to defending civil liberties in the world of computer communications, to developing a sound legal framework for that world, and to educating government, journalists, and the general public about the legal and social issues raised by this new medium. EFF is incorporated in California and has its principal place of business in San Francisco. EFF sues on its own behalf, on behalf of others who use its online computer communications, and on behalf of its members.

11. Plaintiff JOURNALISM EDUCATION ASSOCIATION (JEA) was formed in 1924. It is incorporated in Minnesota and has its headquarters in Manhattan, Kansas. Its purpose is to serve journalism educators through opposing censorship of student expression, creating aids for curriculum and instruction, facilitating the involvement of minority students, promoting the use of technology, and emphasizing professionalism through certification, workshops, conventions, and publications. It sues on its own behalf, on behalf of its members who use online communications, and on behalf of the students with whom the members work.

12. Plaintiff COMPUTER PROFESSIONALS FOR SOCIAL RESPONSIBILITY (CPSR) is a non-profit corporation incorporated in California with national offices in Palo Alto. CPSR has 22 chapters in 14 states and approximately 1,550 members. As technical experts, CPSR members provide the public and policymakers with realistic assessments of the power, promise, and limitations of computer technology. As concerned citizens, CPSR members direct public attention to critical choices concerning the application of computing and how those choices affect society. CPSR sues on its own behalf, on behalf of others who use its online computer communications, and on behalf of its members who use online communications.

13. Plaintiff NATIONAL WRITERS UNION (NWU) is a 4,000-member labor union for freelance writers founded in 1983. Its members include investigative journalists, trade book authors, technical writers, political cartoonists, poets, textbook authors, and multimedia contributors. NWU has its principal place of business in New York City.

NWU sues on its own behalf, on behalf of others who use its online computer communications, and on behalf of its members who use online communications.

14. Plaintiff CLARINET COMMUNICATIONS CORP. is incorporated in California and has headquarters in San Jose. ClariNet publishes an electronic newspaper in Usenet format with 1.2 million paying subscribers and a widely read humor newsgroup. ClariNet sues on its own behalf and on behalf of its subscribers and readers.

15. Plaintiff INSTITUTE FOR GLOBAL COMMUNICATIONS (IGC) is a national computer service provider that provides inexpensive access to the international computer network known as the Internet, as well as other online services, primarily to nonprofit organizations. It is a project of a California public charity; its principal place of business is in San Francisco, California. It sues on its own behalf and on behalf of others who use its online computer communications.

16. Plaintiff STOP PRISONER RAPE, INC. (SPR) is a nonprofit organization dedicated to combating the problem of prisoner rape. SPR is a non-profit corporation incorporated in New York and has its principal place of business in New York City. It sues on its own behalf and on behalf of those who use its online computer communications.

17. Plaintiff AIDS EDUCATION GLOBAL INFORMATION SYSTEM (AEGIS) is a nonprofit corporation incorporated in California that operates a free computer bulletin board system with one of the largest online archives of information on HIV and AIDS in the world. Its home computer is located in San Juan Capistrano, California. It sues on its own behalf and on behalf of those who use its online computer communications.

18. Plaintiff BIBLIOBYTES is a company that produces electronic books for sale 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 communications.

19. Plaintiff QUEER RESOURCES DIRECTORY (QRD) is one of the largest online distributors of gay, lesbian, and bisexual resources on the Internet. It is an unincorporated association. Its system administrator resides in Reston, Virginia, its executive director resides in Los Angeles, California, and its home computer is located in Portland, Oregon. Other distribution point computer locations are in Maryland, California, New Zealand, the United Kingdom, Michigan, and Israel. QRD sues on its own behalf and on behalf of those who use its online computer communications.

20. Plaintiff CRITICAL PATH AIDS PROJECT, INC. is an AIDS treatment and prevention information project that offers AIDS treatment and safer sex information via a free computer bulletin board, electronic mailing lists, and a page on the World Wide Web. Critical Path is also an Internet Service Provider providing free access to the Internet for both organizations and individuals in the Philadelphia area. It is incorporated in Pennsylvania and its home computer is located in Philadelphia, Pennsylvania. It sues

on its own behalf, on behalf of others who use its online computer communications, and on behalf of its members who use online communications.

21. Plaintiff WILDCAT PRESS, INC. is an independent publishing company that promotes its publications by providing free excerpts through a World Wide Web site on the Internet. It is a limited liability partnership and has its principal place of business in Los Angeles, California. It sues on its own behalf and on behalf of those who use its online computer communications.

22. Plaintiff DECLAN McCULLAGH dba JUSTICE ON CAMPUS operates a nonprofit online information clearinghouse on issues of student free speech. The home computer is located at the Massachusetts Institute of Technology in Cambridge, Massachusetts. McCullagh also maintains a list for people interested in censorship issues called "fight-censorship." McCullagh resides in Pittsburgh, Pennsylvania. He sues on his own behalf and on behalf of those who use JUSTICE ON CAMPUS and the fight-censorship list.

23. Plaintiff BROCK MEEKS dba CYBERWIRE DISPATCH (CWD), is the columnist and editor of CyberWire Dispatch, a popular and irreverent online political news column available on the World Wide Web and through a computer subscription program called a listserv. He also writes a column for HotWired, an online magazine. Meeks is a resident of Fredericksburg, Virginia. He sues on his own behalf and on behalf of those who use CYBERWIRE DISPATCH and read his column in HotWired.

24. Plaintiff JOHN TROYER dba THE SAFER SEX PAGE maintains a large archive of information about safer sex on the Internet's World Wide Web. Troyer is a resident of San Francisco, California. The home computer for the Safer Sex Page is located in San Francisco. Troyer sues on his own behalf and on behalf of those who use THE SAFER SEX PAGE.

25. Plaintiff JONATHAN WALLACE dba THE ETHICAL SPECTACLE, publishes an online magazine on the Internet's World Wide Web that examines controversial issues of ethics, law and politics in America. Wallace is a resident of New York City, and rents computer facilities in New Jersey for purposes of housing the magazine. He sues on his own behalf and on behalf of those who use THE ETHICAL SPECTACLE.

26. Plaintiff PLANNED PARENTHOOD FEDERATION OF AMERICA, INC. (PPFA) is the leading national voluntary health organization in the field of reproductive health care. PPFA and its 153 affiliates engage in public education and advocacy concerning safe and legal access to all reproductive health services, including abortion, and its affiliates provide these services. PPFA operates a site on the Internet's World Wide Web, through plaintiff IGC. PPFA is a New York State corporation with its headquarters in New York City.

27. Defendant ATTORNEY GENERAL JANET RENO heads the United States Department of Justice, which is the agency of the United States government responsible for enforcement of federal criminal laws, including the statute at issue in this case.

## FACTS

### Enactment of "Indecency" Standard for Cyberspace Communications

28. In February, 1996, Congress adopted and the President signed the Act. In relevant part, the Act provides:

"Section 502. Obscene or Harassing Use of Telecommunications Facilities Under the Communications Act of 1934.

Section 223 (47 U.S.C. 223) is amended-

(1) by striking subsection (a) and inserting in lieu thereof:

(a) Whoever --

"(1) in interstate or foreign communications ...

"(B) by means of a telecommunications device knowingly --

"(I) makes, creates, or solicits, and

"(ii) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene or indecent knowing that the recipient of the communication is under 18 years of age regardless of whether the maker of such communication placed the call or initiated the communication; ...

(2) knowingly permits any telecommunications facility under his control to be used for any activity prohibited by paragraph (1) with the intent that it be used for such activity,

shall be fined under title 18, United States Code, or imprisoned not more than two years, or both."

(emphasis added) This provision appears in the United States Code as 47 U.S.C. Sec. 223(a)(1)(B) (hereinafter the "indecent" provision).

29. Subsection (h)(1) of Sec. 502(2) of the Act provides that

"the use of the term telecommunications device' in this section

(A) shall not impose new obligations on broadcasting station licensees and cable operators covered by obscenity and indecency provisions elsewhere in this Act; and

(B) does not include the use of an interactive computer service."

Because "interactive computer service" is defined broadly in the Act (see below), the definition of "telecommunications device" to exclude any "interactive computer service" leaves entirely uncertain the meaning and scope of the statutory prohibitions for computer communications.

30. Section 502(2) of the Act adds to 47 U.S.C. Sec. 223, in pertinent part:

"(d) Whoever --

(1) in interstate or foreign communications knowingly

(A) uses an interactive computer service to send to a specific person or persons under 18 years of age, or

(B) uses any interactive computer service to display in a manner available to a person under 18 years of age, any comment, request, suggestion, proposal, image, or other communication that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs, regardless of whether the user of such service placed the call or initiated the communication; or

(2) knowingly permits any telecommunications facility under such person's control to be used for an activity prohibited by paragraph (1) with the intent that it be used for such activity,

shall be fined under title 18, United States Code, or imprisoned not more than two years, or both." (emphasis added).

This provision appears in the United States Code as 47 U.S.C. Sec. 223(d)(1) (hereinafter the "patently offensive" provision).

31. Subsection (h)(2) of Sec. 502(2) of the Act provides that "[t]he term 'interactive computer service' has the meaning provided in section 230(f)(2)." Section 230(f)(2) defines "interactive computer service" to mean "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or service offered by libraries or educational institutions."

32. The provisions described in this section became effective immediately upon passage of the Act.

33. No definition is given in the Act for the term "indecent." The Federal Communications Commission, however, has interpreted the prohibition of "indecent" radio and television broadcasts under 18 U.S.C. Sec. 1464 to cover communications that "depict or describe, in terms patently offensive as measured by contemporary community

standards for the broadcast medium, sexual or excretory activities or organs." The Commission has ruled that this definition includes the use of common Anglo-Saxon street terms for sexual or excretory functions, as well as sexual innuendos and double entendres. In addition, the Commission has ruled that communications with substantial literary, artistic, political, scientific, or other educational or social value, may be "patently offensive" or "indecent."

34. The Act contains two provisions that appear to establish partial defenses to criminal liability. Section 502 adds to 47 U.S.C. Sec. 223 a new subsection (e), which provides that "[i]n addition to any other defenses available by law: (1) No person shall be held to have violated subsection (a) or (d) 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 does not include the creation of the content of the communication." Various exceptions to this defense are set out in subsections (e)(2), (3), and (4), for conspiracies, co-ownership situations, and employer liability.

35. In addition, new 223 U.S.C. Sec. 223(e)(5) provides a defense for any person who "(A) has taken, in good faith, reasonable, effective, and appropriate actions under the circumstances to restrict or prevent access by minors to a communication specified in such subsections, which may involve any appropriate measures to restrict minors from such communications, including any method which is feasible under available technology; or

(B) has restricted access to such communication by requiring use of a verified credit card, debit account, adult access code, or adult personal identification number." New Sec. 223(e)(6) permits the Federal Communications Commission to "describe measures which are reasonable, effective, and appropriate to restrict access to prohibited communications under subsection (d)," but does not authorize the Commission to enforce the Act or approve such measures.

36. Section 509 of the Act may provide a different defense to liability. Section 509 adds a new section, Sec. 230, to Title 47 of the United States Code. Section 230(c)(1) provides: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." This section appears to conflict with new 47 U.S.C. Sec. 223(e), which only provides a defense if a "facility, system, or network" on which "indecent" or "patently offensive" material appears is not under the "control" of the person who provides access.

37. Before passing this Act, Congress made no findings about alternative, less restrictive means of accomplishing the goals of the Act.



38. Online services use computers, phone lines, and modems to connect users to networks that allow them to communicate with thousands of other users throughout the world, and to access extensive information databases from a variety of sources. Most online services offer a package of services that can include: electronic mail to transmit private messages to one or a group of users or to an established mailing list on a particular topic; chat rooms that allow simultaneous online discussions; discussion groups in which users post messages and reply to online "bulletin boards"; informational databases; and access to the Internet.

39. Textual, audio, and video files can all be exchanged through computer communications networks if the user has the right computer hardware and software.

40. The Internet is the largest online network in the world. It links a large number of smaller networks set up by universities, industry, nonprofit organizations, and government. While estimates can only be approximations due to rapid growth, the Internet is believed to connect at least 59,000 computer networks, 2.2 million computers, 159 countries, and 40 million users. The Internet has no centralized distribution point.

41. Many users are connected to the Internet through an Internet Service Provider (ISP). ISPs provide connections, software, and tools for using the Internet. Like the large commercial online services, ISPs also often host online discussion groups and chat rooms that are housed and maintained through the ISP's computers.

42. Some businesses and institutions have a direct connection to the Internet, which means they are part of the vast network of computers that comprise the Internet. Many universities in the United States are directly connected to the Internet and provide accounts on their participating computer to students, faculty, and staff.

43. Some online services provide content as well as access to computer networks. That is, in addition to providing the technical ability to subscribers to send and receive information and messages, some online services create their own information databases.

44. Electronic mail, or e-mail, is the most basic online communication. Users are given a personal e-mail address that allows them to exchange messages or files with other persons and organizations that have Internet e-mail addresses.

45. "Gopher" is a popular way to create and access databased information on the Internet. Gopher is a menu-driven program that allows the user to "gopher" through multiple layers of menus to search for information on a particular topic. A "gopher site" is a database that provides content associated with a particular person or organization. As a reference service, gopher sites often include links to related gopher sites that are associated with other organizations or persons.

46. The "World Wide Web" (Web) is a popular way to create and access databased information on the Internet. The World Wide Web contains sophisticated graphics and audio files in addition to text files. Web sites are databases that provide content

associated with a particular person or organization; they allow users to link instantly to other documents and Web sites by clicking on highlighted words in the text of the document being viewed.

47. "Online discussion groups" are hosted by online services or by particular networks connected to the Internet. The host sets up a section on the network devoted to the discussion of a particular issue and any other online user with access to the host network can post messages on the topic by sending an e-mail message to the discussion group. Users can also post responses to particular messages.

48. "Online mailing lists," or "listservs" are e-mail distribution lists. Internet users subscribe to online mailing lists by sending messages from their own e-mail addresses. Any subscriber can then send a message that is distributed to all the other subscribers on the list.

49. "Chat rooms" are sections provided by online services and some computer bulletin board systems in which online users can engage in simultaneous live interactive online discussion.

50. Online discussion groups, chat rooms, and online mailing lists are sometimes moderated by someone not necessarily connected with the online service provider. Many of these "moderators" are volunteers who simply are interested in a particular topic. The moderators review incoming messages before they are posted to determine whether the messages are related to the subject matter of the group or conform to other standards set up by the moderator.

51. "Computer bulletin board systems" (BBSs) are online networks that are independent of the Internet and that usually cater to people interested in specialized subject matter or to people from a particular geographic region. Subscribers dial directly from their computers into the BBS host computer. BBSs often offer e-mail services among users, online discussion groups, and information databases.

52. A user with access to the Internet may use most gopher sites and Web sites without providing further identification or paying an additional fee. A user with access to newsgroups, online discussion groups, online mailing lists, and chat rooms may generally use particular services without providing further identification or paying an additional fee.

53. "Cyberspace" refers to the combination of all of the online communications systems described above.

54. Nobody owns cyberspace, and the ability of anyone to control what goes into or through online networks varies widely depending on the nature of the system. Anyone can purchase the necessary equipment to get online or to create her own web page.

55. Users of online systems are also content providers (that is, they are publishers), because they can transmit and distribute their own communications and can create a permanent archive of information accessible by other users. There is no limit to the number of people on either side of the sending or receiving end of computer communications.

56. Online communications are interactive. This means, in part, that users of online systems must seek out with specificity the information they wish to retrieve and the kinds of communications they wish to engage in. It also means that users can easily respond to the material they receive or view online.

57. Online systems provide users with a multitude of options for controlling and limiting, if desired, the kinds of information they access through online networks. Commercial online services like American Online, Prodigy, and CompuServe provide features to prevent children from accessing chat rooms and to block access to some kinds of newsgroups based on keywords, subject matter, or specific newsgroup. They also offer screening software that automatically 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.

58. Online users can also purchase special software applications 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.

59. Once information is posted to an international online network like the Internet, it is not possible to allow only residents of a particular region or country to access that information; the information becomes available to anyone in the world who has access to the online network. There is currently no technological method for determining with specificity the geographic location from which users access or post to online systems.

60. Online users are given a password and user name which they must use in order to sign onto their online service. While some users use their full proper name as their online user name, many users have online names that are pseudonyms. These users therefore may send, view, and receive online communications anonymously.

61. There are forums for both "public" and "private" communications in cyberspace. E-mail and online mailing lists are private communications between specified persons or group of persons. Only the intended recipients of an e-mail message receive the message; in this sense e-mail is like regular mail. Similarly, only subscribers to an online mailing list should receive the messages posted to that mailing list. Web sites, gopher sites, online discussion groups, and chat rooms, by contrast, are public because anyone with online access can access them or participate in them at any time. These forums are the public libraries and public squares of cyberspace.

## Relationship of the Plaintiffs To the Act

### American Civil Liberties Union (ACLU)

62. 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's 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.

63. 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 of social value that contains sexual subject matter or vulgar language. Examples include copies of ACLU court briefs in cases involving obscenity, arts censorship, and discrimination against gays and lesbians. Indeed, the ACLU has posted the text of the "seven dirty words" comic monologue which the Supreme Court ruled "indecent" in the 1978 Pacifica case, and which the Court itself reproduced as an appendix to its opinion.

64. 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 or vulgar language; for example, a discussion of masturbation in the context of the firing of former Surgeon General Jocelyn Elders; 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.

65. The ACLU does not moderate its interactive services 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. Thus, for the reasons discussed in this Complaint, the ACLU does not currently intend to self-censor any of its online communications as a result of the Act.

66. The ACLU's web site is hosted by a private company that has expressed concern about the material on the ACLU's site for fear that it would be held liable under the Act. The company has not yet decided what action, if any, to take as a result of this concern.

67. 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 explicit or contains vulgar language or descriptions of the human body or human reproduction.

68. Through its online resources, the ACLU distributes information to and receives information from its affiliates, clients, members, and the public, regarding how women can obtain abortions or abortifacient drugs or devices, and when doctors can perform abortions, including how to contact specific abortion providers, who performs specific abortion procedures, where to obtain specific abortifacient drugs and devices, when specific abortion procedures may be used, and the legal restrictions on obtaining and performing abortions in different states.

69. The ACLU also mails out information to and receives information through the mails from its affiliates, clients, members, and the public, regarding how women can obtain abortions or abortifacient drugs and devices, and when doctors can perform abortions, including how to contact specific abortion providers, who performs specific abortion procedures, where to obtain specific abortifacient drugs and devices, when specific abortion procedures may be used, and the legal restrictions on obtaining and performing abortions in different states.

70. The ACLU also gives out and receives information over the telephone and via FAX from its affiliates, clients, members, and the public, regarding how women can obtain abortions or abortifacient drugs and devices, and when doctors can perform abortions, including how to contact specific abortion providers, who performs specific abortion procedures, where to obtain specific abortifacient drugs and devices, when specific abortion procedures may be used, and the legal restrictions on obtaining and performing abortions in different states.

#### Human Rights Watch (HRW)

71. Plaintiff HRW uses online services to communicate with human rights activists and others in the field and to distribute its human rights reports worldwide through a gopher site on the Internet. HRW's online resources include testimony from victims of forced trafficking in prostitution in Thailand and India, reports on systematic rape in Bosnia, and reports of sexual abuse of female prisoners in the United States. These and other reports contain graphic language and subject matter. In the view of HRW, online communication is a powerful new way for human rights activists, dissidents and others to communicate and organize away from the watchful eyes of oppressive governments.

72. For example, a July 1995 report on slavery in Pakistan detailed tortures that are used to intimidate bonded laborers. That report discusses tortures that include beating of the genitals and rape.

73. HRW believes that the use of graphic language and descriptions is necessary to convey the true horror of human rights abuse. Removal of material considered "indecent" or "patently offensive" from direct victim testimony in HRW's human rights reports would greatly diminish its effectiveness in advocating for an end to human rights abuses.

74. HRW believes that minors as well as adults are interested in its online information, and that it is important for the success of the human rights movement that minors have access to this information. Thus, for the reasons discussed in this Complaint, HRW currently does not intend to self-censor any of its online communications as a result of the Act.

#### Electronic Privacy Information Center (EPIC)

75. EPIC maintains its public online resources through a site on the web and through an online mailing list to which any person with an Internet electronic mail address may subscribe. On average, 500 people visit the Web site each day.

76. EPIC's electronic resources include materials concerning free speech, censorship, and privacy issues. Because of the nature of these issues, some of the materials necessarily use sexually explicit speech or vulgar language. For example, the EPIC web site contains the text of the Supreme Court's opinions in *FCC v. Pacific Foundation*, 438 U.S. 726 (1978), and *Cohen v. California*, 403 U.S. 15 (1971), both of which contain common four letter words.

77. EPIC's web site also contains the text of poems written by subscribers of America Online and removed from that system by America Online management on the grounds that they contain "vulgar or sexually oriented language." EPIC makes such information available in order to illustrate the potential effects of attempts to regulate online speech and expression.

78. EPIC believes minors to be an important audience for its online resources. EPIC staff frequently receive inquiries from high school students seeking information for research projects. EPIC staff refer these students to EPIC's web site as a potential source of relevant information.

79. Thus, for the reasons discussed in this Complaint, EPIC does not currently intend to self-censor its online communications as a result of the Act.

#### Electronic Frontier Foundation (EFF)

80. Since its inception in 1990, EFF has devoted considerable resources to educating the public about civil liberties and legal issues as they arise in cyberspace. Throughout EFF's existence, it has initiated and/or moderated several online forums, including a forum on the WELL (a California-based conferencing system and Internet Service Provider), on Usenet (two online discussion groups or "newsgroups") and on America OnLine. EFF also has its own computer site on the Internet.

81. EFF's public education efforts include the maintaining of extensive online resources both on forums it runs with online service providers, and on its own Internet site. These resources include articles, court cases, legal papers, news releases, newsletters, and excerpts from public discussions related to the EFF's legal, legislative, educational, and

advocacy work. EFF also publishes a "home page" on the web which is accessible to anyone with a user account on another site on the global Internet, as well as anyone who uses an online service provider that includes a "Web browser" among its services.

82. EFF also maintains eight online mailing lists, both for specific civil-liberties and activist activities, and for informing the public about its activities. The primary mailing list has a subscriber base of approximately 7,500 individuals.

83. EFF's web page normally receives between 70,000 to 80,000 hits per day (a hit is an instance of individual access). The site normally transmits the equivalent of 120 million to 140 million words per day.

84. Since virtually all interactions on the Internet or other computer networks have a significant communicative element to them, EFF's policy positions and the discussion forums it sponsors strongly emphasize freedom-of-speech concerns, including concerns about the contours of obscenity law and liability and about the scope of the Federal Communications Commission's jurisdiction to regulate so-called "indecenty." In discussing what the Supreme Court, in the absence of a definition of indecency, might consider to be indecent, EFF must refer in detail to such texts as the George Carlin comedy monologue that was the subject of the litigation in *FCC v. Pacifica*, to the transcripts of Howard Stern broadcasts, and to literary works such as those of Allen Ginsberg and James Joyce. EFF's web site also provides "links" that enable users to visit other sites that contain discussions and examples of "indecent" material.

85. EFF believes it is important for minors to be able to educate themselves about the legal and constitutional structures that frame freedom of speech online. Some EFF members are minors. This Act would radically restrict access by EFF members who are minors to constitutionally protected material that they could legally be given in a library or bookstore.

86. Thus, for the reasons discussed in this Complaint, EFF does not currently intend to self-censor its online communications as a result of the Act.

87. Nearly all of EFF's approximately 3,500 members use online communications. EFF members both receive and transmit information through a variety of online communications. EFF members do not wish to be required to self-censor "indecent" speech in order to avoid prosecution.

#### Journalism Education Association (JEA)

88. JEA is one of the largest national organizations of high school journalism teachers and publication advisors. It has almost 1,600 members. JEA members increasingly use online communications as part of instruction in high school journalism classes or as part of teaching research methods for students who write for school publications.

89. JEA believes that access to online communications is essential for the education of high school students.

90. JEA members attempt to give students the skills to enable them to engage in independent online research. When students do online research directed or supervised by JEA members, but on computers that are not at the school or that are at the school but not being operated by a teacher, it is not possible for JEA members to ensure that students do not access material that might come within the definition of the Act.

91. Many high school students are sufficiently mature to be able to handle material that some might consider "indecent" or "patently offensive." Thus, it might not only be acceptable but also important for some students, under the supervision of JEA members, to access information about, for example, war crimes in Bosnia which might include graphic descriptions of rape.

92. If the Act goes into effect, JEA members fear they will be prosecuted if they fail to censor material that some people believe should be censored under the Act.

93. Section 223(f)(1) provides that "[n]o cause of action may be brought in any court or administrative agency against any person on account of activity that is not in violation of any law punishable by criminal or civil penalty, and that the person has taken in good faith to implement a defense authorized under this section or otherwise to restrict or prevent the transmission of, or access to, a communication specified in this section."

94. JEA members do not know if this section would protect them from liability for violation of First Amendment rights if they unnecessarily restricted access to important protected speech not covered by the Act.

95. JEA also sues on behalf of their minor students. The students wish to retain their right to access constitutionally protected information and ideas.

#### Computer Professionals for Social Responsibility (CPSR)

96. CPSR, a nonprofit organization of computer professionals, maintains a site on the World Wide Web. CPSR also maintains several listservs and hosts several online discussion groups. Board of Director discussions take part online and board votes are sometimes taken online. CPSR also maintains two newsgroups which are not moderated.

97. CPSR's web site is linked to a number of other Web sites, gophers and other computer networks. Many of the sites with which CPSR's site is linked appear to contain information that is of medical or health value but that might be considered indecent or patently offensive. Other linked sites contain other information that might also be considered indecent or patently offensive.

98. One of the listservs, which is also a CPSR working group, is called "Cyber Rights." People who participate in Cyber Rights often discuss issues of censorship and the



application of indecency rules to cyberspace. Some of this discussion is frank and uses strong language and/or quotes matters that have been censored. Other listservs and discussion groups also discuss issues of censorship and contain strong language.

99. Minors have access to the computer communications of CPSR. CPSR believes that it is important that social responsibility be promoted among young people who are learning to use online resources and that access to the CPSR resources would advance this goal. CPSR does not wish to restrict its online resources to adults only.

100. Thus, for the reasons discussed in this Complaint, CPSR does not currently intend to censor its online communications as a result of the Act.

101. As computer professionals, CPSR members engage in a great deal of interaction through various computer networks. This includes e-mail, participation in listservs, participation in discussion groups, and use of various sites on computer networks. CPSR members fear prosecution as a result of their use of computer online communications.

#### National Writers Union (NWU)

102. Plaintiff NWU maintains a site on the World Wide Web, as do several of its leaders. It also maintains an online archive of NWU-related documents, and offers two online mailing lists to which any person, whether or not an NWU member, may subscribe. Some of the material on the NWU's various web sites and mailing lists contains sexually explicit subject matter or vulgar words -- for example, heated debates about homosexuality, and back issues of the NWU's newsletter, which include explicit articles about censorship, obscenity and indecency law, and gay rights.

103. Many NWU members use computers to communicate with each other via private e-mail, to exchange information, and to post literary work. Some of this material is sexually explicit or contains vulgar words. Human sexuality and the human body have always been important subjects of literature and journalism and, as writers, NWU members naturally address these subjects.

104. For example, one NWU member, Robert B. Chatelle, maintains a web page that contains links to erotic fiction that he has written.

105. The NWU and its members and leaders believe that minors should continue to have access to the NWU web site and other online resources. Thus, for the reasons discussed in this Complaint, NWU and some of its members do not currently intend to self-censor any of their online communications as a result of the Act. Other members would self-censor in order to avoid the risk of prosecution.

#### ClariNet Communications Corp. (ClariNet)

106. Plaintiff ClariNet Communications Corp. publishes an electronic newspaper known as the "ClariNet e.News" in Usenet format, which includes news articles, columns, and

financial information. The news articles are taken from the same wire services from which print newspapers obtain their stories but, unlike some print newspapers, ClariNet does not censor the articles. ClariNet has published articles that use common Anglo-Saxon four letter words. It has also published articles that explicitly describe rapes and sexual assaults. Some of these descriptions are more explicit than the same stories in most print newspapers.

107. ClariNet also publishes a humor newsgroup in Usenet format at rec.humor.funny and on the Web. Some of the jokes include vulgar language or sexually explicit material. For instance, some of the jokes discuss sexual acts including oral sex. Some jokes also use strong and explicit language.

108. ClariNet believes that many minors have an interest in reading the articles and jokes it publishes and that minors do read the material published by ClariNet.

109. With regard to its newspaper, which is available primarily through educational institutions, corporations, and Internet service providers, ClariNet depends on the providers to institute a method to obtain access. Because of the vagueness of the statutory defenses, ClariNet does not know if the access systems used by the providers would constitute a defense to liability.

110. For the reasons discussed in this Complaint, ClariNet does not currently intend to censor its news articles as a result of the Act. With regard to its humor newsgroup, ClariNet is unsure what it will do to avoid liability.

Institute for Global Communications (IGC)

111. Plaintiff IGC provides Internet web sites, access to the Internet, and other online services primarily to nonprofit organizations. It serves approximately 400 nonprofit groups, including SIECUS (the Sex Information and Education Council of the United States), the Family Violence Prevention Fund, Stop Prisoner Rape, Human Rights Watch, Pacifica Radio (disseminator of the original "dirty words" comic monologue), and numerous women's rights groups whose online communications deal with sexual subject matter, reproduction, rape, and domestic violence. It also serves approximately 15,000 other groups, including approximately 500-600 schools, providing access to online services.

112. IGC also sponsors online discussion groups. IGC does not moderate these groups but is aware that topics have included gay and lesbian sex and erotica, AIDS and HIV treatment, women's health, and violence against women; many of the participants are minors.

113. IGC does not have the resources to monitor the vast amount of information that is published and communicated through its networks. Nor would it be consistent with IGC's function to monitor and censor the content of communications that it facilitates. IGC has

no way to determine whether or not minors have gained access to specific sites on its network, nor does it wish to restrict access to adults.

114. IGC does not understand whether the defenses provided by the statute would protect it from criminal prosecution.

#### Stop Prisoner Rape (SPR)

115. Plaintiff SPR maintains an extensive World Wide Web site on the Internet that contains, among other things, graphic and uncensored accounts of actual rapes, written by the victims themselves. The purpose of SPR is to provide education, information, and advocacy regarding sexual assaults in the nation's prisons, jails, juvenile facilities, and other detention sites. It provides encouragement and advice to survivors, as well as counseling and legal support. In 1995, "Impact Online," which gives awards for outstanding non-profit Internet sites, named the SPR site the best on the web for prison issues and one of the 30 best non-profit sites.

116. SPR believes that the graphic and uncensored nature of the information on its web site is essential to its goal of educating the public and combating the persistent problem of prisoner rape.

117. SPR believes that minors do access its web site, and believes it is essential to allow this access to continue. Minors are among the victims of prisoner rape and are in fact well-known and abundantly described in published literature on the subject to be particularly singled out as targets for sexual assault precisely because of their youth. Status as a minor is one of the surest demographic indicators of likely targeting for sexual assault of a prisoner in a facility which also includes adults. A significant portion of the SPR site contains recollections of individuals who were raped as minors while incarcerated with adults or in juvenile detention centers. The sharing of these experiences is invaluable to the many minors who have been imprisoned or who may be imprisoned and fear prison rape.

118. Thus, for the reasons discussed in this Complaint, SPR does not currently intend to self-censor its online communications as a result of the Act.

#### AIDS Education Global Information System (AEGIS)

119. Plaintiff AEGIS, through its free computer bulletin board system, offers vital information about HIV and AIDS to people in many parts of the world who have no other access to educational material about the disease. Much of the information in AEGIS is necessarily sexually explicit because HIV/AIDS is a sexually transmitted disease. Documents available from the AEGIS bulletin board include but are not limited to materials from the Center for Disease Control, Gay Men's Health Crisis, AIDS Treatment News, and Body Positive Online Magazine.

120. In addition to its archived material, AEGIS sponsors many online discussion groups for people with AIDS or HIV. Discussion groups are offered in Dutch, French, Spanish, and German, in addition to English. Persons with HIV/AIDS use these online forums to share experiences with other victims of the disease. Medical, social welfare, and other public interest professionals also use the online forums to distribute information about the disease and to answer questions posed by users. Discussions in these groups are often sexually explicit.

121. AEGIS believes that it is essential to be able to use explicit language and pictures in its online communications and discussion groups. The information literally saves lives and must be communicated in terms that are not ambiguous or overly scientific and that all audiences can understand. Teenagers as well as adults need to have access to the archived information and online forums sponsored by AEGIS. Many teenagers are sexually active. They are entitled to information that could save their lives, presented in a factual and descriptive form that is easily comprehended.

122. Many people, including people who fear that they may be infected with HIV/AIDS, use AEGIS to get information about the disease because they can do so anonymously. AEGIS does not want to screen to prevent minors from gaining access to its resources because such screening would infringe upon the privacy and anonymity of all users of the system. Moreover, AEGIS does not have the resources to monitor its online resources to screen out content that is "indecent" or "patently offensive," and any such screening process would undermine the educational and health goals of AEGIS's online services. Thus, for the reasons discussed in this Complaint, AEGIS has not yet decided what changes to make, if any, as a result of the Act.

### BiblioBytes

123. Plaintiff BiblioBytes produces electronic books for sale over the World Wide Web, including romance novels, erotica, classics, adventure, and horror stories. Some of these electronic publications contain language that is sexually explicit or vulgar or describes sexual or excretory activities or organs. One example of a current title in this category is Harlan Ellison's collection of short stories, *Love Ain't Nothing But Sex Misspelled*. Several of the stories in that collection include sexually explicit language and deal with events such as abortion and prostitution. Another example of a current title that contains sexually explicit language is John Anderson's book, *Panaflex X*, which is a fictional account of a woman trying to get out of the pornography industry.

124. BiblioBytes believes that many minors have an interest in reading the books that BiblioBytes makes available online.

125. BiblioBytes now requires a credit card for purchase of its electronic books. BiblioBytes is unsure if this process, which probably screens out most but not all minors, is sufficient to avoid liability under the Act. For the reasons discussed in this Complaint, BiblioBytes does not currently intend to take any additional steps to self-censor its online communications as a result of the Act.

## Queer Resources Directory

126. Plaintiff Queer Resources Directory (QRD) is one of the largest online distributors of gay, lesbian, and bisexual resources on the Internet. QRD is accessed approximately one million times a month and is distributed through several co-servers around the world. QRD contains links to online media; events; cultural information; business, legal, political and workplace issues; and gay, lesbian, and bisexual organizations. The topics covered include parenting, families, marriage, youth organizations, religion, and HIV/AIDS. Some of the material is sexually explicit; for example, discussions of safer sex and human sexuality, and publications such as *Hothead Paisan* (a satiric comic book about the adventures of a homicidal lesbian terrorist) and *Cuir Underground* (a magazine covering events and people in the leather and fetish community).

127. QRD does not wish to restrict minors from having access to its system. In fact, much of the material in QRD would be valuable to gay and lesbian teenagers who are struggling with feelings of confusion or isolation, as well as to straight youth who want information about homosexuality. In addition, QRD believes that it is essential that people be able to access its system anonymously.

128. QRD has not made a decision on what procedures to institute, if any, should this statute not be enjoined. QRD supports the use of voluntary Internet blocking software as an alternative to government regulation.

## Critical Path AIDS Project, Inc.

129. Plaintiff Critical Path AIDS Project, Inc. provides free Internet access to individuals in the Philadelphia area and also operates a bulletin board, electronic mailing lists and a Web site devoted to providing HIV/AIDS treatment information for persons with AIDS and safer sex information for those at risk of contracting AIDS. Critical Path's online resources include AIDS prevention and treatment information in eight different Asian languages, which reach youths and adults at risk for AIDS in some of the most underserved communities in the nation. Critical Path also offers web subsites to such nonprofit groups as We the People (a large multiracial organization of HIV-positive individuals), Prevention Point (a needle exchange program), Fight the Right (a political action network), and will soon be providing a subsite to the Youth Health Education Project, a safer sex outreach organization specifically targeted to teenagers. In the fall of 1995 Critical Path was receiving about 10,000 access requests per day for information on its system from all over the world.

130. The Critical Path AIDS Project web page links directly or indirectly to thousands of databases in all 50 states and many countries, thereby permitting users to access communications and retrieve documents from the far reaches of the world, without leaving the Critical Path web site.

131. Much of the material on Critical Path's web site and bulletin board is necessarily sexually explicit. It is critically important as a matter of physical as well as emotional health that teenagers have access to the information that Critical Path provides.

132. Thus, for the reasons discussed in this Complaint, Critical Path does not currently intend to self-censor its online communications as a result of the Act.

133. Because of the vagueness of the defenses provided in the statute, Critical Path is unsure if it would be criminally liable for some of the communications posted by others for which it provides access.

Wildcat Press, Inc.

134. Plaintiff Wildcat Press, Inc. is a small independent publishing company specializing in classic gay and lesbian literature that promotes its publications by providing free excerpts through its World Wide Web site. Wildcat Press maintains high literary standards and has exhibited at the American Booksellers Association Convention.

135. Some of the material in Wildcat Press's publications is sexually explicit or contains vulgar language. For example, the 1974 novel *The Frontrunner* tells the story of a loving relationship between a young athlete and his coach during the days after the Stonewall Rebellion and before the AIDS crisis. The sequel to that book, *Harlan's Race*, published in 1990, follows one of the characters from *The Frontrunner* as he reflects on the changes in the sexual behavior of the gay community brought on by AIDS.

136. Wildcat Press sponsors the YouthArts Project which publishes two online youth magazines, "YouthArts East" and "YouthArts West," with support from students at the University of Pennsylvania and University of Southern California. The online magazines publish poetry, fiction, essays, fine art, and photography by teenagers and are targeted to an audience of teenagers. Some of the material is sexually explicit. Teenagers can obtain the magazine over the Web.

137. Wildcat Press wishes to continue communicating with all interested readers, regardless of age. Wildcat Press believes that teenagers, especially gay and lesbian youth, are not harmed by but benefit from providing content to and obtaining access to the YouthArts Project.

138. Thus, for the reasons discussed in this Complaint, Wildcat Press does not currently intend to self censor its online communications as a result of the Act.

Declan McCullagh dba Justice on Campus

139. Plaintiff Declan McCullagh began Justice on Campus, a World Wide Web archive of information on student free speech issues, in the fall of 1995. Justice on Campus receives about 150 visits to its web site daily. Although the site is housed on a private computer in Cambridge, Massachusetts attached to the Massachusetts Institute of

Technology network, McCullagh maintains editorial control over communications posted on the site. Since many students, including college students, are under the age of 18, McCullagh believes that a substantial number of minors visit the web site. Justice on Campus has been recognized as serving an important educational purpose, and its materials are assigned reading in one course at the Massachusetts Institute of Technology.

140. Some of the communications on the Justice on Campus site are sexually explicit or contain vulgar language. For example, in the context of its free speech discussion, Justice on Campus reproduced the texts of communications by students at Cornell University which were alleged to constitute sexual harassment. The actual language was necessary in order to focus on the issue of whether college administrators overreacted to the material.

141. McCullagh also maintains a list entitled "fight-censorship" to which people can subscribe to receive information on censorship issues. The information includes explicit material that has been subject to censorship by others.

142. For the reasons discussed in this Complaint, Justice on Campus and McCullagh do not currently intend to self-censor their online communications as a result of the Act.

#### Brock Meeks dba CyberWire Dispatch

143. As publisher and editor of CyberWire Dispatch (CWD), plaintiff Brock Meeks addresses many political and cyberspace issues, including Congressional attempts to regulate and to censor the Internet. CWD often employs vulgar and graphic language to make a point about government censorship efforts. CWD has also published sexually explicit material.

144. Meeks also writes regularly as a columnist for the print magazine Wired and the online magazine HotWired. Meeks sometimes uses vulgar and graphic speech in his columns to satirize or make political points.

145. Meeks does not want to prevent minors, who are an important part of his audience, from reading the material in CWD and Hotwired.

146. Thus, for the reasons discussed in this Complaint, Meeks does not currently intend to self-censor his online communications as a result of the Act.

#### John Troyer, dba The Safer Sex Page

147. Plaintiff John Troyer maintains the Safer Sex Page, a large site on the Internet's World Wide Web that offers educational information on safer sex. The Safer Sex Page is accessed by more than 35,000 people around the world every week.

148. The Safer Sex Page includes a wide array of sex education materials from dozens of sources; brochures include graphics, audio, and video. The resources are both written specifically for the Safer Sex Page and based on information received from other groups including the Center for Disease Control, the United States Department of Health and Human Services, and the Los Angeles Gay and Lesbian Community Services Center.

149. By their very nature, information and discussions about safer sex include explicit language and pictures. Postings include guidelines about the risks associated with different sexual acts. Explicitness is necessary to make safer sex materials comprehensible. The public health threat of unsafe sex demands that people know with specificity how to protect themselves.

150. The Safer Sex Page includes an online discussion group called "Safer Sex Forum" that allows participants to add their own comments to a monthly discussion topic. Users of the Safer Sex Forum often post comments on sexual subjects; past topics have included masturbation, condom brands, and how to talk to a partner about safer sex.

151. Teenagers are an important audience for the resources offered through the Safer Sex Page and the Safer Sex Forum. Many teenagers are sexually active, or consider becoming sexually active before they reach adulthood. These minors are entitled to information that could save their lives.

152. Troyer is currently unsure whether he will self-censor his online communications as a result of the Act.

Jonathan Wallace dba The Ethical Spectacle

153. Plaintiff Jonathan Wallace publishes an online monthly newsletter entitled The Ethical Spectacle under the pen name Jonathan Blumen. The newsletter examines the intersection of ethics, law and politics in society. Past issues have included articles on human experimentation by the Nazis at Auschwitz, and the morality of pornography. An upcoming issue will excerpt the writings of James Joyce, Henry Miller, William Burroughs, and other authors whose works include explicit sexual content and vulgar language.

154. Wallace does not wish to prevent minors from gaining access to The Ethical Spectacle Web page or to lose any teenage readers who may find instruction in the newsletter.

155. Thus, for the reasons discussed in this Complaint, Wallace does not currently intend to self-censor his online communications as a result of the Act.

Planned Parenthood Federation of America, Inc. (PPFA)

156. PPFA's site on the World Wide Web provides a broad range of information relating to reproductive health. PPFA's site also provides educational and graphic information



about all facets of reproductive health, from contraception to prevention of sexually transmitted infections, to finding an abortion provider, to information about which Planned Parenthood affiliates have been providing abortions through use of the drug mifepristone. The educational information includes illustrations of how to place a condom on a penis, and of male and female genitalia. The information PPFA presents is intended to be accessible to minors who seek it; and therefore frequently employs vernacular terminology, such as "cum" when referring to semen or ejaculation.

157. PPFA's site also provides an e-mail service. Through this service, users can address questions to PPFA on subjects such as abortion, contraception, prevention of sexually transmitted infections, and sexuality, and PPFA responds with complete information. PPFA also receives information by e-mail regarding performing and obtaining abortions, practices necessary to reduce unintended pregnancies and sexually transmitted infections, and sexuality information generally.

158. PPFA's site is accessible to any user seeking access. PPFA believes limitations on access to its site would significantly diminish its effectiveness as a source of information, and PPFA does not currently intend to self-censor access.

159. In addition to communicating via interactive computer services, PPFA sends and receives information about performing and obtaining abortions through the mails and telephone and FAX.

#### Allegations Common to All Plaintiffs

160. The effect of this statute, if implemented, would be to reduce adults to obtaining access by computer to only that information that is fit for children.

161. Given that American society is comprised of people from an endless variety of religious, ethnic, cultural, political, and moral backgrounds, each with his or her own view of what constitutes "indecent" or "patently offensive" expression, these terms are completely vague and do not put any reasonable person on notice of what communications are prohibited.

162. Plaintiffs and their members do not know how to define the terms "indecent" and "patently offensive." All are forced as a consequence to guess at what communications will be prosecuted. Because of its vagueness, the statute invites arbitrary and discriminatory enforcement, and chills constitutionally protected expression by the plaintiffs, their members, and other users of interactive computer services.

163. The defenses provided under the statute are vague and contradictory. It is not clear what 47 U.S.C. Sec. 223(e)(1) means by a "facility, system, or network" not being "under [the] control" of a person since even online providers who do not themselves create the content of communications over their systems can technologically exercise "control" over the communications for which they are conduits. It is also not clear whether 47 U.S.C. Sec. 230(c)(1) provides a defense for anyone who is not a "publisher or speaker." Thus,

those who act in part as access providers or hosts for interactive communications cannot know to what extent they will be held liable for "indecent" or "patently offensive" communications to minors.

164. Even if it may be technically feasible to devise a method to block access to computer communications by some or most minors, as a practical matter it is economically infeasible. All of the plaintiffs would suffer serious economic hardship if they were required to write separate versions of online communications: one for adults, and one for minors. Thus, the defense provided by section 223(e)(5) is not practically available.

165. Moreover, any blocking system would require advance identification of those seeking access to a web site, chat room, discussion group, or other online forum. Initiating age ID and blocking systems would undermine the essential purpose of the plaintiffs' communications -- to be disseminated as easily, widely, and quickly as possible, with a minimum of burden and expense.

166. Any attempt to guarantee that minors could not access information that requires advance identification of those seeking access would also make it impossible for users to engage in constitutionally protected anonymous speech on matters of public and private importance.

167. For those plaintiffs who have members who are minors, blocking access to online communications would deny minors access to materials that they could legally receive in printed form or that they could legally given in a library or bookstore. It would deny them access to materials that they have a constitutional right to receive.

168. Section 223(e)(5) provides a defense for "good faith, reasonable, effective, and appropriate actions" to "restrict or prevent access by minors ... including any method which is feasible." This defense is so vague that it is not possible for those plaintiffs who seek to fall within its provisions to know if they have taken the actions necessary to avoid liability.

169. The plaintiffs fear prosecution or other enforcement under the statute for communicating, sending, or displaying "indecent" or "patently offensive" material in a manner available to persons under age 18. They also fear liability for material posted by others to their online discussion groups, chat rooms, bulletin boards, listservs, or web sites. Plaintiffs ACLU, PPF, and others fear prosecution for distributing and receiving information about abortions and abortifacient drugs and devices in violation of 18 U.S.C. Sec. 1462(c).

170. Moreover, plaintiffs fear that if the statute goes into effect, online services and other access providers such as educational institutions will ban communications that they consider potentially "indecent" or "patently offensive," thereby depriving the plaintiffs, their members, and those who use their online services of the ability to communicate about important issues.

171. The plaintiffs' web sites are linked to other web sites on the Internet in a virtually endless chain. There is no way for plaintiffs to screen the material on all of those linked sites or to prevent minors from accessing those sites.

#### CAUSES OF ACTION

172. Plaintiffs repeat and reallege Secs. 1-171.

173. 47 U.S.C. Secs. 223(a)(1)(B) and (a)(2)(the "indecentcy" provision) and 223(d)(the "patently offensive" provision) violate the First Amendment to the United States Constitution on their face and as applied because they effect a total ban on constitutionally protected communications in many parts of cyberspace. Even in those portions of cyberspace where it is technologically and economically feasible to deny access to minors, Secs. 223(a)(1)(B) and (a)(2) and 223(d), are not the least restrictive means of accomplishing any compelling governmental purpose, and thus violate the First Amendment.

174. 47 U.S.C. Secs. 223(a)(1)(B) and (a)(2) and 223(d) are vague, in violation of the First and Fifth Amendments to the United States Constitution.

175. Even if the government could criminalize some constitutionally protected online communications to minors, 47 U.S.C. Secs. 223(a)(1)(B) and (a)(2) and 223(d) are unconstitutionally overbroad, in violation of the First Amendment, because they ban far more constitutionally protected expression to minors than possibly could be justified by any governmental interest.

176. 47 U.S.C. Secs. 223(a)(1)(B) and (a)(2) and 223(d) violate the First, Fourth, Fifth, and Ninth Amendment privacy rights of members and officers of the plaintiff organizations who use private e-mail.

177. 47 U.S.C. Secs. 223(a)(1)(B) and (a)(2)and 223(d) violate the First Amendment rights of members of the plaintiff organizations and other users of computer resources to engage in anonymous speech.

178. 18 U.S.C. Sec. 1462(c) on its face violates the First Amendment rights of members and officers of plaintiff ACLU, PPF, and others who disseminate and receive information through express companies or other common carriers, or through interactive computer services, regarding women's access to abortions and abortifacient drugs and doctors' abilities to perform abortions.

WHEREFORE, plaintiffs respectfully request the Court to:

(1) Declare that 47 U.S.C. Secs. 223(a)(1)(B) and (a)(2), 223(d), and 18 U.S.C. Sec. 1462(c) violate the First, Fourth, Fifth, and Ninth Amendments to the U.S. Constitution and enjoin their enforcement.

(2) Award plaintiffs reasonable attorneys' fees and costs.

(3) Award such further relief as the Court deems just and appropriate.

Respectfully submitted,

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