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E-BUSINESSES, OTHERS SUE TO OVERTURN INTERNET CENSORSHIP LAW

Today in Virginia, the self-described “cradle of the Internet,” sixteen plaintiffs – including Internet businesses and First Amendment advocates – are filing a lawsuit to stop the enforcement of a new state law that criminalizes Internet content. The law bans valuable communications, such as business transactions and the dissemination of health information inside and outside of Virginia, even though it purports only to outlaw materials “harmful to juveniles.”

The Virginia General Assembly passed the law on April 7, over the objections of Governor Gilmore, and it took effect on July 1. The law criminalizes the “knowing display” on the Internet of material deemed “harmful to juveniles” if the display is “for [a] commercial purpose [and] in a manner whereby juveniles may examine or peruse” the materials. The law’s broad definition of “knowing” and vagueness about what constitutes “commercial purpose” makes it a minefield for businesses on the Internet.

Plaintiffs in the case include Internet service providers such as PSINet Inc. as well as trade associations and business leagues such as the Commercial Internet Exchange Association and the Virginia Internet Service Providers Alliance. Other plaintiffs include authors and booksellers that post literature, arts and health-related information on the internet.

Two federal laws and three state laws that have sought to criminalize content on the Internet have been struck down by the courts. Today’s lawsuit, filed in the U.S. District Court in Alexandria, claims that the new law violates the First Amendment and the Commerce Clause of the U.S. Constitution.

Because of the way the Internet works, attempts to regulate its content have proven troublesome. Someone operating a web site or communicating in a chat room does not know where the information will be received. Nor can the sender prevent the communication from being accessed by juveniles in any given state.

“It is disappointing that, at the same time as Governor Gilmore is taking important steps to make Virginia the home of the Internet, the Virginia General Assembly passes a law over his objections that reveals such a profound misunderstanding of the Internet. It’s important for the Commonwealth to adopt policies that acknowledge the Internet as the greatest medium of global free speech in human history,” said William L. Schrader, Chairman and Chief Executive Officer of PSINet Inc.

“The Internet is the global marketplace of ideas. Regulations like this one will just kill it. People are spending hours online, reading, talking, and buying all kinds of things including books. It’s becoming a way of life and source of income for more and more people,” said Glenn Hauman, President and Publisher of BiblioBytes.

In addition to disrupting e-commerce, the law runs afoul of the First Amendment by banning mainstream and constitutionally-protected speech by adults. The content criminalized by the Virginia law may include valuable works of literature and art, safe sex information or other important health-related information and adult conversations carried on as private e-mails or instant messaging.

“All adults in cyberspace will be reduced to sending and receiving only the information which the Virginia legislature finds acceptable for juveniles,” said plaintiff Susie Bright, a writer and lecturer whose works appear on the Internet.

“The Supreme Court has stated that Internet communications deserve the highest level of First Amendment protections. It is clear that decisions about children and the internet should not be made by one-size-fits-all government mandates, but by the people who care most about the children and know them best – their parents,” said Carole Shields, President of People For the American Way.

In addition, the Virginia law will be ineffective in protecting minors because the vast majority of Internet communications are generated by out-of-state and international web sites. The far more effective and constitutionally-acceptable approach is to encourage parents to use software that enables them to control or monitor their children’s Internet use.

The counsel for the plaintiffs are Wiley, Rein and Fielding, who are serving pro bono, People for the American Way Foundation, and Sonnenschein, Nath and Rosenthal which serves as general counsel for the Media Coalition.

The plaintiffs include: American Booksellers Foundation for Free Expression; BiblioBytes; Susie Bright; the Comic Book Legal Defense Fund; the Commercial Internet Exchange Association (CIX); A Different Light Bookstores; Harlan Ellison; Chris Filkins, Proprietor of the Safer Sex Institute; the Freedom to Read Foundation; Lambda Rising Bookstores; People for the American Way; the Periodical and Book Association of American, Inc.; PSINet Inc.; Rockbridge Global Village; Sexual Health Network; and the Virginia Internet Service Providers Alliance (VISPA).

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