

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

AMERICAN BOOKSELLERS FOUNDATION
FOR FREE EXPRESSION; AMERICAN CIVIL
LIBERTIES UNION OF VERMONT; ASSOCIATION
OF AMERICAN PUBLISHERS; FREEDOM TO READ
FOUNDATION; NATIONAL ASSOCIATION OF
RECORDING MERCHANTISERS; NORTHSHIRE
INFORMATION, INC.; PSINET INC.; RECORDING
INDUSTRY ASSOCIATION OF AMERICA, INC.;
THE SEXUAL HEALTH NETWORK, INC.,

Plaintiffs,

v.

Civil No. 1:01-CV-46

HOWARD DEAN, in his official capacity as
GOVERNOR OF THE STATE OF VERMONT;
WILLIAM H. SORRELL, in his official
capacity as ATTORNEY GENERAL OF THE
STATE OF VERMONT; LAUREN BOWERMAN,
DAN M. DAVIS, KEITH W. FLYNN, DALE O. GRAY,
JAMES A. HUGHES, VINCENT ILLUZZI,
JAMES D. McKNIGHT, JAMES P. MONGEON,
JOEL W. PAGE, JOHN T. QUINN, GEORGE E. RICE,
ROBERT L. SAND, TERRY J. TRONO,
and WILLIAM D. WRIGHT, in their official capacities
as VERMONT STATE'S ATTORNEYS,

Defendants.

**MEMORANDUM IN SUPPORT OF STIPULATED
MOTION TO AMENDED COMPLAINT**

Pursuant to Local Rule 7.1 and 15.1, plaintiffs submit this memorandum in support of its Stipulated Motion to Amend Complaint. Plaintiffs seek to amend their complaint to take into account recent amendments enacted into law on June 13, 2001,

which have modified the laws plaintiffs challenge in their complaint. In support of its Motion, plaintiffs state as follows:

1. On February 7, 2001 plaintiffs filed a complaint in this Court against these defendants challenging recent amendments to 13 V.S.A. § 2802, which imposed criminal penalties on the availability, display and dissemination of constitutionally protected speech on the Internet. Defendant Governor Howard Dean signed the amendments into law on May 18, 2000. Plaintiffs' complaint sought declaratory and injunctive relief under the First and Fourteenth Amendments of the United States Constitution and under the Commerce Clause.
2. On June 2, 2001, the Vermont General Assembly amended 13 V.S.A. § 2802 for a second time by making two significant changes. A copy of the amendments is attached hereto as Exhibit A.
3. First, the General Assembly added section 2802(c) to narrow the application of section 2802 to only those circumstances where material is disseminated to a minor "in the presence of a minor." They also deleted reference in section 2802(a) to the terms "communicated" and "transmitted" electronically, thereby reversing the amendments enacted in the previous year. The clear intent of these changes is that 13 V.S.A. § 2802 no longer applies to the dissemination of material over the Internet, but, rather, applies only to traditional means of disseminating material to a minor.
4. Second, the General Assembly also added new section 2802a entitled: "Disseminating Indecent Material to a Minor Outside the Presence of a

Minor.” Section 2802a does apply to materials “communicated” and “transmitted” electronically and, therefore, is now the relevant law which applies to the dissemination of indecent materials over the Internet.

5. The General Assembly also added a requirement that “where dissemination of indecent material occurs outside the presence of a minor, ... a person cannot be charged with a crime without having actual knowledge that the recipient is a minor.”
6. Notwithstanding these new amendments, the Internet Crime law, now codified at 13 V.S.A. 2802a, continues to violate plaintiffs’ rights under the First and Fourteenth Amendments of the United States Constitution, as well as the Commerce Clause.
7. In light of the foregoing, however, it is necessary to amend the complaint so that it accurately reflects the fact that the challenged provisions are now codified at 13 V.S.A. § 28002a.
8. It is also necessary to amend the complaint to address the substantive issue raised by the addition of an “actual knowledge” requirement.
9. Counsel of the defendants has stipulated to this motion.

WHEREFORE, plaintiffs respectfully request that this Court grant this Motion to Amend Complaint.

Respectfully submitted,

Dated: _____

Charles Platto, Esquire
Nolan Burkhouse, Esquire
Sarah S. North, Esquire
Law Offices of Charles Platto, PLC
P.O. Box 1111

8 Beaver Meadow Road
Norwich, Vermont 05055
(802) 649-8400

Michael A. Bamberger
Sonnenschein Nath & Rosenthal
1221 Avenue of the Americas
New York, New York 10020-1089
(212) 768-6700

Attorneys for Plaintiffs

David Putter
Putter & Edson LLP
15 East State Street
Montpelier, Vermont 05602
(802) 229-0932

Markus Brakhan
P.O. Box 5851
44 Church Street, Suite 1
Burlington, Vermont 05402-0607
(802) 660-8210

Attorneys for the American Civil
Liberties Union of Vermont