

ATTACHMENT 8

UNITED STATES DISTRICT COURT
DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

BIG HAT BOOKS, INC., et al.,

Plaintiffs,

v.

No. 1:08cv 596-SEB-TAB

PROSECUTORS, et al.,

Defendants.

DECLARATION OF JOHN LYONS

John Lyons declares under penalties of perjury:

Background

1. I am the Executive Vice-President of the National Association of Recording Merchandisers ("NARM"), a plaintiff in this action. I submit this affidavit on behalf of NARM in support of plaintiffs' motion for a preliminary injunction and/or motion for summary judgment to enjoin the State from enforcing House Enrolled Act 1042 (the "Statute"), a registration and taxing law which is unconstitutional.

2. NARM, based in Marlton, New Jersey, is the leading trade association for music retailers, wholesalers, distributors, record labels, multimedia suppliers, suppliers of related products and services, and individual professionals and educators in the music business. NARM advances the promotion, marketing, distribution, and sale of music by providing its members with a forum for diverse meeting and networking

opportunities, information, and education to support their businesses, as well as advocating for their common interests, NARM's retail members operate thousands of physical and digital storefronts that account for about 85% of the music sold in the U.S. market. Established in 1958, NARM is celebrating its 50th Anniversary this year. NARM has approximately 150 members in Indiana.

3. Many NARM members in the State of Indiana are retailers who sell music recordings. NARM's member-retailers are not what are colloquially referred to as "adult stores."

Application of the Statute

4. Almost all music recording retailers, including NARM's Indiana members, are likely to offer for sale recordings the lyrics of some of which have sexual content that could be considered "harmful to minors". NARM's Indiana members (some of which are likely to move after July 1, 2008) and their staff members fear prosecution under the Statute if they continue to sell these and other mainstream materials containing sexually-related content in the same manner that some have done for decades.

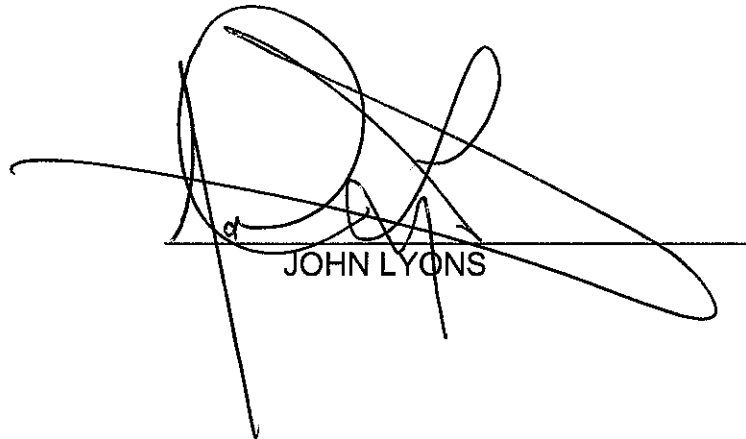
5. The statute requires "a statement detailing the types of [sexually explicit] materials the person intends to offer for sale or sell." It is not clear how detailed this statement must be. Even if NARM's Indiana members had the time to review each recording individually before they shelved it to engage in the sorts of subjective acts required under the Statute, determining which recordings fall under the Statute's proscriptions is not possible and would lead to overinclusive and unconstitutional self-censorship.

6. NARM's Indiana members seek to bring in a general clientele, including younger listeners. Having to register as a purveyor of sexually explicit materials would be injurious to their business and reputation. The only way they avoid such a label would be to purge from their inventory recordings and other materials protected by the First Amendment as to adults and older youths. These options impermissibly infringe on their constitutional rights. Moreover, the right of their patrons -- adults and minors alike -- to access and purchase such materials also will be seriously infringed.

Conclusion

7. For all the reasons stated above, if the Statute is not held unconstitutional, NARM's Indiana members will be forced either to self-censor materials available in their stores or register as a purveyor of sexually explicit materials and pay a punitive fee, to their detriment.

Dated: May 19, 2008



JOHN LYONS

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