

Renaissance News & Views: Update

Supplemental Information on Page One "Cyber Blockade"

The front page story in this issue, titled "Fighting A Cyber Blockade," needs a bit of clarification.

Last month Renaissance was contacted by Ann Beeson of the American Civil Liberties Union's National Legal Department. Ms. Beeson informed us that a library in Virginia is using a product called X-Stop to block access to several Internet sites on their library computer. One of the blocked sites is the Renaissance web page. <<http://www.ren.org>> Ms. Beeson wanted to know if we would participate in a lawsuit against the library.

Renaissance Executive Director, Angela Gardner, polled the Board of Directors and the majority opinion was that we should participate in the lawsuit. Some board members had reservations. Upon informing Ms. Beeson of those concerns she provided the information that appears on page one. After sharing that information with the Board the decision was made to sign on as a participant in the suit, which was filed at the end of last month.

News & Views will continue to bring you the latest on this fight to maintain free speech on the Internet. Keep your eye on upcoming issues for the latest as the story unfolds.





News & views

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Renaissance

Fighting a Cyberspace Blockade

TO: Potential Plaintiffs (*Which includes Renaissance—Editor*)

FROM: Ann Beeson, Staff Attorney
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DATE: January 9, 1998

RE: Litigation to Challenge the Mandatory Use
of Blocking Software at Libraries in Loudoun
County, Virginia

Thank you very much for expressing an interest in serving as a plaintiff in our potential intervention in a case challenging the mandatory use of blocking software at libraries in Loudoun County, Virginia. The following memorandum provides more information about the commitment required to be a plaintiff.

BACKGROUND

Late last year, the Board of Trustees of the Library of Loudoun County, Virginia passed a policy entitled, "Policy on Internet Sexual Harassment," which requires Internet filtering software to be installed on all Internet access terminals in the libraries.

The policy was passed despite the vigorous objections of the ACLU and other civil libertarians, local library patrons, and many teachers and parents in Loudoun County. The policy does not allow either adults or minors to access the Internet at the library without the blocking software under any circumstances.

The libraries implemented the policy by installing a blocking program called, "X-Stop," which is produced by a company called Log-On Data Corporation. Several experts have conducted searches in order to determine what sites are actually blocked by X-Stop.

They have determined that X-Stop blocks access to a wide variety of sites that contain valuable information for adults and minors. For example, X-Stop blocks access to information about gay and lesbian issues and literature (especially sites targeted to gay youth), AIDS

and HIV-related speech, safer sex information, art sites with classic nudes, and a variety of other sites with no sexually explicit content that are caught within the crude technology of X-Stop's blocking devices.

In December, in a case called "Mainstream Loudoun v. Board of Trustees of the Loudoun County Public Library," a group of local library patrons filed suit to challenge the use of the filters. The ACLU is planning to intervene in the case in order to represent web content providers who are being blocked by X-Stop.

We believe it is important that the First Amendment interests of both web speakers and library patrons are represented in the case, because they may be somewhat different. (For example, the Mainstream Loudoun plaintiffs have said that they would approve of an Internet policy that required minors to get parental permission before accessing the Internet.

Some of our clients, such as those who provide safer sex information on the Web, may want to be able to communicate their information to teenagers even if their parents do not consent.) The lawyer for the Loudoun County plaintiffs is aware of our planned intervention, and we will be working closely with him once we intervene in the suit.

The case asserts that the mandatory use of X-Stop in the library violates the First Amendment rights of library patrons and Internet speakers who wish to communicate constitutionally protected information. In *Reno v. ACLU*, the case which struck down the Communications Decency Act as unconstitutional, the Supreme Court granted the Internet the same high level of First Amendment protection granted to books and other printed material.

The Court also held that the Constitution prevents the government from reducing adults to viewing only online content that is fit for children. It would be unconstitutional for a public library to remove from the shelves books

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that contain graphic safer sex information, simply because the library disapproved of the content.

It is equally unconstitutional for the library to block access to controversial material on the Internet. The blocking software, like the CDA, prevents adults and minors from accessing and communicating constitutionally protected information.

FILING THE INTERVENTION

Before we make a final decision to intervene in the case, we must first have a committed group of plaintiffs. We would like to make a final decision and to file the papers within the next two weeks. Because of the time constraints, we urge you to consider carefully the information we have provided and to try to obtain approval by next Friday, January 16, 1998 for you or your organization to participate as a plaintiff.

We hope that the following information will assist you in reaching a final decision about whether you can participate in the suit. If you agree to participate, we will provide you with a formal retainer agreement that will discuss the terms of our legal representation in more detail.

The ACLU National Office and the ACLU of Virginia will jointly file the intervention and will serve as counsel for all of the intervening plaintiffs. We will ask the court for an injunction to prevent Loudoun County and the library from using blocking software because it violates the First Amendment rights of Internet speakers and library patrons. (Our intervention will seek injunctive relief only, and will not include an action for damages.)

PLAINTIFFS

We are putting together a coalition of Internet speakers whose information is blocked by X-Stop to serve as plaintiffs in the case. We expect to include speakers with web sites offering information about safer sex and

AIDS-related issues, gay and lesbian literature, banned book and censorship-related sites, and arts-related sites. The Loudoun County policy limits the ability of speakers all over the world to communicate information to Loudoun County residents over the Internet. Thus, the plaintiffs will include web sites operated from several different states.

LENDING YOUR NAME

Your primary commitment to participating as a plaintiff is a commitment to lend your name to the lawsuit. By lending your name as an Internet speaker who communicates valuable information that is blocked by X-Stop, you will help us convince the Court that this kind of online censorship is just as unconstitutional as removing books from the library on the basis of their controversial content.

TIME COMMITMENT

The commitment to be a plaintiff is also a time commitment - plaintiffs need to be available to provide information for the lawsuit. If you are an organization, you will probably want to designate a few people to serve as contacts for purposes of the suit.

The litigation may be quickly resolved, or may take years to complete. Regardless of the duration of the case, you will probably spend no more than three to five days providing information for the lawsuit.

The time commitment may be shorter or longer depending on whether a trial becomes necessary. Initially, before we file the lawsuit, we need you to provide us with general information about your web site, the material that is blocked, and why you believe it is important for you to be able to communicate this information to all web users, including patrons of the Loudoun County library.

After the lawsuit is filed, we may ask you for additional information as it becomes necessary for various phases of the case. Most of this information can be provided to us by regular mail, e-mail, or phone, so in per-

son visits will not be necessary. As part of discovery in the case, the defendants may request answers to interrogatories (sets of written questions) or may request to depose you (reserve a time to ask questions orally). If this happens, it is unlikely to take more than a day or two of your time.

Finally, if the case goes to trial, we may need you to testify in court. This, too, is unlikely to require more than two days of your time.

COSTS AND FEES

No financial contribution is required for participation in the lawsuit. We will pay the costs and fees involved in bringing the suit.

If we win the suit, we may apply to the court for reimbursement of attorneys fees and costs. If the court ultimately requires the defendants to pay fees and costs, the money will go to the legal organizations rather than to the plaintiffs.

RISKS

There are very few foreseeable risks to participating in the lawsuit. You will receive some publicity from your participation in the lawsuit, and may receive calls from the press.

(This can be good or bad, depending upon your perspective.)

Some press articles may try to label the plaintiffs as "smut-protectors," but of course we will fight that label with reference to the very legitimate information that the plaintiffs provide.

Finally, there is always the possibility that a plaintiff could be personally fined by a court for some specific act or omission made in the case without the knowledge or advice of counsel; we mention this risk for the sake of thoroughness, but it is unlikely that you would actually encounter this problem.

Thanks again for your interest in serving as a plaintiff in this important case to protect free speech rights in cyberspace. Please do not hesitate to contact us if you have any further questions about the lawsuit.

