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**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF ALASKA**

**AMERICAN BOOKSELLERS FOUNDATION FOR FREE
EXPRESSION; AMERICAN CIVIL LIBERTIES UNION
OF ALASKA; ASSOCIATION OF AMERICAN
PUBLISHERS, INC.; COMIC BOOK LEGAL DEFENSE
FUND; ENTERTAINMENT MERCHANTS
ASSOCIATION; FREEDOM TO READ FOUNDATION;
DAVID & MELISSA LLC d/b/a Fireside Books; BOOK
BLIZZARD LLC d/b/a Title Wave Books; BOSCO'S, INC.;
DONALD R. DOUGLAS d/b/a Don Douglas Photography;
and ALASKA LIBRARY ASSOCIATION,**

Plaintiffs,

v.

**DANIEL S. SULLIVAN, in his official capacity as
ATTORNEY GENERAL OF THE STATE OF ALASKA,**

Defendant.

Civil No. 3:10-cv-00193-RRB

DECLARATION OF ALLAN R. ADLER

**UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA**

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DECLARATION OF ALLAN R. ADLER

I, Allan R. Adler, do declare:

Background

1. I am Vice President for Legal and Government Affairs of the Association of American Publishers, Inc. (“AAP”), a plaintiff in this action. I submit this declaration on behalf of AAP and its members in support of the plaintiffs’ request for a declaration of unconstitutionality and preliminary and permanent injunctive relief prohibiting enforcement of AS 11.61.128, as amended by SB 222 (the “Amended Act”) and as prior to amendment (the “Prior Act”).

2. AAP, a not-for-profit New York corporation with offices in New York and Washington, is the national trade association of the U.S. book publishing industry. AAP’s approximately 300 members include most of the major commercial book publishers in the

United States, as well as smaller and non-profit publishers, university presses, and scholarly associations. AAP members publish hardcover and paperback books in every field and a range of educational materials for the elementary, secondary, post-secondary, and professional markets. AAP members also produce computer software and electronic products and services. AAP represents an industry whose very existence depends on the free exercise of rights guaranteed by the First Amendment.

3. Although the business of AAP's members is still primarily based on print publishing, they also are very actively involved in digital publishing, including on the Internet. AAP's members' online activities include: (a) creating electronic products, sometimes to accompany and supplement their printed books and journals; (b) creating custom educational material on the Internet; (c) communicating with authors and others; (d) receiving manuscripts, and editing, typesetting, and designing books electronically; (e) transmitting finished products to licensed end-user customers; (f) communicating with bookstores and other wholesale and retail accounts; and (g) promoting authors and titles online.

4. Many AAP members provide information to the world via Internet websites. Some of the content provided by AAP members in this manner contains nudity or sexual conduct. Many of the efforts to ban books in various communities have been directed at books published by AAP members. If the Amended Act is not permanently enjoined and declared unconstitutional, AAP members will be forced either to risk criminal liability or to stop providing online access to constitutionally-protected books and other related materials.

5. The AAP itself has a website, located at www.publishers.org, that includes discussion of challenged books, links to other websites, and images from constitutionally protected materials that might be deemed "harmful to minors" under the Amended Act.

6. The online information that AAP members provide serves both adults and minors.

7. Online users anywhere in the world can access the content provided by AAP and its members on the World Wide Web.

Fear of Prosecution Under the Amended Act

8. AAP and its member publishers fear that they may be at risk of prosecution under the Amended Act for providing material on the Internet that is constitutionally protected as to adults and older minors yet might be deemed “harmful to minors” under the Amended Act.

9. The only certain way for AAP and its members to avoid making available material that is “harmful to minors” — and thus to avoid prosecution — is to eliminate from their websites any material that could potentially be found to be covered by the Amended Act. In order to do so, AAP members will be forced to determine what material might fall within the Amended Act’s vague “harmful to minors” standard. This task is made more difficult because other terms in the Amended Act are similarly vague. For example, although it appears that the Alaska Legislature intended the Amended Act to apply only to visual depictions of nudity or sexual conduct, the word “depict” in common usage includes verbal as well as visual depictions. AAP members will therefore be forced to eliminate from their websites all depictions that may be considered “harmful to minors,” whether visual or otherwise, or risk prosecution.

10. AAP members sell books and other materials to retailers in the State of Alaska. The Amended Act would affect the inclusion of excerpts from AAP-member publications on the websites of Alaska retailers. For example, application of the “harmful to minors” standard could preclude the otherwise lawful sale of and dissemination to minors of such popular, acclaimed, and socially important books as *Changing Bodies*, *Changing Lives* by Ruth Bell, *The Joy of Sex* by Alex Comfort and *Kamasutra*, the *Oxford World’s Classics* edition by Vatsyayana Mallanaga, as well as serious works on art and photography such as *Beauty and Art: 1750-2000* by Elizabeth Prettejohn and *Frida Kahlo: The Paintings* by Hayden Herrera.

11. In addition to affecting retailers within the State of Alaska, the Amended Act also affects publishers' and booksellers' websites nationwide. Users of the Internet can access actual covers and excerpts from books such as those noted above on many of these websites, and some depictions therein of sexual activity or sexual excitement could well be deemed subject to the Amended Act.

Internet Use by AAP Members Is Interstate in Nature

12. Much of the Internet use by publishers and booksellers is interstate in nature. For example, any publisher's webpage can be accessed by Internet users not only throughout the United States but throughout the world. Similarly, AAP members from across the country communicate with one another, as well as with bookstores and other Internet users across the country, via email. Moreover, because AAP members cannot effectively prevent their websites or discussion groups from being accessed by Alaska users, the only certain method of compliance with the Amended Act is for AAP and its members to exclude from their websites anything that might possibly fall under the purview of the Amended Act, thus limiting the informational content and hence the usefulness of the websites for adults, who are constitutionally entitled to unrestricted access to all First Amendment-protected material, even if it is sexually explicit.

13. AAP would have the same concerns, only more so, if the Amended Act were enjoined and the Prior Act, of which AAP was previously unaware, reinstated. The Prior Act does not require that the material be considered as a whole and applies to material having serious value to minors.

14. Both the Internet and retail stores are important sources of interstate business for AAP members. If the Amended Act and the Prior Act are not enjoined and AAP members are forced to self-censor, they will suffer irreparable injury in the form of significant loss of sales

and recognition otherwise generated by use of their websites and the presence of their publications in retail stores.

Conclusion

15. For all the reasons stated above, AAP and AAP members reasonably fear prosecution under the Amended Act and the Prior Act. If the Amended Act and the Prior Act are not enjoined, AAP and AAP members will be forced either to self-censor their communications or risk criminal liability.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 31st day of August 2010.


Allan R. Adler