

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMERICAN CIVIL LIBERTIES UNION,	:
ANDROGYNY BOOKS, INC. d/b/a A DIFFERENT	:
LIGHT BOOKSTORES, AMERICAN BOOKSELLERS	:
FOUNDATION FOR FREE EXPRESSION,	: COMPLAINT FOR
ARTNET WORLDWIDE CORPORATION,	: DECLARATORY AND
BLACKSTRIPE, ADDAZI, INC. d/b/a	: INJUNCTIVE RELIEF
CONDOMANIA, ELECTRONIC FRONTIER	:
FOUNDATION, ELECTRONIC PRIVACY	:
INFORMATION CENTER, FREE SPEECH MEDIA,	:
INTERNET CONTENT COALITION, OBGYN.NET,	:
PHILADELPHIA GAY NEWS, PLANETOUT	:
CORPORATION, POWELL'S BOOKSTORE,	: Civil Action No. 98-CV-
5591	
RIOTGRRRL, SALON INTERNET, INC.	:
and WEST STOCK, INC.,	:
Plaintiffs,	:
v.	:
JANET RENO, in her official capacity as	:
ATTORNEY GENERAL OF THE UNITED STATES,	:
Defendant.	:

PRELIMINARY STATEMENT

1. Congress has enacted a broad censorship law that imposes severe criminal and civil penalties on the availability, display and dissemination of constitutionally protected, non-obscene materials on the Internet by making it a crime to "knowingly . . . by means of the World Wide Web, make[] any communication for commercial purposes that is available to any minor and that includes any material that is harmful to minors" 47 U.S.C. Sec. 231(a)(1) (hereinafter 47 U.S.C. Sec. 231 is referred to as the "Act"). Under the Act, *any* speech that some community might consider to be "harmful to minors" -- including Ken Starr's report on the Clinton-Lewinsky scandal or a Mapplethorpe photograph -- is potentially criminal if displayed for free on the World Wide Web (the "Web") and accessible by minors. This action seeks to have the Act declared unconstitutional under the First and Fifth Amendments of the United States Constitution, both on its face and as applied to plaintiffs, and to enjoin the government from enforcing it

2. The Act's constitutional flaws are identical to the flaws that led the Supreme Court to strike down the Communications Decency Act (the "CDA"), in *Reno v. American Civil Liberties Union*, 521 U.S. ___, 117 S. Ct. 2329 (1997). The effect of the Act, like the CDA, is to restrict *adults* from communicating and receiving expression that is clearly protected by the Constitution
3. Plaintiffs represent a broad range of individuals and entities who are speakers, content providers, and users of the Web. Plaintiffs include online magazines, booksellers, media companies, art vendors, and gay and lesbian content providers. The Act directly violates the First Amendment rights of plaintiffs, their members and tens of millions of other speakers to communicate protected expression on the Web. In addition, the Act violates the rights of millions of Web users to access and view constitutionally protected speech, including the right to do so anonymously.
4. The Act regulates and restricts speech on the Web. The Internet in general, and the Web in particular, represents the most participatory marketplace of mass speech yet developed -- it is in many ways a far more speech-enhancing medium than radio or television, print, the mails, or even the village green. With a few simple tools and at a very low cost, the Web enables average citizens and small businesses, as well as large corporations, to publish online newspapers, distribute electronic pamphlets, participate in local or worldwide conversations, and communicate with a broader audience than ever before possible. The vast majority of information on the Web is available for free, even when it is created and provided by commercial entities or individuals hoping to make a profit. Thus, the Web also provides millions of users with access to a vast range of free information and resources. Web users are far from passive listeners -- rather, they are empowered with the tools to seek out exactly the information they need and to respond with their own information if desired
5. The Act does not restrict the *sale* of speech on the Web. In fact, the Act provides an explicit defense for providers who charge for their speech by credit or debit card. Rather, the Act explicitly and purposefully bans a wide range of protected expression that is provided *for free* on the Web by organizations and entities who happen to be communicating on the Web "for commercial purposes.
6. In addition, because of the way the Web works, the Act's prohibition on certain communications with minors effectively would ban those same communications between adults. The Act targets both written and visual expression that is constitutionally protected for adults, including, for example, valuable works of literature and art, safer sex information, examples of popular culture, and a wide range of robust human discourse about current issues and personal matters that may include provocative or sexually oriented language. There are no reasonable means for speakers to ascertain the age of persons who access their free Web communications, or to restrict or prevent access by minors to their content. Thus, the Act will reduce the adult population in cyberspace to reading and communicating only material that is suitable for young children. In addition, because the Act makes no allowance for the varying levels of maturity of minors of different ages, the Act prohibits speech that is valuable and constitutionally protected for older minors, but that may not be appropriate for younger children

7. The speech at issue in this case does not include obscenity, child pornography, or speech used to entice or lure minors into sexual activity; such speech is already illegal under existing law.

JURISDICTION AND VENUE

8. This case arises under the United States Constitution and the laws of the United States and presents a federal question within this Court's jurisdiction under Article III of the federal Constitution and 28 U.S.C. Secs. 1331 and 1361
9. The Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. Sec. 2201 et seq
10. The Court has the authority to award costs and attorneys' fees under 28 U.S.C. Sec. 2412
11. Venue is proper in this district under 28 U.S.C. Sec. 1391(e).

THE STATUTORY LANGUAGE AT ISSUE

12. The Act, to be codified at 47 U.S.C. Sec. 231, was signed into law on October 21, 1998 as part of the Omnibus Appropriations Act. Unless enjoined, the Act will become effective thirty days after the date of enactment
13. The Act imposes criminal and civil penalties for "knowingly and with knowledge of the character of the material, in interstate or foreign commerce by means of the World Wide Web, mak[ing] any communication for commercial purposes that is available to any minor and that includes any material that is harmful to minors" 47 U.S.C. Sec. 231(a)(1)
14. Persons who violate Section 231(a) "shall be fined not more than \$50,000, imprisoned not more than 6 months, or both." 47 U.S.C. Sec. 231(a)(1). Section 231(a)(2) states that "[i]n addition to the penalties under paragraph (1), whoever intentionally violates such paragraph shall be subject to a fine of not more than \$50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation." 47 U.S.C. Sec. 231(a)(2)
15. Section 231(a)(3) states that "whoever violates paragraph (1) shall be subject to a civil penalty of not more than \$50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation." 47 U.S.C. Sec. 231(a)(3)
16. The Act defines material that is "harmful to minors" as "any communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that is obscene or that -- (A) the average person, applying contemporary community standards,

would find, taking the material as a whole and with respect to minors, is designed to appeal to, or is designed to pander to, the prurient interest; (B) depicts, describes, or represents, in a manner patently offensive with respect to minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post-pubescent female breast; and (C) taken as a whole, lacks serious literary, artistic, political, or scientific value for minors." 47 U.S.C. Sec. 231(e)(6)

17. The Act defines "minor" as "any person under 17 years of age." 47 U.S.C. Sec. 231(e)(7)
18. The Act defines the phrase "by means of the World Wide Web" to mean "by placement of material in a computer server-based file archive so that it is publicly accessible, over the Internet, using hypertext transfer protocol or any successor protocol." 47 U.S.C. Sec. 231(e)(1)
19. The Act defines "commercial purposes" as being "engaged in the business of making such communications." 47 U.S.C. Sec. 231(e)(2)(A)
20. The Act defines "engaged in the business" as meaning "that the person who makes a communication, or offers to make a communication, by means of the World Wide Web, that includes any material that is harmful to minors devotes time, attention, or labor to such activities, as a regular course of such person's trade or business, with the objective of earning a profit as a result of such activities (although it is not necessary that the person make a profit or that the making or offering to make such communications be the person's sole or principal business or source of income). A person may be considered to be engaged in the business of making, by means of the World Wide Web, communications for commercial purposes that include material that is harmful to minors, only if the person knowingly causes the material that is harmful to minors to be posted on the World Wide Web or knowingly solicits such material to be posted on the World Wide Web." 47 U.S.C. Sec. 231(e)(2)(B)
21. Section 231(b) of the Act attempts to exempt certain persons from liability. It states: "For purposes of subsection (a), a person shall not be considered to make any communication for commercial purposes to the extent that such person is -- (1) a telecommunications carrier engaged in the provision of a telecommunications service; (2) a person engaged in the business of providing an Internet access service; (3) a person engaged in the business of providing an Internet information location tool; or (4) similarly engaged in the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the content of the communication, except that such person's deletion of a particular communication or material made by another person in a manner consistent with subsection (c) or section 230 shall not constitute such selection or alteration of the content of the communication.
22. Section 231(c) of the Act provides an affirmative defense if the defendant "in good faith, has restricted access by minors to material that is harmful to minors - (A) by requiring use of a credit card, debit account, adult access code, or adult personal identification

number; (B) by accepting a digital certificate that verifies age; or (C) by any other reasonable measures that are feasible under available technology." 47 U.S.C. Sec. 231(c)(1)

23. Section 231(d) of the Act forbids the disclosure of "any information collected for the purposes of restricting access to such communications" to minors without prior consent. 47 U.S.C. Sec. 231(d)(1)(A)
24. The Act does not define the distinction between what constitutes a "knowing" violation under Sec. 231(a)(1) and an "intentional" violation under Sec. 231(a)(2)
25. The Act makes no distinction between material that may be "harmful" to very young minors and material that may be "harmful" to older minors
26. The Act does not define the relevant "community" for purposes of determining what is "harmful to minors" in the global medium of cyberspace
27. The Act does not define what comprises a work "considered as a whole" in the context of the Web, which is a seamless, interconnected set of texts, sound and graphics provided by different content providers and located on different computers around the world
28. Congress passed the Act despite a letter from the Department of Justice (the "DOJ") dated October 5, 1998 to the Chairman of the House Committee on Commerce, Representative Thomas Bliley, stating that the Act raises "difficult constitutional issues" in light of *Reno v. American Civil Liberties Union*, 521 U.S. ___, 117 S. Ct. 2329 (1997). See Department of Justice letter dated October 5, 1998 to the Chairman of the House Committee on Commerce, Representative Thomas Bliley (the "DOJ Letter") at 3. The DOJ also emphasized the "numerous ambiguities concerning the scope" of the Act's coverage. DOJ Letter at 4. In addition, the DOJ expressed doubt that the Act "would have a material effect in limiting minors' access to harmful materials" given that "children would still be able to obtain ready access to pornography from a myriad of overseas web sites." DOJ Letter at 3. In light of the constitutional problems and doubtful efficacy of the Act, the Department of Justice concluded that it did "not believe that it would be wise to divert the resources that are used for important initiatives [such as fighting child pornography and thwarting child predators] to prosecutions of the kind contemplated under the [Act]." DOJ Letter at 3.

THE PARTIES

29. The named plaintiffs are briefly described below. The impact of the Act on the plaintiffs' communications is described more fully in paragraphs 81-190
30. 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

31. Plaintiff A Different Light BOOKSTORES maintains a Web site through which visitors can purchase books and music by, about, and for gay and lesbian individuals and can receive information about the gay and lesbian community. Androgyny Books, Inc. d/b/a A Different Light Bookstores is incorporated in California and has its principal places of business in New York, New York, San Francisco, California and West Hollywood, California
32. Plaintiff AMERICAN BOOKSELLERS FOUNDATION FOR FREE EXPRESSION ("ABFFE") was organized as a not-for-profit organization by the American Booksellers Association in 1990 to inform and educate booksellers, other members of the book industry, and the public about the dangers of censorship and to promote and protect the free expression of ideas, particularly freedom in the choice of reading materials. ABFFE has over 300 member bookstores, primarily in the United States. ABFFE is incorporated in Delaware, and has its principal place of business in New York, New York
33. Plaintiff ARTNET WORLDWIDE CORPORATION ("ArtNet") is the leading fine art vendor on the Web. ArtNet is incorporated in New York and has its principal place of business in New York, New York
34. Plaintiff BLACKSTRIPE is a Web-based resource for gay and lesbian individuals of African descent. BlackStripe is operated by an individual residing in Wilmington, Delaware using a server located in California
35. Plaintiff CONDOMANIA is the nation's first condom store and is a leading online seller of condoms and distributor of safer-sex related materials. Addazi, Inc. d/b/a Condomania is incorporated in Massachusetts and has its principal place of business in Los Angeles, California
36. Plaintiff ELECTRONIC FRONTIER FOUNDATION ("EFF") is a nationwide, nonprofit organization of approximately 2,000 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, California
37. 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 (the "Fund"), a tax-exempt organization incorporated in the District of Columbia. Both EPIC and the Fund have their principal places of business in the District of Columbia
38. Plaintiff Free Speech Media, LLC is a Colorado limited liability for-profit corporation. Free Speech Media, LLC operates a project called Free Speech Internet Television ("FSITV"), which promotes independent audio and video content on the Web. While the

FSITV Web site is designed to encourage the democratic expression of progressive ideals, it welcomes the contribution of materials regardless of ideology. FSITV believes that such democratic media can and will improve the cultural and political fabric of society by diversifying the exchange of information. FSITV's base of operations is located in Colorado

39. Plaintiff INTERNET CONTENT COALITION (the "ICC") is a nonprofit professional association of providers of original content for the Internet. ICC is incorporated in New York and has its principal place of business in Westtown, Pennsylvania. Members of the ICC include many well-known and high-profile providers of original content on the Web such as: CNET, MSNBC, Sony Online, The New York Times, Time, Inc., and ZDNet
40. Plaintiff OBGYN.NET is a comprehensive international online resource center for professionals in Obstetrics and Gynecology, the medical industry, and the women they serve. OBGYN.net is a service and publication that has its principal place of business in Austin, Texas, and that is wholly owned by Elecomm Corporation, which is incorporated in Texas
41. Plaintiff PHILADELPHIA GAY NEWS has been the leading print newspaper for the gay and lesbian community of Philadelphia for 22 years. It now also publishes on the Web. It is a for-profit corporation that is incorporated in Pennsylvania and has its principal place of business in Philadelphia, Pennsylvania
42. Plaintiff PLANETOUT CORPORATION is a leading online content provider for gay, lesbian, bisexual and transgendered persons. It is a for-profit corporation that is incorporated in Delaware and has its principal place of business in San Francisco, California
43. Plaintiff Powell's Bookstore operates a bookstore in Portland, Oregon and also maintains a Web site through which visitors can purchase new, used, rare and out-of-print books. Powell's Bookstore is incorporated in Oregon and has its principal place of business in Portland, Oregon
44. Plaintiff RIOTGRRL is a popular "Webzine" that advocates positive empowerment and support for women. RiotGrrl's mission is to foster discussion, action, and growth for women through the Web. RiotGrrl is incorporated in Florida and has its principal place of business in Fort Myers, Florida
45. Plaintiff SALON INTERNET, INC. ("Salon Magazine") is a leading online magazine featuring articles on current events, the arts, politics, the media, and relationships, as well as regular columns by well-known writers. Salon Magazine is a for-profit corporation that is incorporated in California and has its principal place of business in San Francisco, California
46. Plaintiff WEST STOCK, INC. ("West Stock") maintains a Web site that displays and sells licenses for stock photographs. In addition, West Stock sells licenses to many images that are not available on its Web site. West Stock is incorporated in Washington and has its principal place of business in Seattle, Washington

47. 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

The Internet

48. The Internet is a decentralized, global medium of communications that links people, institutions, corporations and governments around the world. It is a giant computer network that interconnects innumerable smaller groups of linked computer networks and individual computers. While estimates are difficult due to its constant and rapid growth, the Internet is currently believed to connect more than 159 countries and over 100 million users. The amount of traffic on the Internet is doubling approximately every 100 days
49. Because the Internet merely links together numerous individual computers and computer networks, no single entity or group of entities controls the material made available on the Internet or limits the ability of others to access such materials. Rather, the range of digital information available to Internet users is individually created, maintained, controlled and located on millions of separate individual computers around the world
50. The Internet presents extremely low entry barriers to anyone who wishes to provide or distribute information or gain access to it. Unlike television, cable, radio, newspapers, magazines or books, the Internet provides the average citizen or small business with an affordable means for communicating with, accessing and posting content to a worldwide audience.

The World Wide Web

51. The World Wide Web (the "Web") is the most popular way to provide and retrieve information on the Internet. Anyone with access to the Internet and proper software can post content on the Web, which may contain many different types of digital information - text, images, sound, and even video. The Web is comprised of millions of separate but interconnected "Web sites," which in turn may have hundreds of separate "Web pages," that display content provided by particular persons or organizations. Any Internet user anywhere in the world with the proper software can create her own Web page, view Web pages posted by others, and then read text, look at images and video, and listen to sounds posted at these sites
52. To gain access to the information available on the Web, a person uses a Web "browser" -- software, such as Netscape Navigator, Mosaic, or Internet Explorer -- to display, print and download documents that use hypertext transfer protocol ("http"), the standard Web formatting language. Each document on the Web has an address that allows users to find

and retrieve it. Most Web documents also contain "links." These are short sections of text or image that refer and link to another document. Through the use of these links from one computer to another, from one document to another, the Web for the first time unifies the diverse and voluminous information made available by millions of users on the Internet into a single body of knowledge that can be easily searched and accessed

53. A number of search engines and directories -- such as Yahoo, Infoseek, and Lycos -- are available free of charge to help users navigate the Web. Once a user has accessed the search service, she simply types a word or string of words as a search request and the search service provides a list of sites that match the search string.

How Individuals Access the Web

54. Individuals have several easy means of gaining access to the Web. Internet service providers ("ISPs") offer their subscribers modem access to computers or networks linked directly to the Internet. Most ISPs charge a modest monthly fee, but some provide free or very low-cost access. National "commercial online services," such as America Online, CompuServe, and Microsoft Network, serve as ISPs and also provide subscribers with additional services, including access to extensive content within their own proprietary networks. In addition, many educational institutions, libraries, businesses, and individual communities maintain a computer network linked directly to the Internet and thus the Web, and provide account numbers and passwords enabling users to gain access to the network
55. Most users of the Internet are provided with a username, password and e-mail address that allow them to log on to the Internet and to communicate with other users. Many usernames are pseudonyms or pen names that provide users with a distinct online identity and help to preserve their anonymity and privacy. The username and e-mail address are the only indicators of the user's identity; that is, persons communicating with the user will only know them by their username and e-mail address (unless the user reveals other information about herself through her communications).

Other Means of Exchanging Information Through The Web

56. The Web also allows individuals to communicate in discussion groups and chat rooms and by e-mail using hypertext transfer protocol. Many Web sites use software applications, sometimes called "middleware," to provide users of their sites with access to discussion groups and chat rooms. For example, PlanetOut sponsors a variety of discussion groups and chat rooms in which anyone visiting its Web site can participate
57. Discussion groups allow users of computer networks to post messages onto a public computerized bulletin board and to read and respond to messages posted by others in the discussion group. Discussion groups have been organized to cover virtually every topic

imaginable. Chat rooms allow users to engage in simultaneous conversations with another user or group of users by typing messages and reading the messages typed by others participating in the "chat.

58. Online discussion groups and chat rooms create an entirely new global public forum where individuals can associate and communicate with others who have common interests, and engage in discussion or debate on every imaginable topic
59. Finally, it is possible to set up an account for electronic mail, commonly referred to as "e-mail," using the Web. Several commercial Web sites such as Yahoo and Hotmail will provide free e-mail accounts to individuals. These accounts allow individuals to use the Web to create, send, and receive e-mails with other individuals. Such accounts allow individuals who do not possess their own computer or Internet access account to establish a permanent e-mail address and to correspond with other individuals by using the Web at public libraries and other public Internet access sites
60. As can be seen from the various ways that individuals can exchange information and communicate via this technology, the Web is "interactive" in ways that distinguish it from traditional media. For instance, users are not passive receivers of information as with traditional broadcast media; rather, users can easily respond to the material they receive or view online. In addition, "interactivity" means that Web users must actively seek out with specificity the information they wish to retrieve and the kinds of communications in which they wish to engage. For example, to gain access to material on the Web, a user must know and type the address of a relevant site or find the site by typing a relevant search string into a search engine.

The Range of Content Available on the Web

61. Content on the Web is provided by the millions of Web users worldwide, and the content ranges from art, to humor, to literature, to medical information, to music, to news, to sexually oriented material. For example, on the Web, one can view the full text of the Bible, read The New York Times, or peruse an article on the supermarket industry. One can browse through paintings from art galleries around the world, view in detail images of the ceiling of the Sistine Chapel, or watch a video about immigration. The overwhelming majority of information on the Web is provided for free to users
62. At any one time, the Web serves as the global communication medium for literally tens of thousands of political debates and social dialogues among world-class newspapers as well as small town citizens. Although the vast majority of the information on the Web is not sexually oriented, there is material available on the Web that might be considered "harmful to minors" in some communities. For example, a Web user can access the entire Starr Report and related discussions, explicit safer-sex information, pictures by well-known artists such as Robert Mapplethorpe and Andres Serrano, and videos about AIDS

63. The Web provides tremendous opportunities for individual entrepreneurs, start-up companies, and home-based businesses, as well as businesses that also exist in the offline world. There are currently a wide range of individuals and companies communicating on the Web for commercial purposes, from booksellers and online magazines to party suppliers and pizza parlors. It is not possible to know the exact number of sites, but the percentage of sites that are run by profit-making enterprises has increased over time. The number of such sites is now more than 400,000 and may well be over one million.

The Impact of the Act on the Web

64. Because of the nature of the Web, the Act will ban a wide range of constitutionally protected speech among adults

65. The Act purports to restrict only content provided on the Web "for commercial purposes," but in fact it explicitly bans a wide range of protected expression that is provided *for free* on the Internet by individuals and organizations. 47 U.S.C. Sec. 231(a)(1). The Act does not address the commercial *sale* of content; in fact, providers who sell their content are explicitly *exempt* from the Act when the buyer pays by credit or debit card. 47 U.S.C. Sec. 231(c). Rather, the Act targets all other communications made publicly accessible on the Web "for commercial purposes," defined very broadly as being "engaged in the business of making such communications." 47 U.S.C. Sec. 231(e)(2)(A). The Act's definition of a person "engaged in the business" explicitly states that "it is not necessary that the person make a profit" nor that the making of the communications be the person's "principal business." 47 U.S.C. Sec. 231(e)(2)(B). Just like many traditional print newspapers, bookstores, and magazine publishers, many Web publishers make a profit (or attempt to make a profit) through advertising. In addition, content providers such as online booksellers, music stores, and art vendors allow potential customers to browse their content for free -- similar to browsing in a non-virtual book store or art gallery. Finally, some online content providers make a profit by charging their content contributors, although users may access the content for free. Thus, the Act impacts a wide range of providers of free content, from fine art to popular magazines to news and issue-oriented expression

66. The Act applies to all communications on the Web that are "available to any minor." Because all free content on the Web is "available to" both adults and minors, the Act on its face applies to communications between adults. Given the technology of the Web, there are no reasonable means for speakers who provide information for free to ascertain the age of persons who access their speech, or to restrict or prevent access by minors. From the perspective of these speakers, the information that they make available on the public spaces of the Web must either be made available to all users of the Web, including users who may be minors, or not made available at all

67. The Act attempts to provide affirmative defenses to criminal liability, none of which are technologically or economically available to plaintiffs and other providers of free content on the Web. Section 231(c)(1)(A) provides an affirmative defense if the defendant

restricts access by "requiring use of a credit card, debit account, adult access code, or adult personal identification number." Section 231(c)(1)(A) is identical to a defense in the CDA that was found unavailable to content providers in *Reno v. American Civil Liberties Union*, 521 U.S. at ___, 117 S. Ct. at 2339 n.26 & 2347. Financial institutions will not verify a credit card in the absence of a financial transaction, so the option of requiring a credit card is completely unavailable to content providers who provide their speech for free. Validation by a debit card would also require a financial transaction and so is unavailable for free content providers. Setting up an adult identification system before providing access to free content is economically and technologically infeasible for the vast majority of content providers covered by the Act

68. Section 231(c)(1)(B) provides an affirmative defense if the defendant "accept[s] a digital certificate that verifies age." This defense is technologically and economically infeasible for the vast majority of content providers covered by the Act
69. Section 231(c)(1)(C) provides an affirmative defense if the defendant takes "other reasonable measures that are feasible under available technology" to restrict access by minors. As discussed above, there are no other reasonable means available to content providers covered by the Act. This defense, too, is similar to a defense in the CDA that was found unavailable to content providers in *Reno v. American Civil Liberties Union*. *See id.*
70. Even if age or credit card verification were technologically or economically feasible, such requirements would fundamentally alter the nature and values of the new computer communication medium, which is characterized by spontaneous, instantaneous, albeit often unpredictable, communication by hundreds of thousands of individual speakers around the globe, and which provides an affordable and often seamless means of accessing an enormous and diverse body of information, ideas and viewpoints. Pre-registration or screening requirements would undermine the unique characteristics of this new technology
71. Age verification and identification requirements would also make it impossible for online users to access constitutionally protected speech anonymously. Even if it were economically and technologically feasible for speakers to verify the age of their readers, the Act would require readers to provide personally identifiable information in order to access speech for free. This is implicitly acknowledged by Section 231(d) of the Act, which forbids the further disclosure of "any information collected for the purposes of restricting access to such communications" to minors. 47 U.S.C. Sec. 231(d)(1)(A). The inability to access speech anonymously would deter many users from accessing sensitive or controversial speech covered by the Act
72. In addition, requiring users to provide identifying information prior to being able to even browse a site to determine what it offers will deter users from entering those sites, and will reduce the commercial opportunities provided to plaintiffs and other speakers using the Web. Requiring adults to identify themselves before they can access speech defined as "harmful to minors" will also stigmatize that speech and thus deter access to protected speech.

The Ineffectiveness of the Act and the Effectiveness of Alternative Means

73. Because of the global nature of the Internet, defendants cannot demonstrate that the Act would likely reduce the availability of sexual content on the Web to minors in the United States
74. At least 40% of the content provided on the Web originates abroad. All of the content on the Web is equally available to all Web users worldwide and may be accessed as easily as content that originates locally. Because it is not technologically possible to prevent content posted abroad from being available to Web users in the United States, the Act will not accomplish its purported purpose of keeping sexually oriented content from minors in the United States
75. Conversely, there are many alternative means that are more effective at assisting parents in limiting a minor's access to certain material if desired
76. Commercial online services like America Online, Prodigy, and CompuServe provide features to prevent children from accessing chat rooms and to block access to Web sites and newsgroups based on keywords, subject matter, or specific newsgroups. These services also offer screening software that 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
77. Online users can also purchase special software applications, known as user-based blocking programs. 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
78. User-based blocking programs are not perfect, both because they fail to screen all inappropriate material and because they block valuable Web sites. However, a voluntary decision by concerned parents to use these products for their children constitutes a far less restrictive alternative than the Act's imposition of criminal penalties for protected speech among adults
79. Congress has recognized the usefulness of such user-based blocking programs through another provision enacted along with the Act, and not being challenged here, that requires Internet service providers to "notify [all new customers] that parental control protections (such as computer hardware, software or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors." 47 U.S.C. Sec. 230(d)
80. Congress itself has recognized that it did not adequately research other alternatives before passing the Act. Another provision passed alongside the Act calls for the establishment of a Commission to "conduct a study to identify technological or other methods that -- (A)

will help reduce access by minors to material that is harmful to minors on the Internet; and (B) may meet the requirements for use as affirmative defenses for purposes of section 231(c)" of the Act. If Congress had properly researched this issue before passing the Act, it would have realized that there are other less restrictive alternatives than the criminal and severe civil penalties imposed by the Act.

Relationship of Plaintiffs to the Act

81. Because all communications on the Web are available throughout the United States as well as the world, all plaintiffs engage "in interstate or foreign commerce." 47 U.S.C. Sec. 231(a)(1)
82. Plaintiffs fear prosecution under the Act for communicating, sending, displaying, or distributing material that might be deemed "harmful to minors" by some community in the United States. Plaintiffs and/or their members all provide material for free on the Web "for commercial purposes" that they believe to be valuable for adults, but that they fear could be construed as "harmful to minors" in some communities
83. Plaintiffs also fear civil penalties under the Act for their online communications. A federal prosecutor anywhere in the country could seek civil penalties of up to \$50,000 for each day of violation simply by filing a civil complaint against one of the plaintiffs and proving merely by a preponderance of the evidence that the plaintiff had communicated material that the local community believes is "harmful to minors."
84. Plaintiffs also fear liability for material created by others that is available on their Web sites and Web-based online discussion groups and chat rooms. The Act contains an exemption for providers "engaged in the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the content of the communication." 47 U.S.C. Sec. 231(b)(4). Elsewhere, however, the Act states that it applies to a person who "knowingly solicits . . . material to be posted on the World Wide Web." 47 U.S.C. Sec. 231(e)(2)(B). Plaintiffs fear that Section 231(b) will not exempt them from prosecution or civil penalties because they will be found to have "solicited" or "selected" the communications for publication on their sites
85. Plaintiffs do not understand what the Act prohibits, and are thus unable to determine with certainty what speech is prohibited by the Act and what speech is not. For example, they do not know the relevant "community" for determining what is "harmful to minors" on the global Internet. They do not know whether their speech will be prohibited if it is found to be "harmful" to very young minors even if it has value to older minors. They do not know what comprises a work "considered as a whole" in the context of speech on the Web, which is a seamless, interconnected set of texts, sound and graphics provided by different content providers and located on different computers around the world. Finally, they do not understand what would constitute "reasonable measures that are feasible

under available technology" that are sufficient to provide an affirmative defense under the Act

86. The defenses provided in the Act are technologically and economically unavailable to the plaintiffs. Even if plaintiffs could comply with the Act, plaintiffs believe that the Act's registration requirements would deter a substantial proportion of its users who would not access their speech because they could no longer do so anonymously. Thus, the Act would significantly diminish the audience for plaintiffs' speech and would economically burden the plaintiffs as a result
87. Plaintiffs have no way to comply with the Act and are left with two equally untenable alternatives: (i) risk prosecution or civil penalties under the Act, or (ii) attempt to engage in self-censorship and thereby deny adults and older minors access to constitutionally protected material.

American Civil Liberties Union

88. The American Civil Liberties Union (the "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 including First Amendment free speech rights
89. Many ACLU members use the Web to communicate on a wide variety of subjects for commercial purposes. Some members provide free content on the Web which they fear will make them subject to criminal and civil liability under the Act. The ACLU also has a broad spectrum of members who use the Web to access material. These members fear the Act will deny them access to many valuable resources
90. Many ACLU members are minors, including both high school and college students, who will be directly affected by this Act. These members use the Web to do school homework and seek information on a vast range of subjects. The Act will block the availability to these members of much information on political and social subjects.

Some of the ACLU members who fear liability under the Act include:

91. *Nadine Strossen*: Nadine Strossen is a member of the ACLU and has been president of the ACLU since 1991. Ms. Strossen is a professor at New York Law School and has written extensively regarding individual liberties. Ms. Strossen is the author of the book *Defending Pornography: Free Speech, Sex, and the Fight for Women's Rights* (Anchor, 1996)
92. Currently, Ms. Strossen is a paid contributing monthly columnist for the online magazine Intellectual Capital. The Intellectual Capital magazine is supported by advertising revenue and provides all of its content for free on the Web. Ms. Strossen's column in Intellectual Capital regularly and frankly discusses topics such as homosexuality, sex,

pornography and censorship. Ms. Strossen believes that her publications on the Web have social, political and educational value for adults and minors

93. Ms. Strossen's staunch defense of civil liberties has engendered criticism and hostility from individuals and groups across the political spectrum. In Ms. Strossen's experience, the defense of sexual expression is one of the most controversial and provocative issues in our society. Indeed, on several occasions there have been attempts to censor Mr. Strossen's speech on this issue, including attempts in Cincinnati, Ohio and in Ventura, California. Thus, Ms. Strossen believes that some people may find her frank treatment of issues involving sex to be "harmful to minors." Ms. Strossen believes that her essays and the discussions by readers are valuable exchanges of ideas regarding important issues, and she does not plan to self-censor her column. As a professional writer publishing on the Web, Ms. Strossen fears that she may be subjected to criminal and civil penalties under the Act.

94. *Lawrence Ferlinghetti*: Lawrence Ferlinghetti is a member of the ACLU. Mr. Ferlinghetti is San Francisco's poet laureate and has authored two novels and more than a half-dozen collections of poetry, including *A Coney Island of the Mind*. Mr. Ferlinghetti is the co-founder and owner of both City Lights Bookstore, founded in 1953, and City Lights Publishing, a book publisher founded in 1955, which are located in San Francisco, California

95. In 1956, Mr. Ferlinghetti's City Lights Publishing published Allen Ginsberg's poem "Howl," and Mr. Ferlinghetti sold the poem at his City Lights Bookstore. As a result, Mr. Ferlinghetti was arrested and tried for publishing and selling obscene material. After a lengthy trial, at which Mr. Ferlinghetti was represented by the ACLU, he was acquitted of these charges

96. City Lights Books currently has a Web site that promotes books available from the bookstore and publisher. The Web site also contains lists of literary events and a brief history of City Lights Bookstore and Publishing. City Lights Books plans to expand its Web site to include excerpts from the books and poems that City Lights publishes. The City Lights Web site also has a section with a brief history of the "Howl" obscenity trial and photographs from the trial and has plans to expand this section of the Web site by adding excerpts from the poem. Also, Mr. Ferlinghetti's work is available on a variety of poetry sites on the Web

97. In Mr. Ferlinghetti's experience, there are people who would find his work and the work he publishes "harmful to minors." Mr. Ferlinghetti will not self-censor his Web site and therefore fears that, as owner of City Lights Books, the content of his Web site will subject him to criminal prosecution or severe civil penalties if the Act is allowed to stand.

98. *Patricia Nell Warren*: Patricia Nell Warren is a member of the ACLU. Ms. Warren is a former Reader's Digest editor and the author of seven novels, four books of poetry and numerous articles, poems and essays. Ms. Warren's novel *The Front Runner* was on The New York Times best-seller list and continues to be one of the best-selling gay novels of all time
99. Ms. Warren is also the co-founder and co-owner, with Tyler St. Mark, of Wildcat Press. Ms. Warren promotes Wildcat Press' books on the Internet at the Wildcat Press Web site. Some of the material in Wildcat Press' publications is sexually explicit or contains vulgar language. The Web site includes reviews of and excerpts from Ms. Warren's books, articles and commentaries written by Ms. Warren, and the YouthArts Project which Ms. Warren founded and supports
100. The content of the book excerpts and articles by Ms. Warren generally deal with gay and lesbian issues. In Ms. Warren's experience, there are many people in society who are openly hostile to and discriminate against homosexuals. Indeed, Ms. Warren has faced repeated attempts to ban her books at libraries. Ms. Warren fears that material which discusses gay and lesbian issues will be found to be "harmful to minors" in some communities, even if it does not contain sexually explicit material
101. Also, some of the excerpts and articles, such as "Looking for Mr. Goodbar . . . Gay Style," frankly discuss gay and lesbian sex. Further, Wildcat Press sponsors the online youth publication YouthArts Project, which publishes poetry, fiction, essays, fine art, and photography by contributors age 25 and under and is targeted to an audience that includes teenagers. In Ms. Warren's experience, many people would find any discussion of young people exploring their homosexuality to be "harmful to minors.
102. Because Ms. Warren believes that the speech provided on the Wildcat Web site is socially, educationally and politically valuable, she does not currently plan to self-censor the Wildcat Web site. Thus, as owner and sponsor of the Web site, Ms. Warren fears that she could face civil and criminal penalties for both her work and the work of others she publishes on the Web. In addition, Ms. Warren fears that the expense of defending against even an unfounded prosecution or civil law suit brought under the Act would force the Wildcat Press out of business.
103. *David Bunnell*: David Bunnell is a member of the ACLU. Mr. Bunnell is the chief executive officer of Upside Media Inc., a California corporation. Upside Media Inc. publishes Upside Magazine, a print magazine, and also has a Web site on the Internet
104. Upside Magazine is primarily devoted to covering issues related to high-tech business. The Web publication has a section devoted to daily news and also has current and archived articles from the print magazine Upside. The Upside Web site covers a broad spectrum of subjects relating to the Internet, including daily news reporting, economic reporting and analysis, and stories about personalities, books and events

105. Some of the material reported in Upside discusses sex and uses explicit language. For instance, the Upside article "The Net's Dirty Little Secret: Sex Sells," discusses adult Web sites on the Internet and describes some of the content of those Web sites. Similarly, the Upside article "Madeleine Altmann's Babes4U" discusses female entrepreneurs who own and operate adult Web sites on the Internet and describes some of the content of those sites. As with other Upside articles, both of these articles provide links to the sites discussed in the article
106. Mr. Bunnell believes that the material on the Upside Web site has social, political and educational value for adults and minors, but he fears that some people in some communities might find some of the material on the Upside Web site "harmful to minors." Because Mr. Bunnell does not plan to self-censor the Upside Web site, he fears that as chief executive officer in charge of Upside Media Inc., he would be subject to criminal prosecution or civil fines or both if the Act is allowed to stand
107. All of the above ACLU members, and other ACLU members not specifically mentioned, fear prosecution or enforcement under the Act for displaying material that might be considered "harmful to minors."

Androgyny Books, Inc. d/b/a A Different Light Bookstores

108. Plaintiff Androgyny Books, Inc. d/b/a A Different Light Bookstores maintains a Web site through which visitors can purchase books and music of interest to gay and lesbian individuals and can receive information about the gay and lesbian community. A Different Light Bookstores aims to stock every book in print by, for, and about the lesbian, gay, bisexual, and transgender communities. A Different Light has operated retail bookstores since 1979 and today has stores in New York, San Francisco, and West Hollywood. The Web site receives approximately 1500 hits each week. A Different Light has processed over 1500 orders over its Web site since it was developed in 1995
109. Users of A Different Light's Web site receive an enormous amount of information about the gay and lesbian community. Visitors can search through the "bookshelves" located on the site for books about gay and lesbian issues or by gay and lesbian authors. They can choose from among its over 21,000 book titles in sixty categories, including poetry, travel, psychology, recovery, parenting, and history. A Different Light's Web site sells books about such individuals as Carson McCullers, Tennessee Williams, Ellen DeGeneris, and Greg Louganis. Music and books on tape are also available for purchase on the site. A Different Light also offers e-mail versions of catalogs selling material of general interest or devoted to specific topics such as business, law, education, religion, coming out, and spirituality. In addition, the Web site announces recent books, offers book reviews, provides profiles of authors, and publishes essays. After obtaining a free subscription, users may receive a schedule of events occurring at A Different Light's three stores or otherwise sponsored by A Different Light. These announcements can then be viewed by anyone who accesses the Web site

110. Plaintiff A Different Light fears prosecution under the Act because its Web site contains material that may be considered "harmful to minors." A Different Light fears that, because its Web site is devoted to gay and lesbian literature, music, and information, all of its content may be considered "harmful to minors" in some communities. In addition, some of the books A Different Light sells contain sexually explicit, or otherwise adult, material. For instance, A Different Light sells such titles as *Boys Behind Bars: True Homosexual Accounts* by Boyd and *Mammoth Book of New Erotica* by Jakubowski. In addition, some of the content published in essays or excerpts of books contains sexually explicit material. For example, in a story entitled "Shame On Me" - which appears on A Different Light's Web site as an excerpt from *Sundays at Seven*, America's longest-running gay reading series, edited by Rondo Mieczkowski and compiled by James Carroll Pickett - Gavin Geoffrey Dillard explicitly describes many homosexual sexual encounters. Significantly, some titles themselves, as they appear on the Web site, are sexually suggestive or contain strong adult language
111. Plaintiff A Different Light does not require visitors to identify themselves to access the information and services available on its Web site. Although A Different Light provides all of the information on its Web site for free to users, it requires individuals who purchase items from the Web site to provide credit card information for billing purposes
112. Plaintiff A Different Light believes all members of society, including minors as well as adults, are interested in and benefit from the services provided on its Web site. A Different Light believes its presence and materials provide a necessary reference for gays and lesbians of all ages who are discovering their sexuality. Therefore, for the reasons set forth in this complaint, A Different Light does not intend to self-censor its Web site in any way as a result of the Act.

American Booksellers Foundation for Free Expression

113. Plaintiff American Booksellers Foundation for Free Expression ("ABFFE") has hundreds of bookseller members from coast to coast, many of whom sell materials that contain nudity or descriptions of the nude human body, and which deal frankly with the subject of human sexuality. ABFFE's members are not "adult bookstores." Some member bookstores have their own Web pages that discuss the content of books sold in stores. For instance, the Sisterhood Bookstore, in Los Angeles, California has an extensive Web site which lists many of the books it sells, often with pictures of the books, covers and descriptions of their content. Because many of the books sold by Sisterhood Bookstore are about feminism, lesbianism and sex, its owners fear that some communities would find its Web site "harmful to minors" under the Act
114. Most member bookstores use the Web to obtain information and excerpts of books from publishers. For example, member booksellers may review current popular titles such as *Primary Colors* by Anonymous and *Sabbath's Theatre* by Philip Roth, which include passages describing nudity and sexual conduct

115. ABFFE members' right to learn about, acquire, and distribute materials containing nudity and sexual conduct, and their patrons' right to purchase such materials, would be seriously infringed by the Act if it is not enjoined because ABFFE members and the publishers with which they transact business would be forced to self-censor or risk prosecution or civil penalties under the Act.

ArtNet Worldwide Corporation

116. Plaintiff ArtNet Worldwide Corporation ("ArtNet") is the leading vendor of fine art of the Web. ArtNet's Web site also provides a variety of information and services about art. For example, the Web site lists events occurring around the world -- such as art exhibitions, auctions, art fairs, and museum shows -- and allows the user to view samples of the art available at those events. ArtNet's Web site also contains postings of individual artists, who describe their art and exhibit individual works for sale. The Web site also provides information about specific shops and galleries that sell art and antiques. ArtNet also lists art services, such as framing and restoration, available across the United States. In addition, the Web site contains a magazine providing news articles, editorials, and art criticism written by its own correspondents and gathered from external sources. Moreover, Web site visitors can post and find listings for art related job opportunities available around the world. ArtNet also provides chat rooms where users can promote their own art, buy and sell art and related items, and discuss art in general. ArtNet believes that minors as well as adults are interested in and benefit from the information and services provided on its Web site

117. ArtNet funds its Web site by selling space on it to advertisers and to sellers of art and related items, such as artists, galleries, and shops

118. Plaintiff ArtNet fears prosecution under the Act because its Web site contains material that may be considered "harmful to minors." For example, some of the art exhibited for sale on ArtNet by art galleries and private artists depicts nudity. Examples of such displays of nudity are "Dancing Nude" by Robert d'Amore and several works by Andrea Greeven, including "Object Lessons #1" and "Object Lessons #2," which focus on male genitalia and female breasts, respectively. Occasionally, such art contains sexual imagery. For example, Andrea Greeven's "Lovers" depicts a nude male advancing toward a reclining nude female. In addition, ArtNet's online magazine contains material that may be considered "harmful to minors." For example, an article entitled "Andres Serrano at Paula Cooper" by Paul H-O, which describes artist Andres Serrano's photography and its exhibition in New York, is accompanied by several very sexually explicit photographs from the exhibition. Moreover, news articles and editorials in the magazine may contain frank discussions about adult topics. ArtNet does not monitor the content of its chat rooms, and the discussion that occurs in them may include topics and language that could be viewed as "harmful to minors."

119. Plaintiff ArtNet provides all of the content on its Web site for free to Web users and does not require visitors to identify themselves to access most of the information or

services available on its Web site. ArtNet allows the user, however, to voluntarily supply such personal information as her name and e-mail address before obtaining the password necessary to enter one of ArtNet's chat rooms.

BlackStripe

120. Plaintiff BlackStripe maintains a Web-based forum devoted to same-gender-loving individuals of African descent. BlackStripe is visited by approximately 550 visitors each day. BlackStripe is funded, in part, by selling space on the Web site to advertisers
121. Plaintiff BlackStripe is dedicated to educating its visitors about issues concerning same-gender-loving individuals of African descent. BlackStripe provides a variety of information and services. For example, the Web site contains news articles and editorials written by its own correspondents and gathered from external sources. In addition, the Web site provides information about events in the Black same-gender-loving community and reviews books, films and music. BlackStripe's Web site also provides such unique information as the Blacklist, a list of individuals who have made significant contributions to the Black same-gender-loving community. The Web site also contains chat rooms, discussion boards, and links to other Web sites. All of the information on the BlackStripe Web site is provided to Web users for free
122. BlackStripe fears that its content could be considered "harmful to minors" in some communities, making it vulnerable to prosecution or civil penalties under the Act. First, BlackStripe fears that many communications on its Web site could be deemed "harmful to minors" merely because they discuss gay and lesbian issues, even though they contain no sexually explicit content. Many people including lawmakers are openly hostile to what they call the "gay lifestyle." For example, it is possible that some communities would find a chat room on BlackStripe inappropriate for minors to read merely because it could involve a man seeking to meet other men or a woman seeking to meet other women. Moreover, the Web site's descriptions of events occurring across the United States that are important to same-gender-loving individuals may be considered "harmful to minors.
123. Second, BlackStripe fears prosecution or civil penalties for the materials posted on its site that are sexually oriented and might be considered "harmful to minors" under the Act. For example, editorials and articles may include frank discussions of sexual issues, descriptions of sexual acts, and strong language. For instance, James Earl Hardy's essay entitled "Black-on-Black Love: It Ain't A ëRevolutionary Act" and Drew Alise Timmens' composition entitled "Theft of Sexuality" each contain sexual language and descriptions that may be considered "harmful to minors." In addition, exchanges in chat rooms and on discussion boards may contain sexual language and content, including graphic discussions regarding safer sex. BlackStripe's Web site also provides links to other Web sites that may contain similar material

124. Plaintiff BlackStripe believes that minors as well as adults are interested in and benefit from the information and services provided on its Web site. BlackStripe recognizes that the Web is often the only means for same-gender-loving minors who may be confused about their sexuality to interact with other individuals who have experienced similar feelings. BlackStripe believes that, because the sense of isolation often experienced by same-gender-loving teenagers may be even greater for those of African descent who live in communities with few minorities, its Web site is indispensable. BlackStripe believes that its Web site is necessary so that individuals, including minors, across the United States and abroad can receive information about issues unique to the Black same-gender-loving community.

Addazi, Inc. d/b/a Condomania

125. Condomania, the nation's first condom store, was established in June 1991, in New York City. Condomania focuses on assisting customers of every age, sex, culture and sexual orientation in learning about and purchasing condoms and safer sex products. In 1996, Condomania launched Condomania Online, a site on the Web. Condomania Online is the cyberspace extension of Condomania's retail stores, featuring an online catalog, the latest safer sex information, regularly updated newsletters and editorials, and company information. Condomania's Web site has approximate 3,000 visitors each day. Condomania's Web site dramatically improves the availability of safer sex products not typically found in many parts of the country and the world. It also offers a wealth of information to people who might not otherwise have access to the facts about safer sex and the products available today

126. Condomania's Web site contains a full color, online catalog featuring over 250 of the most popular items from Condomania's stores. In all, there are over 100 different condoms featured, categorized by style so consumers can easily find the condoms that are best suited for them. Each condom has been photographed fully inflated so the viewer can see its actual shape, size, texture and color. In addition, the dimensions for each condom are displayed alongside a picture and dimensions of an "average" condom, so that each condom can be statistically and visually compared. The Condom Wizard, an interactive condom search guide, guides users through a series of individualized questions, and provides product recommendations, custom tailored to each person's needs and preferences. The Condom Wizard is tied into the online catalogue, so once the Wizard makes its recommendations, a viewer can click over to detailed descriptions of each product

127. In addition to condoms, the online catalog features lubricants, t-shirts, boxer shorts, novelty items, games, books and other products -- all related to Condomania's theme of fun, safer sex. A "shopping cart" mechanism allows viewers who wish to purchase a product to "drop" products into a "shopping cart" as they go through the catalog. At the end of their shopping trip, viewers go to a "check out stand," where they can review their selections and make any changes. To complete a purchase, viewers

complete an online order form with their address and credit card number, or they can print out an order form and send it to Condomania via mail or fax

128. The Condomania site also includes the seventeen-page Condomania Safer Sex Manual, which uses frank language to educate and help people negotiate the many issues of safer sex. Two different monthly newsletters on the site provide additional information on the newest products and trends in the safer sex industry, and practical advice on how to incorporate safer sex into one's life. The site also contains detailed information on sexually transmitted diseases, including HIV and AIDS, and information about Condomania's education and outreach programs, store locations, and company history
129. Condomania believes that the information that it provides may prevent sexually transmitted disease and unwanted pregnancy among older minors and adults and serves as a framework and a starting point for older minors and adults who want or need to initiate discussion about safer sex. Although Condomania believes that the information it provides is valuable to adults and older minors and can save lives, Condomania fears that some communities may consider certain of its materials "harmful to minors."

Electronic Frontier Foundation

130. Plaintiff ELECTRONIC FRONTIER FOUNDATION ("EFF") is a nationwide, nonprofit organization of approximately 2,000 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
131. EFF sues on behalf of its members, who fear prosecution or other enforcement under the statute for communicating, sending, or displaying material "harmful to minors" in a manner available to persons under age 17 for commercial purposes. EFF also fears that if the statute goes into effect, content providers will be forced to ban communications that they consider potentially "harmful to minors," thereby depriving EFF's members and others who use its online services of the ability to communicate and access constitutionally protected speech. Some of EFF's members likely to be harmed by the law include:
132. *Bill Boushka*: Mr. Boushka maintains a site on the Web called "High Productivity Publishing" ("HPPUB"). HPPUB provides the public with commentary and analysis of current events, with a particular emphasis on individual liberty and associated responsibilities and obligations. On his site, Mr. Boushka has published a copy of a book he has written entitled *Do Ask, Do Tell: A Gay Conservative Lashes Back*, an expose about gays in the military. This politically-charged text contains subject-matter and language that might be deemed "harmful to minors" and is available for reading, download, and purchase to anyone interested in the topic.

133. *Jon Noring*: Mr. Noring maintains a site on the Web called "OmniMedia Digital Publishing." On his site, Mr. Noring publishes electronic books, which are available to the public through download. While access to the full texts requires a "SoftLock" password, which must be purchased with a credit card, any interested individual can access the first several chapters of any text for free, without a password, to determine if s/he would like to make a purchase. Several of the excerpts include information that might be deemed "harmful to minors." These texts include *Fanny Hill* (lesbian love scene), *Perfumed Garden* (sexually explicit story), and *Lightning Bolt* (sexually explicit dialogue).
134. *Open Enterprises Cooperative*: Open Enterprises, a worker-owned cooperative, maintains a site on the Web called "Good Vibrations." Good Vibrations has an online store where individuals can purchase sex toys, and erotic and sexual self-help books and videos. The Good Vibrations site includes an antique vibrator museum and up-to-date sex information and news. The Good Vibrations site serves as a resource for quality products and information, models honest communication about sexuality, and promotes the philosophy that sex is fun and natural. All of the information on the site is provided for free. The site is a resource not only for Open Enterprises' customers but for sex therapists, educators and advice columnists nationwide.
135. *Rufus Griscom*: Mr. Griscom publishes an electronic magazine on the Web entitled "Nerve," which is about "sexual literature, art, and politics." The site includes stories and essays by Pulitzer Prize winners and other acclaimed writers, as well as hundreds of nude photographs. It also includes NerveLink.com, a directory of 4,000 sites related to sex, health and literature. The site contains sexually explicit language and images that Mr. Griscom believes are fully protected for adults by the Constitution
136. All of the above EFF members, and other EFF members not specifically mentioned, fear prosecution or other enforcement under the statute for communicating, sending, or displaying material "harmful to minors" in a manner available to persons under age 17 for commercial purposes. None of the EFF members can prevent their communications from reaching minors without also preventing adults from accessing their speech.

EPIC

137. Plaintiff Electronic Privacy Information Center ("EPIC") is a nonprofit educational organization established in 1994 to examine civil liberties and privacy issues arising on the Internet. In furtherance of its mission, EPIC conducts research, pursues litigation and testifies before Congress and other public bodies. EPIC also publishes reports and an electronic newsletter (the "EPIC Alert") and maintains a comprehensive Web site dealing with online civil liberties and privacy issues that logs more than 100,000 visits each month

138. Since its inception, EPIC has devoted a substantial amount of time and resources to issues affecting free expression on the Internet. As part of that work, EPIC coordinates the Internet Free Expression Alliance, a coalition of organizations concerned with proposed laws and technical standards that could impede the ability of Internet users to publish and receive constitutionally protected material. EPIC also examines the effects of Internet rating systems and blocking and filtering programs designed to restrict minors' access to "inappropriate" content. EPIC staff frequently speak at conferences and lecture at universities and law schools on these issues
139. In December 1997, EPIC published the report, "Faulty Filters: How Content Filters Block Access to Kid-Friendly Information on the Internet." In researching the report, EPIC staff visited scores of Web sites that had been blocked by a "filtered" search engine in order to ascertain the nature of the content available at those sites. EPIC staff review the content available at filtered and blocked Web sites on a continuing basis in order to assess the effect of filtering and blocking systems on Internet expression. EPIC staff also review the content available at Web sites containing sexually-explicit material in order to assess the procedures, if any, employed at such sites to restrict minors' access. In the course of these activities, EPIC staff access material that might be deemed "harmful to minors" in some communities
140. EPIC fears that many content providers, in an attempt to comply with the Act, may remove from their Web sites material similar to that which EPIC staff heretofore have been able to access. EPIC also fears that many content providers, in an attempt to comply with the Act, may attempt to impose identification and age verification requirements as a condition of accessing material similar to that which EPIC staff heretofore have been able to access without providing such identification
141. Because it believes that the ability to access information anonymously is protected under the First Amendment, EPIC does not intend to instruct its staff to use a credit card, debit account, adult access code, adult personal identification number, or a digital signature at any Web site in order to access material that might be deemed "harmful to minors" in some communities. EPIC thus fears that the Act will limit the ability of its staff to continue the research activities described above and inhibit its ability to pursue its educational mission.

Free Speech Media, LLC

142. Plaintiff Free Speech Media, LLC operates Free Speech Internet Television ("FSITV"), which is a Web-based project that encourages the democratic expression of progressive ideals through promoting, curating and hosting independent creators of audio and video content on the Web. FSITV's Web site is visited approximately 6000 times each day
143. FSITV promotes video and audio content on the Web that is often too candid or esoteric to be displayed through mainstream media. FSITV believes that broadcasting

such messages using the audio or video technology available on the Web, and FSITV's Web site in particular, is superior to dissemination through print media because such technology allows a user to gain a greater understanding of a particular idea by allowing her to view and hear the speaker. In addition, FSITV promotes free speech internationally by allowing organizations from around the world to display political messages. FSITV may, in some cases, provide the only forum in which organizations may broadcast speech that is prohibited in their countries through other media. Plaintiff FSITV believes that older minors as well as adults are interested in and benefit from the information and services provided on its Web site

144. FSITV promotes independent audio and video creators in two ways. First, FSITV obtains licenses to make available certain video and audio content on its Web site. FSITV currently holds licenses to approximately 500 video and audio files, which it makes available from the home page on its Web site. They include content on a wide range of topics, including human rights, homelessness, labor issues, racism, prison conditions, sexuality, AIDS, feminism, and environmentalism
145. Second, FSITV offers a hosting service that allows members to use FSITV's server to supplement their own Web sites with audio and video content hosted on FSITV's server. Some of these members post their audio and video files on pages sharing FSITV's URL; however, many of the member Web pages are not accessible through the FSITV home page. FSITV offers a basic hosting service for free. FSITV also offers a "premium membership" for a fee. Premium members may use their Web pages to display advertising banners, to solicit advertisers or sponsors, or sell goods or services. Premium members also gain additional storage capacity and other advanced technical features
146. Plaintiff Free Speech Media, LLC uses revenue obtained from premium memberships to help support all aspects of the FSITV project
147. FSITV provides a forum in which paying and nonpaying members, as well as nonmembers, may express progressive ideas. For example, FSITV allows a Laotian organization, devoted to using non-violent political means to fight for democracy and independence for Laos, to disseminate its political messages on FSITV's Web site free of charge through audio broadcasts of "Radio Free Laos." In addition, performer Frank Moore, a paying member, provides a video entitled "Fairy Tales Can Come True," which describes Moore's experiences as an individual with cerebral palsy, on a site sharing FSITV's URL. Additionally, nonmembers, as well as members, may post comments about issues on the discussion boards provided on FSITV's Web site
148. Plaintiff Free Speech Media, LLC fears that it is vulnerable to prosecution under the Act for speech available through FSITV's Web site that may be considered to be "harmful to minors" in some communities. Many audio and video messages licensed by FSITV and available on its homepage contain frank discussions of sexual issues, descriptions of sexual acts, and strong language. For instance, an audio clip of a speech by Larry Kramer about AIDS is rife with adult language. Additionally, many messages, including AIDS Community Television's "Oral Sex and HIV Transmission, Parts 1 & 2," contain candid and explicit discussions about safer sex. Moreover, audio and video

content posted by members may be considered "harmful to minors." For example, videos posted on www.freespeech.org/eroplay by Frank Moore, such as those entitled "Out of Isolation" and "In the Mess," contain nudity and sexual imagery

149. FSITV makes all of the information on its Web site available to users for free. FSITV does not require users of the content on its site to identify themselves to access the available information. FSITV allows the user, however, to voluntarily supply her e-mail address and sends updates concerning FSITV to that address by periodic e-mail newsletters
150. Plaintiff Free Speech Media, LLC does not intend to self-censor FSITV's Web site in any way, and thus fears prosecution or civil penalties as a result of the Act.

Internet Content Coalition

151. Plaintiff INTERNET CONTENT COALITION (the "ICC") is a nonprofit professional association of providers of original content for the Internet. The ICC was formed to represent and promote the interests of its membership in the establishment of standards and practices for content, publishing, technology, and commerce on the Internet; to educate the membership on Internet issues; and to help the Internet remain a self-governing medium with the highest standards of excellence
152. ICC member organizations use the Web to communicate free information for commercial purposes in a variety of ways. Some of these organizations, like CNET, MSNBC, The New York Times, and Time, Inc., have advertisements on their sites. Other member organizations, like Sony Online, advertise and promote their off-line products via the Web
153. ICC members provide a variety of content that they believe has value for adults and older minors but that they fear could be considered "harmful to minors" in some communities. A number of the sites that provide news, for example, include the full text of the Starr Report, as well as related articles, documents and testimony. Time Inc.'s Web site, for example, includes the full text of the Starr Report and President Clinton's and Monica Lewinsky's testimony before the grand jury. Time, Inc. also has discussion boards on its site, which allow users to engage in online conversations by posting messages on different topics. Current discussion board topics include: "Kenneth Starr - Professional Pornographer" and "Marriage, Affairs, and Other Sexy Stuff." Similarly, the New York Times has "forums" on its Web site, which allow users to conduct online discussion on such topics as "Vladimir Nabokov: Is 'Lolita' a Love Story?" The New York Times site also has a wealth of information of women's health issues, including sexually transmitted diseases.

OBGYN.net

154. Plaintiff OBGYN.net is the world's largest Internet based network of U.S. and international obstetricians and gynecologists, related medical practitioners and women. Each month, over 130,000 Internet users visit the OBGYN.net Web site, which is funded through advertising and sponsorship. Advertisements are placed on rotating banners throughout OBGYN.net and link to Web pages for the advertising company. Sponsors receive additional benefits beyond those of advertisers, including an expanded Web presence, sponsorship of all Ob/Gyn conferences OBGYN.net attends worldwide, and the right to use the OBGYN.net name and logo in its marketing material
155. The content of OBGYN.net is provided by and for women, medical professionals, and the medical industry. In order to provide the most helpful and useful content for women, OBGYN.net harvests the Internet for information of interest to the physicians and catalogs it on its Web site for easy access. Harvested content is then reviewed by physicians for appropriateness and quality. Currently OBGYN.net connects Internet users to over 4,000 external links relevant to their specific interests. In addition, women can tap into the incredible resource of OBGYN.net's "Women's Health Forum." The different "forums" of OBGYN.net contain postings in which women can ask questions and get answers within hours directly from Ob/Gyn's around the world. OBGYN.net also regularly sponsors Web-based live chats during which women can discuss a specific health issue among themselves and with medical professionals
156. In addition, doctors from all over the world use OBGYN.net to obtain up-to-the-minute medical information and to communicate with their colleagues. Indeed, doctors in the Philadelphia area -- such as Dr. Jeffrey Levy, a Clinical Associate Professor at the University of Pennsylvania -- use OBGYN.net and other Web sites in order to access a variety of information about women's health care. In the section of OBGYN.net for doctors, doctors also use OBGYN.net forums to discuss products and procedures on an international level, exchanging over 1.5 million e-mail messages monthly. Doctors may also publish articles and customize their own place in cyberspace through OBGYN.net. Through OBGYN.net, doctors also have free access to Knowledgfinder, an interface to the National Library of Medicine database Medline. In addition to its vast library of information, OBGYN.net brings cutting edge interactive technology to the doctors' fingertips. Interactive components allow the visitors to interact with their peers, their patients, and the medical industry, creating a living breathing Web site that changes and develops as quickly as medical science
157. OBGYN.net believes that it provides an invaluable service to women, medical professionals and the medical industry. In particular, OBGYN.net believes that the materials its provides may be of special interest to older female minors, who may not have access to or the financial means to obtain other forms of medical resources, or who may be reluctant or embarrassed to ask for or seek the medical information that they need
158. OBGYN.net believes that its resources are valuable for adults and older minors, but fears that some communities might consider its materials "harmful to minors," especially younger minors. For example, OBGYN.net provides a catalogue of descriptive "links" to sites addressing sexual health and sexuality, including "Dr. Ruth Online" and "Planned Parenthood: Woman's Guide to Sexuality." Furthermore, some communities

might consider some of the sex-related information in articles on certain medical issues, such as yeast infections and genital warts, published on OBGYN.net "harmful to minors." Finally, OBGYN.net is concerned that certain of OBGYN.net's Web-based chats may be considered to be "harmful to minors." For instance, on June 25, 1998, OBGYN.net hosted a chat entitled "Contraception," during which participants discussed with medical professionals the effectiveness of different forms of birth control. The transcript of this chat is currently available on the OBGYN.net Web site.

Philadelphia Gay News

159. Plaintiff PHILADELPHIA GAY NEWS ("PGN Online") is the online version of the print newspaper Philadelphia Gay News ("PGN Print"). PGN Print is the largest and oldest gay newspaper in Philadelphia. PGN Print has been published since 1976, and it has a weekly circulation of 17,000 copies. PGN Online has been published since September 1996, and it averages 1156 hits per week
160. PGN Online contains much of the same content as is found in PGN Print. For example, PGN Online has national and local news stories written by PGN correspondents; arts and events sections, including regular columns and a Calendar of Events; and editorials on a variety of political and social topics. PGN Online also has material that is not published in PGN Print, including personal and classified advertisements and a directory of back issues that are available online
161. PGN fears that its content could be considered "harmful to minors" in some communities, making it vulnerable to prosecution or civil penalties under the Act. First, PGN fears that many communications on its Web site could be deemed "harmful to minors" merely because they discuss gay and lesbian issues, even though they contain no sexually explicit content. Discrimination against gays and lesbians is still commonplace, and many people including lawmakers are openly hostile to what they call the "gay lifestyle." For example, PGN contains numerous descriptions of gay and lesbian bars, newsstands and other establishments in Philadelphia and other cities, which some people might believe are "harmful to minors" because they will "entice" minors into exploring gay life
162. Second, PGN fears prosecution or civil penalties for the materials posted on its site that are sexually oriented and might be considered "harmful to minors" under the Act. For example, such materials include a lengthy article on sex columnist Dan Savage, an interview with gay porn star Cole Tucker, a review of the nude gay play "Party," and a feature entitled "What is your favorite coming-out story?" In addition, PGN Online also contains listings of gay bars and other establishments, as well as announces the meetings of various gay groups, such as "More Than Just Sex.
163. PGN Online believes that both adults and youth have an interest in the material it publishes. PGN Online believes that its ability to publish online is crucial because it

allows those gays and lesbians who might feel uncomfortable obtaining a print version of PGN to nonetheless participate in Philadelphia's gay and lesbian community

164. PGN does not currently intend to self-censor its Web site in any way, and thus it fears prosecution or civil penalties under the Act.

PlanetOut Corporation

165. Plaintiff PlanetOut Corporation ("PlanetOut") is a leading online content provider for gay, lesbian, bisexual and transgendered persons worldwide. Over 500,000 visitors access PlanetOut each month. PlanetOut funds its activities through royalties, electronic commerce, and paid advertisements from a wide range of sponsors

166. PlanetOut provides on its Web site a variety of information and services of interest to the gay, lesbian, bisexual and transgendered community. For example, PlanetOut provides national and international news, including stories written by its own correspondents. It also provides information regarding travel, finance, shopping, and entertainment. Other services provided by PlanetOut include online personal advertisements and chatrooms

167. PlanetOut fears that its content could be considered "harmful to minors" in some communities, making it vulnerable to prosecution or civil penalties under the Act. First, PlanetOut fears that many communications on its Web site could be deemed "harmful to minors" merely because they discuss gay and lesbian issues, even though they contain no sexually explicit content. Discrimination and even violence against gays and lesbians is still commonplace, and many people including lawmakers are openly hostile to what they call the "gay lifestyle." For example, it is possible that some communities would find "personals" listings inappropriate for minors to read because they involve a man seeking to meet other men or a woman seeking to meet other women. PlanetOut also contains numerous descriptions of gay and lesbian bars, newsstands and other establishments throughout the United States, which some people might believe are "harmful to minors" because they will "entice" minors into exploring gay life. PlanetOut's fear is bolstered by the fact that some of the user-based screening programs currently available on the market automatically block gay or lesbian sites, regardless of whether sexually oriented issues are discussed on the site

168. Second, PlanetOut fears prosecution or civil penalties for the materials posted on its site that are sexually oriented and might be considered "harmful to minors" under the Act. For example, such materials include an online radio show hosted by sex adviser Malcolm McKay on topics such as "Difficulties Using Condoms," chat rooms such as "The Steam Room," and discussion groups such as "Lesbian Libido" in which frank sexual exchanges may be involved

169. PlanetOut provides visitors to its Web site with the option of becoming members of PlanetOut. Becoming a member involves providing PlanetOut with certain

information, including a person's e-mail address, phone number, and age. PlanetOut does not, however, verify that information or require membership in order for a visitor to access any of the materials and services offered on PlanetOut's Web site. Members receive weekly newsletters, news headlines at their e-mail addresses, and other benefits

170. PlanetOut believes that minors as well as adults are interested in its online information. Moreover, an important part of PlanetOut's mission is to provide an online community for gay and lesbian teenagers, many of whom are undergoing intense feelings of isolation and loneliness and would have no other source of contact with the gay and lesbian community were it not for the Internet

171. Because PlanetOut believes that all of its content is vital to the online gay and lesbian community, PlanetOut currently does not intend to self-censor any of its online communications as a result of the Act, and so fears prosecution or civil penalties under the Act.

Powell's Bookstore

172. Plaintiff Powell's Bookstore maintains a Web site through which visitors can purchase new, used, rare and out-of-print books to be mailed to them. Powell's Bookstore operates a bookstore in Portland, which will soon be expanded to occupy over 68,000 square feet with room for over one million books, as well as six satellite stores. Powell's Bookstore developed a Web site for its Technical Store in 1994 and expanded the Web site to sell books for all other stores in 1996. Users of the Web site can choose from titles contained in the combined inventory of all seven of its stores. The Powell's Bookstore Web site is visited by approximately 5000 visitors each day. Powell's Bookstore has sold more than 300,000 books over its Web site

173. The Powell's Bookstore Web site allows buyers of books around the world access to an enormous inventory consisting of over one million books on any given day. Visitors may search an extensive database by title, author, subject, or key words. Depending on availability, users may choose whether to purchase a particular title as a new hardcover or paperback or as a used book. Visitors to the Web site may also search Powell's Bookstore's extensive database for rare and out-of-print books. Powell's Bookstore also sells signed copies of certain titles. Visitors access the Web site free of charge and provide financial information for billing only after they have selected a title for purchase

174. Plaintiff Powell's Bookstore fears prosecution under the Act because its Web site contains material that may be considered "harmful to minors." Powell's Bookstore lists some books that contain sexually explicit, or otherwise adult, material. Powell's Bookstore also carries an extensive inventory of gay and lesbian literature, which may be considered "harmful to minors" in some communities. Some examples of gay and lesbian titles available on the Powell's Bookstore Web site are "Homosexuality in the Priesthood and Religious Life" edited by Jeannine Bramick and "Century of Gay Erotica" by Phil Andros. Significantly, some titles themselves, as they appear on the Web site, are

sexually suggestive or contain strong adult language. For example, Powell's Bookstore lists for sale such titles as: *New Fuck You*, erotica by Eileen Myles; *Penis Book*, a men's health book by Margaret Gore; and *Vagina Monologues*, a feminist studies book edited by Eve Ensler

175. Plaintiff Powell's Bookstore also fears prosecution under the Act because Web sites on which it advertises, and from which users can access its Web site, contain material that may be considered "harmful to minors." For instance, Powell's Bookstore advertises on Nerve.com ("Nerve"), which is a Web site devoted to "literary smut" that publishes such content as nude photographs and erotica in print. Many of the pages on Nerve containing sexually explicit material also display a banner advertisement for Powell's Bookstore through which visitors can be instantly linked to Powell's Bookstore's Web site. Powell's Bookstore fears it could be prosecuted under the Act for its association with sites such as Nerve
176. Plaintiff Powell's Bookstore does not require visitors to identify themselves to access the information and services available on its Web site. Although all of the information on its Web site is provided for free, Powell's Bookstore accepts credit cards from individuals who purchase books on the site.

RiotGrrl

177. Plaintiff RiotGrrl is a well-known, popular online magazine that reaches over 40,000 individual readers every month directly through its Web site and has access to hundreds of thousands of readers through its involvement in the Chickclick Network, a network of linked Web sites for women and girls. Although Internet users may read the magazine for free, RiotGrrl obtains revenue from advertisements just like any print magazine
178. "RiotGrrl" ó a tagname for women and girls in their late teens and early twenties who advocate feminist issues ó originally began in the early 1990's as an alternative women's movement in response to the more male-oriented grunge rock movement. In this vein, the mission of RiotGrrl, the online magazine, is to provide young women with cutting edge content that addresses what matters most in their lives, without holding back on topics that are considered controversial or "alternative" by mainstream publications
179. RiotGrrl offers a wide range of online materials on contemporary culture, sex and relationships, politics and personal growth. In addition, the RiotGrrl Web site contains an "archive" of all its past issues that Web users can easily browse through and read. After they have registered on the RiotGrrl site by providing their e-mail address, an alias and a password, Web users can also participate in online conversations and forums sponsored by RiotGrrl on such topics as sex, media, rants, and teengrrl
180. RiotGrrl believes that many minors as well as adults are interested in its online publication and its other services. In particular, RiotGrrl believes that some of the

feminist-oriented content that it provides may be of particular interest and import to older female minors. Although the content of RiotGrrl is created for men and women between the ages of 18 and 30, RiotGrrl is extremely popular with older minors between the ages of 16 and 18. These teens are savvy and an integral part of the RiotGrrl audience, contributing to RiotGrrl in many positive ways

181. RiotGrrl Web fears that a variety of its materials may be considered to be "harmful to minors" in some communities. For example, in one of its first few issues, RiotGrrl published an article about MTV personality Jennie McCarthy entitled "Anatomy of a Jack-Off Queen." A tongue-in-cheek commentary on the sex-oriented nature of television, the article features both text and pictures that some might find "harmful to minors." Although this article has a header that indicates that minors should not read the article, the Web site cannot prevent minors from reading the article. More recent issues of the magazine include "Sexriot" articles focusing on such issues as masturbation or a satire on President Clinton's relationship with Monica Lewinsky. In particular, one recent piece praised American "anime," i.e., overtly sexual cartoons, on the Web and included examples of this Web art
182. RiotGrrl currently does not intend to self-censor any of its online communications, and thus fears prosecution or civil penalties under the Act.

Salon Internet, Inc.

183. Plaintiff Salon Internet, Inc. ("Salon Magazine") is a well-known, popular online magazine. Salon Magazine includes cutting-edge news articles; commentaries on and reviews of music, art, television, and film; and regular columns on politics, relationships, the media, business and other areas of interest. The Salon Magazine Web site features the current issue of the magazine and also includes back issues. The back issues may be browsed by topic or date or searched for a specific issue via a search engine on the site. After providing their e-mail addresses and subscribing to Salon Magazine's "Table Talk," Web users may also participate in hundreds of different online discussions on such issues as books, sports, work life, romance, and digital culture
184. Approximately 40,000 Web users access Salon Magazine's Web site everyday. Web users may access the magazine for free. Salon Magazine pays for the site through advertisements similar to those in print magazines
185. The Salon Magazine Web site contains a significant amount of material that it fears could be considered "harmful to minors" in some communities. For example, Salon Magazine has a regular column called "Sexpert Opinion" by Susie Bright, a well-known author, which deals with issues of eroticism, sexual politics, sexual liberation and erotic identity in the 90's. Web readers of Salon Magazine also can read the full text of the Starr Report and a wide range of political and social commentaries on it, including: "Talking Head" by Virginia Vitzthum and "The Voyeur General's Report to Congress" by Gary Kamiya. In addition, although Courtney Weaver's column "Unzipped" was recently

discontinued as a regular feature of the magazine, Web users can still read Ms. Weaver's lively and entertaining commentaries on modern emotional and sexual relationships, focusing on such issues as sexual fetishes and preferences, Viagra, and matchmaking, by visiting Salon Magazine's "archives." Salon Magazine believes that older minors as well as adults are interested in its online publication and its other services

186. Salon Magazine currently does not intend to self-censor any of its online communications, and so it fears prosecution or civil penalties under the Act.

West Stock, Inc.

187. Plaintiff West Stock, Inc. ("West Stock") maintains a Web site that displays and sells licenses for stock photographs. West Stock's Web site is visited by approximately 1000 visitors each day

188. Plaintiff West Stock's Web site provides potential buyers with access to stock photographs over the Web. On its Web site, it provides over 40,000 photographs and displays the portfolios of over 100 photographers. Users access the site free of charge and may select items to license. West Stock charges a fee from \$10 to \$70 per photograph depending on the photograph and the license the user chooses. Plaintiff West Stock believes that minors as well as adults are interested in and benefit from the services provided on its Web site

189. Plaintiff West Stock does not require visitors to identify themselves to access the information available on its Web site. West Stock requires individuals who actually purchase licenses for photographs to provide credit card information for billing purposes

190. Plaintiff West Stock fears prosecution under the Act because its Web site contains material that may be considered "harmful to minors." Several photographs displayed on the Web site contain nudity or are sexually suggestive. In fact, the user may select "erotic" or "nudes" as a category of photographs to view. Examples of erotic or nude photographs include a sexually suggestive photograph displaying nude female breasts, erotic photographs of female buttocks, and a sexually suggestive photograph of a partially nude male.

CAUSES OF ACTION

First Cause of Action:

Violation of Adults' Rights Under the First and Fifth Amendments of the United States Constitution

191. Plaintiffs repeat and reallege paragraphs 1-190

192. The Act violates the First and Fifth Amendments of the United States Constitution on its face and as applied because it creates an effective ban on constitutionally protected speech by and to adults
193. The Act violates the First and Fifth Amendments because it is not the least restrictive means of accomplishing any compelling governmental purpose
194. The Act violates the First and Fifth Amendments because it is substantially overbroad.

Second Cause of Action:

Violation of Older Minors' Rights Under the First and Fifth Amendments of the United States Constitution

195. Plaintiffs repeat and reallege paragraphs 1-190
196. The Act violates the First and Fifth Amendments of the United States Constitution because it interferes with the rights of minors to access and view material that is not harmful to them by prohibiting the dissemination of any material with sexual content that is "harmful to minors" of any age, despite the fact that the material will not be "harmful" to all minors.

Third Cause of Action:

Violation of the Right to Communicate and Access Information Anonymously Under the First and Fifth Amendments of the United States Constitution

197. Plaintiffs repeat and reallege paragraphs 1-190
198. The Act violates the First and Fifth Amendment right to communicate and access information anonymously.

Fourth Cause of Action:

Vagueness in Violation of the First and Fifth Amendments of the United States Constitution

199. Plaintiffs repeat and reallege paragraphs 1-190

200. The Act is unconstitutionally vague, in violation of the First and Fifth Amendments.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that the Court:

A. Declare that 47 U.S.C. Sec. 231 violates the First and Fifth Amendments of the United States Constitution;

B. Preliminarily and permanently enjoin defendants from enforcing the above-noted provision;

C. Award plaintiffs costs and fees pursuant to 28 U.S.C. Sec. 2412; and

D. Grant plaintiffs such other and further relief as the Court deems just and proper.

Dated: October 22, 1998

Respectfully submitted,

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RIOTGRRL, SALON INTERNET, INC. and WEST STOCK, INC.