

Judge grants injunction vs new Mass. obscenity law

October 28 2010, By DENISE LAVOIE , AP Legal Affairs Writer

(AP) -- A federal judge has granted a preliminary injunction sought by free-speech advocates who argued that a new Massachusetts law aimed at protecting children from online sexual predators effectively bans from the Internet anything that may be considered "harmful to minors," including material adults have the right to view.

The new law closed a loophole that led the state's highest court to overturn a man's conviction for sending sexually explicit instant messages to someone he believed was a 13-year-old girl.

But Internet content providers, the [American Civil Liberties Union](#) of Massachusetts and others sought to block enforcement of the law as it applies to broad-based Internet communications. They did not seek to bar enforcement against sexual predators or others who use the Internet to send harmful material to minors.

U.S. District Judge Rya Zobel ruled Tuesday that the law, as it is now written, violates the First Amendment.

"Our goal is to ensure that our laws keep up with modern technology in order to protect kids from sexual predators on the Internet," Attorney General Martha Coakley said in a statement.

She said her office will draft an injunction that addresses the concerns raised in the ruling and will examine if the law needs to be changed to be sure "law enforcement has the necessary tools to protect children

online."

The new law was passed quickly by the state Legislature after the Supreme Judicial court found in February that the old state law that imposes criminal penalties for disseminating material harmful to minors did not cover electronic communications.

Instant messages, text messages, e-mail and other electronic communications were added. Penalties include to up to five years in prison or a fine of as much as \$10,000 for a first offense.

The American Booksellers Foundation for Free Expression, the Association of American Publishers, the Comic Book Legal Defense Fund and others filed a federal lawsuit in July challenging the new law.

The content providers argued that the new amendments amount to "a broad censorship law" that would ban from the Internet a variety of information that could be seen as harmful to minors, including material about contraception, pregnancy, literature and art that adults have a First Amendment right to view.

They also argued that people who disseminate information through a generally accessible website cannot discern the ages of those who view the information and that, as a result, the law inhibits the free speech of adults.

Zobel agreed.

"The plaintiffs have demonstrated, without question, that the 2010 amendments ... violate the First Amendment," Zobel wrote.

The judge did not specify in her ruling how the injunction would be enforced. She ordered the plaintiffs to submit a proposed injunction

after seeking the agreement of the state Attorney General.

John Reinstein, legal director of the ACLU of Massachusetts, said the state could choose to appeal the ruling to the 1st U.S. Circuit Court of Appeals, the case could go to trial for a final judgment or the law could eventually be rewritten.

"We think this is the right decision, and the solution is for the Legislature to re-examine this and see if there is language which is appropriately respectful to the First Amendment rights of all people," Reinstein said.

Coakley's office had argued that the new [law](#) only prohibits the dissemination of matter that is obscene to minors under a standard set in a 2006 Supreme Court ruling, that is, when the person sending the material specifically intends to disseminate it to someone under the age of 18.

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