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American Civil Liberties Union, et. al. v. Janet Reno: American Library Association, Inc., et. al. v. United States Department of Justice, et. al., 929 F.Supp. 824 (E.D. Pa. 1996)

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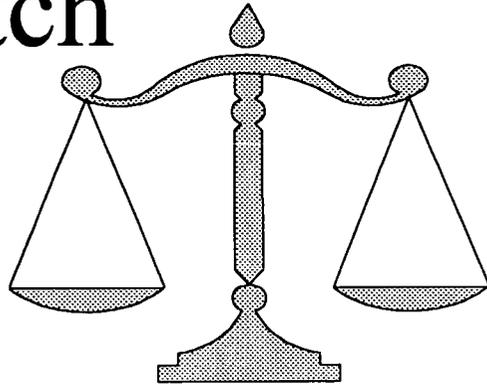
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Courtwatch



American Civil Liberties Union, et al. v. Janet Reno;
American Library Association, Inc., et al. v. United States
Department of Justice, et al.
929 F. Supp. 824 (1996 E.D.P.A.)
by Stacy Lyn Davis

In June 1996, a specially appointed three-judge panel held several provisions of the Communications Decency Act of 1996 unconstitutional and thereby preliminarily enjoined the Department of Justice from enforcing sections 223(a) and 223(d) of the statute. The provisions were subject to strict scrutiny and were found to lack a narrowly tailored compelling government interest. In ordering the preliminary injunction, the court concluded that the plaintiffs met their burden of proof by showing that they are likely to succeed on the merits, they have suffered irreparable harm, and the public interest would be served by granting the injunction.

The Communications Decency Act (CDA), signed into law in February, was designed primarily to protect minors from encountering objectionable material on the Internet. The Act criminalizes the acts of knowingly creating, soliciting, sending or displaying "indecent" or "patently offensive" material over the Internet, and proscribes stiff penalties including fines or imprisonment.

The ACLU and other plaintiffs--citizens groups, libraries, and organizations which publish materials on the Internet or are otherwise involved with the computer or telecommunications industries--brought an action to preserve free speech under the First and Fifth Amendments. The CDA does not differentiate between "indecent" material and "obscene" material which is not protected speech. The

plaintiffs objected to the broad scope of the statute and argued that the indecent language sought to be regulated constitutes speech which has traditionally been protected by the First Amendment. The prohibition of hard-core pornography and other illegal materials is already vigorously enforced in cyberspace under existing child pornography and obscenity laws.

The court noted that plaintiffs such as Critical Path AIDS Project, Inc., have feared criminal prosecution under the Act because their websites provide information on HIV and safe sex in easy-to-understand language geared toward teenagers. The CDA also places Internet content providers at risk for providing information to women about issues including abortion, female genital mutilation, rape, and incest, regardless of the fact that the allegedly indecent material is geared toward saving lives.

In accordance with the CDA's authorization of expedited review, the action was heard and determined by a district court of three judges. The judges issued separate opinions in which they analyzed the relevant provisions of the CDA and particularly struggled to define "indecent" and "patently offensive" speech. Courts have traditionally relied on community standards to define the boundaries of free speech, but the Internet poses a challenge to this practice because it has virtually eliminated all traditional community boundaries and has therefore created a truly global community.

The court concluded that the CDA did not meet the "least restrictive means" standard necessary for a statute to be sufficiently narrowly tailored. The court recognized that the CDA provisions will have a chilling effect on the free expression of Internet users and content providers because there is no practical way to control the flow of information in cyberspace at this time. The court reviewed several age verification systems and parent-controlled software programs designed to limit the Internet access of children, and also acknowledged the fact that much of the material found online originates outside of the United States. Judge Solviter explained, "[w]e have found that 'many speakers who display arguably indecent content on the Internet must choose between silence and the risk of prosecution.' Such a choice, forced by sections 223(a) and (d) of the CDA, strikes at the heart of speech of adults as well as minors."

The parties have taken advantage of the expedited review procedures and have thereby requested that the US Supreme Court grant a summary decision based on the findings of the District Court.