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**UNITED STATES DISTRICT COURT
 DISTRICT OF ALASKA**

**AMERICAN BOOKSELLERS FOUNDATION FOR FREE
 EXPRESSION, et al.**

Plaintiffs,

v.

**JOHN BURNS, in his official capacity as ATTORNEY
 GENERAL OF THE STATE OF ALASKA,**

Defendant.

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

PLAINTIFFS' RESPONSE TO DEFENDANTS' SECOND MOTION TO CLARIFY

Plaintiffs respectfully submit this Response to defendant Attorney General of Alaska's January 5, 2011 Motion to Clarify this Court's Order Granting Preliminary Injunction, which is the second motion to clarify filed by the Attorney General.

This Court's Order Granting Preliminary Injunction provides, in pertinent part:

the Preliminary Injunction prevents *any enforcement of AS 11.61.128* until further Order of this Court, or until the parties enter

into a stipulation that would eliminate the need for such an injunction.

Order Granting Preliminary Injunction, Oct. 20, 2010, p. 9 (Doc. 47) (emphasis added). No such stipulation has been executed; the Order Granting Preliminary Injunction thus remains in effect.

In response to the first motion to clarify filed by the Attorney General, this Court entered an Order of Clarification, which stated, in pertinent part:

Given the Court's previous order, AS 11.61.128 shall not be enforced pending further order of this Court.

Order of Clarification, Nov. 17, 2010, p. 2 (Doc. 50) (emphasis added).

On December 27, 2010, Plaintiffs filed a motion for summary judgment. (Doc. 51). Defendant's brief is due January 11, 2011.

In his second motion for clarification, the Attorney General advises this Court that James Moore was convicted of violating AS 11.61.128 (and also convicted of violating AS 11.41.452, online enticement of a minor), and that Mr. Moore has appealed both convictions. The Attorney General asks whether he may file a brief seeking to have Mr. Moore's conviction under AS 11.61.128 affirmed.

As a threshold matter, the Attorney General is obliged to advise both Mr. Moore's counsel and the Alaska courts in which Mr. Moore's case is proceeding about the pendency of this action, the entry of this Court's Order Granting Preliminary Injunction, and the entry of this Court's Order of Clarification. (After receiving the Attorney General's motion, we contacted Mr. Moore's counsel, and advised him of these proceedings.)

The Attorney General's filing of a brief at this time seeking to have Mr. Moore's conviction under AS 11.61.128 affirmed on appeal would be "*enforcement* of AS 11.61.128," which has been preliminarily enjoined by this Court (emphasis added). Of course, this Court's Order Granting Preliminary Injunction has no effect whatsoever on Mr. Moore's conviction

under AS 11.41.452, online enticement of a minor, or upon the Attorney General's seeking to have that conviction affirmed.

Respectfully submitted,

s/ Michael A. Bamberger
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The undersigned certifies that a true and correct copy of the foregoing Plaintiffs' Motion for Summary Judgment was served via electronic filing this 6th day of January 2011 upon counsel for Defendant.

s/ Michael A. Bamberger
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