

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[REDACTED]
AMERICAN CIVIL LIBERTIES UNION; and
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION;

Plaintiffs,

v.

JOHN ASHCROFT, in his official capacity as
Attorney General of the United States;
ROBERT MUELLER, in his official capacity as
Director of the Federal Bureau of Investigation;
and MARION E. BOWMAN, in his official
capacity as Senior Counsel to the Federal
Bureau of Investigation,

Defendants.

04 Civ. 2614 (VM)

SEALED

DECLARATION OF [REDACTED]

I, [REDACTED] of [REDACTED] do declare:

1. I am the President and sole employee of [REDACTED] which is
an Internet access and consulting business incorporated and located in [REDACTED]

2. [REDACTED] provides a variety of Internet-related services for its clients. For example, we
provide space on the Web where people can post their own sites and store electronic files. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] We also provide some clients with e-mail accounts and the ability to access the
Internet.

8. As I had never heard of a National Security Letter and had never before been contacted by the FBI, I was extremely disconcerted by the phone call. In an attempt to find out more information about NSLs, I searched the Internet by using Google and other Internet search engines. I also visited various government websites. I was unable to find anything describing the rights and obligations of a person served with an NSL. I also asked some of my acquaintances with whom I communicate over the Internet whether they knew anything about an NSL. None of them did.

9. Agent [redacted] delivered the NSL to me on or about [redacted]. The letter, which is dated [redacted], is on FBI letterhead and signed by Marion E. Bowman, Senior Counsel, National Security Affairs, Office of the General Counsel. A copy of the letter is attached to this declaration as Exhibit 1.

10. After receiving the letter, I immediately scanned it and learned that the FBI was searching for information about one of my clients, [redacted]
[redacted]
[redacted]

11. The letter also stated that I was not allowed to tell anyone, including my client, that the FBI was seeking information through an NSL.

13. The letter also stated that I was required to provide the FBI with a range of information about my client, including [redacted] name and other identifying information.

14. Once I learned the subject of the NSL, I became concerned that the government might be [redacted]
[redacted]
[redacted]

As there was no indication that a judge had reviewed or approved the NSL, I did not want to hand over any of the information sought by the government.

15. Although I read the NSL carefully, I could not find any information stating that I could challenge the NSL.

16. Furthermore, nothing in the letter said anything about the right to talk with a lawyer. It didn't seem right that the government could forbid me from talking to a lawyer. In light of the gag provision, however, I wasn't sure what I was allowed to do. I asked Agent whether I could consult a lawyer and my business partners about the NSL. Agent said that I could do so.

17. The NSL states that I am obligated to comply with the government's demand. I am opposed to doing so, however, because I think that the government and because protecting the confidentiality of my clients' information is important to me on professional level. Rather than immediately provide the requested information, I contacted attorneys with the ACLU to determine what, if any, options were available to me.

18. On or about , Agent left me a voicemail to find out when I would provide the government with the information sought by the NSL.

19. On or about I left a voicemail for Agent asking him to direct any questions about the NSL to my attorneys.

20. To this day, I am still not certain exactly what the gag provision in the NSL and Section 2709(c) covers. I am not sure whether I can even tell people that I am involved in a lawsuit without providing any further information.

21. Until I filed this lawsuit, I was unsure whether I could disclose even the fact that the federal government has sought access to my client's records without mentioning either the FBI or the NSL power. The government has now prohibited the disclosure of my name and my company's name in connection with this case. They have provided no further clarification as to what I can and cannot say without violating the gag provision.

22. Because of the gag provision in Section 2709(c), I have not disclosed information either about the NSL or about this lawsuit to my client, who is the subject of the NSL. This has been particularly difficult because on a variety of issues. I did not want to cut off all communications and I also thought that doing so could raise suspicions and possibly lead the government to believe that I had violated the gag provision. Because of the gag provision, however, I have found it very difficult to have any kind of normal conversation used to discuss topics related to politics and current events, but now I feel wary when I communicate I have steered clear of numerous topics of conversation, as I am afraid that the topic of the NSL might come up, which I assume would violate the gag provision. The gag has put me in a very compromising situation, as I do not want to be dishonest in my communications but also do not want to violate the gag.

23. Because of the gag provision in the NSL and Section 2709(c), I have not disclosed information about the NSL or this lawsuit to any of my clients. Were it not for the gag, I would definitely have informed my clients that the government had sought information from me and that I am challenging the constitutionality of the NSL provision in an effort to protect all of my clients' interests. I want them to know that I take my commitment to security and

confidentiality very seriously.

24. Some of my clients have specifically asked me whether [REDACTED] is the Internet Service Provider (ISP) challenging the constitutionality of this provision of the Patriot Act. Because of the gag and the government's insistence that my identity remain a secret, I have been uncertain whether I must lie to them or whether a non-committal answer will suffice. The fact that I cannot speak candidly with my clients about this important issue, which is facing the entire Internet community, undermines the business relationships that I have worked so hard to develop with my clients.
25. [REDACTED] credibility with its customers is directly linked to its commitment to the security and confidentiality of client information. It has now become standard practice for all ISPs to have some kind of privacy policy, and I believe that customers evaluate a company's commitment to security when deciding what ISP to use.
26. Because of the gag provision in the NSL and Section 2709(c), I have not disclosed information about the NSL this lawsuit to other electronic communications service providers (ECSPs). Were it not for the gag, I would have contacted other ECSPs to solicit their advice as to how [REDACTED] should respond to the NSL. I have no doubt that other ISPs, such as America Online, must have received at least one of these NSLs. Because of the gag, however, I am not able to contact them to find out what they did when they were in my situation. Furthermore, because of the gag other recipients of NSLs couldn't even admit that they had in fact received NSLs, making any attempt at discussion about the subject futile.
27. Because of the gag provision, I cannot tell other ISPs that I am trying to challenge the FBI's use of this power. As a result, I cannot work with other ISPs to develop any kind of joint

strategy to challenge NSLs through litigation.

28. The gag provision has also made it difficult to maintain normal communications with business colleagues, friends and family members. I have to make up excuses about where I am going when I need to meet with my lawyers about this case. I have been on edge ever since the FBI contacted me. Because of the gag provision, however, I cannot to talk to friends and family about the stress that I have experienced since receiving the NSL.

29. Because of the gag provision, I have not disclosed information about the NSL and this lawsuit to the press and the public. I believe that the government may be abusing its power by targeting people with politically unpopular views. I also think that I should have the right to challenge the government's demand for businesses' records. But I am afraid to talk about the NSL power in even generic terms out of fear that the government could accuse me of violating the gag provision. Furthermore, even though I have taken every precaution to comply with the gag, I am afraid that I may be prosecuted and even jailed if I inadvertently violate the gag provision.

30. I find it ironic that before I received the NSL, I freely engaged in political debate on the government's use of the Patriot Act. But now that I have received one of these letters and I know much more about the way the Patriot Act works, I am prevented from talking. My experience as a recipient of an NSL has made me feel even more strongly that the public should be able to monitor how the government is using these new powers so that it can police against possible abuses.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on this day, May 15, 2004.

[REDACTED]