

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

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AMERICAN CIVIL LIBERTIES UNION, et al.,                    )  
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  )  
v.    )  
  )  
  )  
JANET RENO, in her official capacity as                    )  
ATTORNEY GENERAL OF THE UNITED STATES,                )  
  )  
  )  
  )  
Defendant.    )

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AFFIDAVIT OF BRAD TEMPLETON

Brad Templeton of Sunnyvale, California, being duly  
sworn, deposes and says:

1. I am a Canadian citizen currently residing in Sunnyvale, California and the Chief Executive Officer of ClariNet Communications Corp. ClariNet is a privately held California corporation formed in 1991 and located in San Jose that publishes electronic information of different types.

2. Among ClariNet's publications is an electronic newspaper entitled the "ClariNet e.News." The purpose of the newspaper is to provide subscribers with online news, sports, financial information, and other reading material on a variety of topics. The newspaper is distributed in Usenet format to approximately 1.2 million paying subscribers. With a few exceptions, the newspaper is not sold directly to individuals but is available through internet service providers who provide the newspaper as part of their basic service and through educational institutions and corporations.

3. The vast majority of the material in the newspaper could not be considered indecent or patently offensive under any standard. The news articles we publish are taken from the same wire services from which print newspapers obtain

their stories. When the wire services provide articles that have vulgar language or sexually explicit material, they include a warning to that effect. Some, but not all, print newspapers censor these articles. ClariNet, in the interest of providing full information, does not censor the articles. Thus, we have occasionally published articles that use four letter words. We have also occasionally published articles that explicitly describe rapes and sexual assaults.

4. ClariNet also publishes a humor newsgroup in Usenet format at rec.humor.funny and on the World Wide Web. I created rec.humor.funny in 1987. Although many people submit jokes, the humor section is moderated for quality. This material is widely read. Two daily jokes are distributed and all of the jokes are archived. Some of the jokes include vulgar language or sexually explicit material. For instance, some of the jokes discuss sexual acts including oral sex. Some jokes also use strong language. Where appropriate, jokes are accompanied by a disclaimer stating that they may not be suitable for minors.

5. I believe that the news articles and the jokes are accessed by teenagers. Because ClariNet does not have direct contact with the subscribers to the newspaper, we could not prevent minors from accessing the news articles through the providers except by requiring the providers to restrict access. With regard to the jokes, it would be impossible to prevent access by minors. The jokes are distributed through a newsgroup sent out to tens of thousands of sites over which we have no control. ClariNet sends the jokes to computers that send them to other computers and so on. ClariNet has no control over what computers are linked to other computers.

6. I have no idea what "indecent" or "patently offensive" means. For this reason, I would have a hard time deciding the lawfulness of articles and jokes under a law prohibiting online dissemination of "indecent" or "patently offensive" material to minors. I am concerned that some of our articles and jokes would be considered "indecent" or "patently offensive."

7. If a law prohibiting online material that is "indecent" or "patently offensive" goes into effect, ClariNet currently intends to continue to publish news articles in the same manner. We do not currently intend to alter our journalistic standards to avoid prosecution. I am not sure whether ClariNet would change what jokes it publishes. We would have to assess the risks.

8. If a law prohibiting "indecent" or "patently offensive" material goes into effect, I am concerned that online services and other access providers will ban communications that they consider potentially "indecent" or "patently offensive." This would deprive ClariNet of many of its potential subscribers and readers.

9. I believe that a law prohibiting online material that is "indecent" or "patently offensive" would unfairly punish electronic publications. Some print newspapers publish the same articles for which we could be prosecuted. Similarly, some joke books contain the same jokes for which ClariNet could face criminal sanction.

10. Both the newspaper and the humor newsgroup allow readers to link to other sites. The sites to which they are linked are in turn linked to still other sites, creating a virtually endless chain. ClariNet would not be able to screen those sites to which it provides links, let alone the whole chain of linked sites, for material that could be considered "indecent" or "patently offensive." I would

be reticent to continue providing links if a law prohibiting "indecent" or "patently offensive" online material goes into effect for fear of criminal prosecution or other sanction.

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Brad Templeton

Subscribed and sworn to  
before me this \_\_\_\_ day of  
February, 1996

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Notary Public