

**UNITED STATES DISTRICT COURT
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.

DECLARATION OF CROSSAN R. ANDERSEN

I, Crossan R. Andersen, do declare:

Background

1. I am the President and CEO of the Entertainment Merchants Association (“EMA”), a plaintiff in this action. I submit this affidavit on behalf of EMA and its members that use online communications systems, its members that have establishments or outlets in Alaska, and their customers, in support of plaintiffs’ motion 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. EMA is a not-for-profit international trade association for the home entertainment industry. Its member companies operate approximately 35,000 retail outlets in the U.S. and 45,000 around the world, including 22 in Alaska, that sell and/or rent motion pictures on DVDs

and Blu-ray discs, and/or computer and console video games and/or digitally distribute versions of these products. Members comprise the full spectrum of retailers (from single-store specialists to multi-line mass merchants, and both brick and mortar and online stores), distributors, the home video divisions of major and independent motion picture studios, video game publishers, and other related businesses that constitute and support the home entertainment industry. EMA members manufacture, distribute, sell and rent a wide variety of expressive works in the motion picture and video game formats, some of which may contain depictions covered by the Amended Act.

3. EMA was established in April 2006 through the merger of the Video Software Dealers Association and the Interactive Entertainment Merchants Association. EMA is incorporated in the State of Delaware and has its principal place of business in Encino, California.

4. EMA's member-retailers are not what are colloquially referred to as "adult stores."

Fear of Prosecution Under the Amended Act

5. EMA and its members fear that EMA's members may be at risk of prosecution under the Amended Act for unknowingly permitting minors to view or access constitutionally protected material that might be deemed "harmful to minors" under the meaning of the Amended Act.

They do not know how to determine what material may cross this vague line. Many DVDs and video games contain sexually related narrative or pictorial content that might be deemed by some to be "harmful to minors" under the Amended Act. Motion pictures and video games that may be appropriate for a fifteen year old may not be appropriate for an eleven year old. EMA's members would therefore be forced to censor their material to be appropriate for the youngest minors who might conceivably access it in their stores or over the Internet.

6. Many retailers of DVDs and Blu-ray discs, including some of EMA's Alaska members, offer for sale or rental items containing sexual content that could be considered

“harmful to minors” under the Amended Act, such as DVDs and Blu-ray Discs of motion pictures such as “The Brown Bunny,” written and directed by the award-winning artist/filmmaker Vincent Gallo, “Lust, Caution,” directed by Academy Award winner Ang Lee, the acclaimed documentary “Inside Deep Throat,” and the popular “Caligula.”

7. The Amended Act affects not only EMA members in Alaska, but nationwide. Users of the Internet can often access visuals and excerpts from motion pictures and video games through members’ websites, even those with no activities inside the State. Some of the language and depictions in those visuals and excerpts would invariably be subject to the Amended Act.

8. Much of the Internet use by EMA’s members is interstate in nature. Any member’s Web site can be accessed by Internet users not only throughout the United States, but throughout the world. Some EMA members stream and/or download movies and/or video games, including works like those referenced above (paragraph 6), from their web sites. With respect to these titles and all other works offered on their web sites, these members cannot effectively prevent access by Alaska users. Nor can these members effectively prevent persons 16 years old and younger from accessing their web sites. Thus, both in-state and out-of-state EMA members who post information which may be considered “harmful to minors” as established by the Amended Act on the Internet must comply with the Amended Act or risk criminal prosecution in Alaska.

9. The only certain method of compliance with the Amended Act is for EMA’s members to exclude from their websites their streamed and downloaded content and retail establishments anything that might possibly fall under the purview of the Amended Act. EMA strongly believes that adults are constitutionally entitled to unrestricted access to all First Amendment-protected material, even that which contains sexual activity or excitement.

10. EMA has the same, although elevated, concerns were the Amended Act enjoined and the Prior Act, of which it was previously unaware, reinstated. The Prior Act does not consider the material taken as a whole and applies to material having serious value to minors.

11. The Internet is an important source of interstate business for EMA members. As discussed above, members conduct business over the Internet in a variety of ways. EMA members also conduct a great deal of business in their "brick and mortar" retail locations. If the Amended Act and the Prior Act are not enjoined and EMA members are forced to self-censor, they will suffer immeasurable injury through significant loss of sales and recognition otherwise generated by use of their Internet websites with respect to both censored and uncensored materials and resources. Their ability to sell materials that are protected by the First Amendment in their retail stores will also be severely curtailed.

Conclusion

12. For all the reasons stated above, if the Amended Act and the Prior Act are not held unconstitutional, EMA's Alaska members will be forced either to self-censor materials available in their stores and on their websites or risk prosecution.

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

Executed on this 27th
day of August 2010.


Crossan R. Andersen

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