[US] Three judge panel issues preliminary injunction against provisions of the Communications Decency Act of 1996

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On 11 June 1996, a three judge panel granted a preliminary injunction against enforcement of two provisions of the Communications Decency Act of 1996 ("CDA") designed to keep children from receiving sexually explicit materials on the Internet. The CDA constitutes Title V of the historic Telecommunications Act of 1996 passed on 8 February (see IRIS 1996-3: 7-10). In ACLU v. Janet Reno, the court found sections 223(a)(1)(B) and 223(a)(2) as well as 223(d)(1) and 223(d)(2) of the CDA to be an unconstitutional abridgement of First Amendment free speech rights.

Section 223(a) prohibits the transmission of obscene or indecent material on the Internet where there is knowledge that the recipient of the communication is under 18 years of age. Section 223(d) prohibits transmission to a person under 18 years of age, or making available to a person under 18 years of age, material that is patently offensive as measured by contemporary community standards. Violators are subject to criminal penalties of up to a two-year prison sentence and fines up to $250,000.

Noting that the CDA imposed content-based restriction on speech, the court subjected the CDA to the strict scrutiny test which requires a compelling government interest and narrowly tailored government regulation to further that interest. While recognizing the government interest in protecting the physical and mental well-being of children, all three judges in separate opinions emphasized that the CDA was not appropriately narrowly tailored to further that government interest.

Judge Buckwalter's opinion concluded that the terms "indecent" and "patently offensive" were overly vague as used in the CDA. Neither the courts, Congress, nor the FCC have yet defined what is considered indecent over cyberspace. Judge Buckwalter also noted the difficulty in determining the relevant "community standard" applicable to Internet communication. He felt there was sure to be a chilling affect on speech as users would be required to steer wide of what may be considered patently offensive according to any "community standard." Judge Buckwalter concluded that the fact that users would be unable to reasonably predict whether their behavior conformed to the Act, violation of which

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constitutes criminal penalties including prison sentences, places the CDA at odds with the due process guarantees of the Fifth Amendment. Judge Dalzell noted that the CDA has the effect of a complete ban, since internet users would be inhibited from making certain materials available even to adults in order to ensure that minors could not come across the same materials. Thus, Judge Dalzell concluded that the CDA was not sufficiently narrowly tailored to address only the protection of children from certain materials on the Internet. Judge Sloviter also maintained that the provisions of the CDA were more broad than necessary to accomplish its purpose, and that vigorous enforcement of current obscenity and child pornography laws would adequately protect minors from the harm to children the government sought to prevent.

The government is expected to appeal the court's decision. Such an appeal would be heard by the U.S. Supreme Court.

United States District Court for the Eastern District of Pennsylvania, 11 June 1996, ACLU v. Janet Reno.

http://www.aclu.org/court/cdadec.html

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