

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CENTER FOR DEMOCRACY & TECHNOLOGY, et al, : CIVIL ACTION

v. :

MICHAEL FISHER, ATTORNEY GENERAL OF PENNSYLVANIA : NO. 03-5051

**ANSWER TO THE COMPLAINT**

1. Admitted that child pornography is a serious crime and should have no place in a civilized society. Admitted that laws and their enforcement should extend to child pornography that may be available over the Internet. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of this paragraph.

2. Denied.

3. Denied.

4. Denied.

5. Admitted that governments can take various actions in the attempt to combat child pornography. In all other respects, denied.

6-8. The averments of these paragraphs are conclusions of law to which no answer is required.

9. Admitted that Plaintiff CDT is a non-profit corporation incorporated under the laws of the District of Columbia, and with its principal offices in the District of Columbia, for the purposes of educating the general public concerning public policy issues raised by the growth of digital media, conducting legal and policy research concerning digital media, and developing and advocating public policies to advance constitutional civil liberties and democratic values in connection with the development of digital media. In all other respects, denied.

10. Admitted that the ACLU-PA is incorporated in Pennsylvania. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of this paragraph.

11. Admitted that a corporation named Plantaganet, Inc. is incorporated in Pennsylvania with an address in Doylestown, PA. Defendant is

without knowledge or information sufficient to form a belief as to the truth of the remaining averments of this paragraph.

12. Admitted that the Defendant, D. Michael Fisher, is the Attorney General of Pennsylvania. Denied that he is responsible for any system of secret prior restraint orders. His responsibilities under the challenged law are questions of law to which no answer is required.

13. Admitted that the Statute in question was originally codified at Title 18 Pennsylvania Consolidated Statutes § 7330, but was re-codified in December 2002 at Title 18 Pennsylvania Consolidated Statutes § 7621-7630. Denied that Defendant undertook or implemented any system of secret prior restraint orders.

14. Denied that Defendant has a system of secret prior restraint orders or has issued such orders. Denied that anything Defendant has done in the implementation of the Statute has been inconsistent with the Statute. The remaining averments are conclusions of law to which no answer is required.

15. Admitted that this paragraph describes the Complaint. Denied that Defendant has or had a system of secret prior restraint orders. The following answers to the succeeding paragraphs of the Complaint are incorporated by reference.

16. The first sentence is admitted. Admitted that the World Wide Web has, over the last ten years, become a common method that Internet users all over the world use to make content available to other Internet users. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of this paragraph.

17. Admitted, in general, as of the present time. Denied that the description contains all of the details that comprise Internet communications.

18. Admitted, in general, as of the present time. Denied that this has in the past been, or will necessarily in the future, be true.

19. Denied that a request and response would generally be transmitted through only one backbone provider. The remaining averments are admitted, in general, as of the present time.

20. Admitted that in many cases today the user's ISP is different from the web site's ISP. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of this paragraph.

21. Admitted.

22. Admitted.

23. Admitted.

24. Admitted that a web site publisher may contract with an entity, which may be an ISP, to own and operate the necessary web server on the entity's premises or on third party premises arranged by the entity, and that such entities are sometimes called "web hosts." Admitted that these "web hosts" will typically operate one or more web servers that can store the web pages for their customers and make those pages generally available for users on the Internet. In all other respects, denied. Particularly denied that these entities are the same as web-hosting services described at paragraph 29.

25. Admitted.

26. Admitted.

27. Admitted.

28. The first three sentences are admitted. The fourth sentence is admitted insofar as it alleges that in many cases the same publisher is responsible for all pages and sub-pages on a web site. The remainder of the fourth sentence is denied except as to the situation described in paragraph 29. That is, denied that in any appreciable number of situations other than that described in paragraph 29 are wholly different and independent publishers responsible for different sub-pages on a single web site.

29. The first, second, sixth, and last sentences are admitted. Admitted that GeoCities is an example of an "online community," also sometimes called a "web-hosting service." Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of this paragraph.

30. The first two sentences are admitted. The third sentence is admitted in part and denied in part. Denied that the user's computer directly does a "look-up" in series of global databases for the IP address of the URL requested. Admitted that the user's computer first does a "look-up" in, or queries, a particular domain name server or servers assigned to the user's computer and usually owned or controlled by the user's ISP. Admitted that if that domain name server does not know the IP address, it may then query other domain name servers, which may query still other domain name servers until a domain name server produces the IP address of the server that can provide the requested web pages. Defendant is without knowledge or information sufficient to form a belief as to the truth of any remaining averments of this paragraph.

31. Admitted that IP addresses are generally expressed as a series of four numbers separated by periods, e.g., 207.102.198.176. Admitted that this numeric IP address provides a user's computer with the address of the web

server to which the user's computer must send a request for web pages with a particular URL. The remaining averments are denied.

32. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph.

33. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of the first sentence of this paragraph. The second sentence is denied.

34. Admitted as of today. Denied that this was true in earlier days of the World Wide Web. Defendant is without knowledge or information sufficient to form a belief as to whether it will be true in the future.

35. The first two sentences are admitted. The remaining averments are denied as stated. Denied that the user's ISP does not "read" the URL when it first receives the request, when the ISP's domain name servers begin the process of resolving the URL to an IP address. Denied that ISPs, or their systems, never open or read the communication to determine the specific web site requested even beyond their domain name servers. Defendant is without knowledge or information sufficient to form a belief as to the truth of any other averments of this paragraph.

36. Admitted that a web server that supports multiple sites does "read" the request in order to determine which site is being requested. Otherwise, the answer to paragraph 35 is incorporated by reference.

37. Denied.

38. Denied.

39. Admitted that on or about May 20, 2002, one of Defendant's agents sent an "Informal Notice of Child Pornography" to an ISP; admitted that the text of that Informal Notice is quoted at paragraph 39 of the Complaint. In all other respects, denied. Particularly denied that this Informal Notice was an "order."

40. Denied that Defendant ever sent any prior restraint orders to anyone. Admitted that from late April 2002 through the end of 2002, Defendant sent about 250 Informal Notices of Child Pornography to ISPs and that these Notices identified about 325 different URLs. Admitted that Defendant continued to send Informal Notices of Child Pornography to ISPs after January 1, 2003 up to September 9, 2003. Denied that any Informal Notices sent after mid-July 2002 were worded the same as the one quoted in paragraph 39 of the Complaint. The Informal Notices sent from mid-July 2002 to the end of 2002 did not have the first sentence quoted in paragraph 39. The

Informal Notices sent in 2003 were worded as set forth at Exhibit "A" attached to this Answer. In all other respects, denied.

41. Admitted that more than half of the Informal Notices of Child Pornography sent by Defendant to ISPs referenced sites accessible through the ISPs' services rather than sites residing on their services. In all other respects, denied. Particularly denied that Defendant sent any prior restraint orders to anyone.

42. Denied that Defendant sent any prior restraint orders to anyone. Denied that Defendant has not sent a substantial quantity of notices to "online communities" or "web-hosting services." Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments of this paragraph.

43. Denied.

44. Admitted that once, in September 2002, Defendant sought a court order under the Statute. In all other respects, denied.

45. Denied. Defendant has not sent, is not sending, and does not intend to send any prior restraint orders.

46. Denied. Defendant has not sent, is not sending, and does not intend to send any prior restraint orders.

47. Admitted that Defendant tries not to make public the identity of web sites that display child pornography. In all other respects, denied.

48. Admitted that in February 2003, Plaintiff CDT assisted in the submission of a Right to Know Law request to Defendant and that, in responding, Defendant refused to provide URLs of sites where material in violation of 18 Pa.C.S. § 6312 had appeared. Admitted that State Right to Know Law issues are not raised in this action. In all other respects, denied. Particularly denied that Defendant sent any prior restraint orders to anyone, and denied that he produced any such orders to CDT.

49. Admitted that in July 2002, a representative of WorldCom wrote to one of Defendant's agents regarding several Informal Notices of Child Pornography that the agent had sent to WorldCom. In all other respects, denied.

50. Denied.

51. Denied.

52. Denied.

53. The averments of this paragraph are conclusions of law to which no answer is required.

54-56. The averments of these paragraphs are conclusions of law to which no answer is required. To the extent they contain facts, they are denied.

57. Admitted that in September 2002, Defendant filed an application with a common pleas court and obtained a court order *ex parte* under §§ 7626 and 7627 of the Statute regarding the ISP WorldCom. Further characterization of the Order is a matter of law to which no answer is required. In all other respects, denied.

58. Admitted that a July 25, 2002 letter from WorldCom to one of Defendant's agents containing the quoted language was attached as an exhibit to the Application that Defendant filed with the court, and admitted that Defendant sent WorldCom a copy of the Application with the Order and Notice of the Order. In all other respects, denied.

59. Denied.

60. Admitted.

61. Admitted that the Court of Common Pleas Order identified five web sites designated by their URLs. Admitted that the Order made no assertions or determinations regarding any other web sites. Further interpretations or characterizations of the Application and Order are questions of law to which no answer is required. Admitted that at least two of the sites identified in the Order were the top pages, or home pages, of the sites. Admitted that the terra.es site identified in the Order appeared to be a sub-page on the domain of the terra.es web-hosting service. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments. In particular, Defendant is without knowledge or information sufficient to form a belief as to whether any of the other sites listed in the Order were sub-pages or, if they were, whether the domains had any other pages, or any other pages that did not contain material that violated 18 Pa.C.S. § 6312.

62. Admitted that the September 17, 2002 Court of Common Pleas Order referenced at paragraph 60 identified the URL <http://www.terra.es/personal8/jenout>. Further interpretations or characterizations of the Order are questions of law to which no answer is required. Admitted that terra.es is the domain name for an online community or web-hosting service. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of this paragraph.

63. Admitted that the September 17, 2002 court order identified specific URLs. Admitted that Defendant notified WorldCom of the court order.

The remaining averments are denied. Particularly denied that Defendant has issued any secret prior restraint orders, or orders of any kind, to anyone.

64. Denied.

65. Denied.

66. Admitted that blocking access to an IP address will block access to the site or sites that use that IP address. The remaining averments are denied. Particularly denied that sites that use the same IP address are wholly unrelated to each other.

67. Admitted that sharing of IP addresses is a common practice today. The remaining averments are denied. Denied particularly that some sites or, in some cases, all sites that share an IP address are not closely related to each other. Denied particularly that child pornography sites do not often share the same IP address with other child pornography web sites, and denied particularly that child pornography or, at least, pornography, sites do not at times comprise all of the sites under an IP address. Denied particularly that the sites that share an IP address are ever wholly unrelated to each other.

68. Admitted that a report published by a Harvard Law School student in February 2003 claims what is alleged as of or about the time of the report. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of this paragraph, including the accuracy of the report or the existence of any other research reaching the same conclusions.

69. Admitted that a report published by a Harvard Law School student in February 2003 claims what is alleged as of or about the time of the report. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of this paragraph, including the accuracy of the report or the existence of any other research reaching the same conclusions.

70. Admitted as of today. Denied that IP address sharing has been prevalent for more than the last several years. Defendant is without knowledge or information sufficient to form a belief as to whether IP address sharing will prevail in the future.

71. Denied.

72. Admitted that, as a matter of technology, web sites that carry hard core pornography can share IP addresses with non-sexual web sites. Denied that web sites that carry hard core pornography, or child pornography, do always share an IP address with sites that do not carry similar material. Defendant is without knowledge or information sufficient to form a belief as to

the frequency with or degree to which child pornography sites share IP addresses at all or share them with sites that do not display child pornography or other illegal, harmful, or worthless content.

73. Denied.

74. Denied.

75. Denied.

76. Admitted that IP address blocking may not permanently block access to a site. Whether this eventuality would cause a failure to comply with a court order is a question of law to which no response is required. Admitted that an ISP can block or disable its customers' access to a web site by making entries in domain name servers under the ISP's control. Denied that compliance using this method would be "partial." Denied that an ISP would use this kind of method only in case of its inability to block an IP address. Defendant is without knowledge or information sufficient to form a belief as to the truth of any remaining averments of this paragraph.

77. Admitted that if entries in the domain name servers disable access to the domain name only, they disable access to all sub-pages under the domain name. In all other respects, denied. Particularly denied that an ISP cannot comply with a court order directing that it disable its customers' access to a sub-page under the domain name without blocking access to all other sub-pages.

78. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Denied.

85. Admitted that no one has been prosecuted under the statute cited at paragraph 53 of the Complaint. Denied that Defendant does not attempt to have the creators and other distributors of child pornography investigated and prosecuted under other laws coincident with Defendant's own investigations. Denied that Defendant will not investigate and, if necessary, prosecute ISPs

that knowingly, after statutory notice of court orders, continue to distribute child pornography through their services in Pennsylvania. Defendant is without knowledge or information sufficient to form a belief as to the truth of any remaining averments of this paragraph.

86. Admitted that child pornography is illegal throughout the United States. Denied that all or almost all countries of the world have sufficient, and sufficiently enforced, laws against child pornography. In all other regards, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph.

87. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph.

88. Denied that enough ISPs that host, or provide Internet access to those who host, child pornography can be found and contacted and that enough of such ISPs, even if found and contacted, will take sufficient action to obviate the need to have other ISPs disable access to the child pornography accessible through their services. In all other regards, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph.

89. Admitted that governments can take various actions in an effort to combat sexual abuse and exploitation of children. The remaining averments are denied. Particularly denied that the Statute challenged here is not a necessary, or, at least, important, and cost-effective weapon in the battle against child abuse, and one that has little or no adverse effect on wholly innocent and lawful web sites.

90. Admitted that many online communities, or web-hosting services, when informed of child pornography residing on their services, have removed it. The remaining averments are denied. Denied particularly that enough hosts of child pornography web sites, and enough hosting ISPs, particularly those in foreign countries, can be identified and contacted or will remove the child pornography from the Internet to obviate the need to have other ISPs disable access to the child pornography accessible through their services. Denied particularly that providing information to the national and international investigators, as Defendant has done consistently, and intends to continue doing, leads to investigations or prosecutions. Denied particularly that criminal prosecution of creators of child pornography alone is an effective, or cost-effective, method of eliminating child pornography and the abuse of children inherent in it. Denied particularly that prosecution of ISPs that knowingly, after notice, distribute child pornography by providing access to it through their services is less restrictive than what the Statute challenged here authorizes.

91. Admitted that Defendant sent, and WorldCom received, a court order entered under the Statute on September 17, 2002. Denied that Defendant has issued any secret prior restraint orders. Denied that the only disablements of access by WorldCom known to Defendant (in September 2002) have interfered with Plaintiff CDT's access to any lawful sites on the Internet. Denied that any actions by Defendant in the future will interfere with Plaintiff CDT's access to any lawful sites on the Internet. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of this paragraph.

92. Denied that Defendant has issued any secret prior restraint orders. Denied that any actions by Defendant in the future will interfere with access to any lawful sites on the Internet by Plaintiff American Civil Liberties Union of Pennsylvania or its members. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of this paragraph.

93. The averments of this paragraph are conclusions of law to which no answer is required. To the extent the paragraph contains facts, they are denied. Particularly denied that Defendant has issued or intends to issue any secret prior restraint orders to anyone.

94. Denied that any notice of order has been sent to an ISP directing it to disable access to a web site other than the notice of order sent to WorldCom on September 17, 2002. Denied that an ISP will receive an order other than a court order in the future. Denied that Plantagenet, Inc. will not be able to comply with any notice of court order that it might receive in the future. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of this paragraph.

95. The answers to paragraphs 1-94 are incorporated by reference.

96. Denied.

97. The answers to paragraphs 1-94 are incorporated by reference.

98. Denied.

99. The answers to paragraphs 1-94 are incorporated by reference.

100. Denied.

101. The answers to paragraphs 1-94 are incorporated by reference.

102. Denied.

103. The answers to paragraphs 1-94 are incorporated by reference.

104. Denied.

### **AFFIRMATIVE DEFENSES**

1. The Complaint does not assert a present case or controversy as to claims that 18 Pa.C.S. § 7621-7630, as applied, and particularly as might be applied by a district attorney or future attorney general, have the effect of restraining lawful speech or interstate commerce.

2. Claims that 18 Pa.C.S. § 7621-7630, as applied, and particularly as might be applied by a district attorney or future attorney general, have the effect of restraining lawful speech or interstate commerce are not ripe for adjudication.

3. Plaintiffs lack standing to bring the claims they assert.

4. To the extent Plaintiffs request any relief other than purely prospective declaratory or injunctive relief, it is barred by the Eleventh Amendment to the Constitution.

5. If Plaintiffs are making any claims or requesting relief of any kind under State law, the claims or relief are barred by the Eleventh Amendment, as well as by State law sovereign immunities.

6. If the Court finds that resolution of the federal claims depends on interpretations of 18 Pa.C.S. §§ 7621-7630 that are unsettled as a matter of State law, the Court must abstain from deciding the federal issues pending determinations of the State questions by the State courts.

7. If the challenged laws restrain any First Amendment protected speech at all, the restraints are not based on content of the protected speech, but are content-neutral.

8. If the challenged laws restrain any First Amendment protected speech at all, the laws' restraints serve compelling governmental interests and are narrowly drawn to achieve those interests. This is particularly true in light of the fact that the technology of the Internet continues to advance, and "new products are constantly being developed" for blocking and filtering objectionable content. H.R. Rep.No. 105-775, p. 19, cited in *American Civil Liberties Union v. Ashcroft*, 322 F.3d 240, 261, n. 24 (3d Cir. 2003).

9. If the challenged laws restrain any First Amendment protected speech at all, the laws' restraints at least further substantial governmental interests and restrain real First Amendment interests no more than is necessary, leaving open ample channels of communication.

10. If the challenged laws impact interstate commerce at all, they evenhandedly effectuate legitimate state interests with minimal effect on interstate commerce.

11. The requested injunctive relief would be an excessive burden on Defendant, the public interest, and other persons, especially children suffering, or in danger of suffering, sexual abuse.

WHEREFORE, Defendant requests that the Court enter judgment in his favor and against Plaintiffs.

D. MICHAEL FISHER  
ATTORNEY GENERAL

BY: s/ John O. J. Shellenberger  
John O.J. Shellenberger  
Chief Deputy Attorney General  
Identification No. 09714

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COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

CRIMINAL LAW DIVISION  
BUREAU OF CRIMINAL INVESTIGATIONS  
CHILD SEXUAL EXPLOITATION UNIT

RE: Complaint Number:

INFORMAL NOTICE OF CHILD PORNOGRAPHY

To: \_\_\_\_\_, an Internet Service Provider

This notice is provided to you to advise you that child pornography, as defined at Section 6312 of the Pennsylvania Crimes Code, 18 PaCS 6312, has been accessed through your service at uniform resource locator www. \_\_\_\_\_

You should remove or disable access to those items identified as child pornography to your subscribers who subscribe to your service from an address located within the Commonwealth of Pennsylvania within five business days of receipt of this Notice.

You should ensure that: 1) Access to uniform resource locator www. \_\_\_\_\_ be denied to your subscribers who subscribe to your service from an address located within the Commonwealth of Pennsylvania using Internet service provided by [ISP] ; and 2) that the Attorney General or his designated agent is notified in writing (either U.S. Mail, email, or facsimile) that you have complied with this Informal Notice within five business days of said compliance. Accompanying your compliance notification must be a screen shot of the web page accessed by the Uniform Resource Locator demonstrating that access has been denied.

Failure to comply with this Informal Notice will result in this Office proceeding under Subchapter C of Chapter 76 of the Pennsylvania Crimes Code, 18 Pa.C.S. 7621 et seq, relating to Internet Child Pornography, to seek a Court Order directing you to deny access to said Internet site.

\_\_\_\_\_  
[Name]  
Special Agent

[Address]

[Phone]

[Fax]

[e-mail]

Exhibit A

**CERTIFICATE OF SERVICE**

I, John O. J. Shellenberger, hereby certify that the foregoing Answer to the Complaint has been filed electronically and is available for viewing and downloading from the Court's Electronic Case Filing (ECF) system. A true and correct copy of the foregoing Answer to the Complaint was served on November 18, 2003 by e-mail and first class mail, postage prepaid, to:

Stefan Presser, Esquire  
American Civil Liberties Union  
125 S. Ninth St., Suite 701  
Philadelphia, PA 19107

John B. Morris, Jr., Esquire  
Center for Democracy & Technology  
1634 I Street, NW, Suite 1100  
Washington, D.C. 20006

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