

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.

3. [REDACTED] has both paying and non-paying clients. Some of those clients are individuals and political associations that engage in controversial political speech.

4. Some of our clients communicate anonymously or pseudonymously. Using a pseudonym allows speakers to discuss embarrassing, sensitive or controversial subjects without fear of retaliation or reprisal.

5. [REDACTED] possesses a wide array of information about its clients. With respect to any particular client, we may possess the client's name, address and telephone number; other addresses associated with the account; e-mail addresses associated with the account; Internet Protocol (IP) addresses associated with the account; Uniform Resource Locator (URL) addresses assigned to the account; activity logs for the account; logs tracking visitors to the client's website; the content of a client's electronic communications; data files residing on [REDACTED] server; the client's customer list; the client's bank account and credit card numbers; records relating to merchandise bought and sold; and the date the account was opened or closed.

6. [REDACTED] has a strong commitment to preserving the security of our clients' information.

[REDACTED]

[REDACTED] clients maintain accounts with our company specifically because of our commitment to security.

7. [REDACTED]

[REDACTED]

8.

[REDACTED]
[REDACTED] 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. [REDACTED]

[REDACTED] 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.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

10.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

11.

[REDACTED]
[REDACTED]

13.

[REDACTED]
[REDACTED]

14.

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

15. [REDACTED]

16. [REDACTED]

17. [REDACTED]

18. [REDACTED]

19. [REDACTED]

20. To this day, I am still not certain exactly what the gag provision [REDACTED] 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 [REDACTED]

[REDACTED] 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 [REDACTED]

22. Because of the gag provision in Section 2709(c), I have not disclosed information [REDACTED]

[REDACTED] about this lawsuit [REDACTED] This has been particularly difficult because [REDACTED] I engaged in ongoing communications [REDACTED] 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 [REDACTED] used to discuss topics related to politics and current events, but now I feel wary when I communicate [REDACTED] I have steered clear of numerous topics of conversation, as I am afraid [REDACTED]

[REDACTED] might come up [REDACTED] The gag has put me in a very compromising situation, as I do not want to be dishonest in my communications [REDACTED] but also do not want to violate the gag.

23. Because of the gag provision [REDACTED] and Section 2709(c), I have not disclosed information about [REDACTED] this lawsuit to any of [REDACTED] clients. Were it not for the gag, I would definitely have informed my clients that [REDACTED]

[REDACTED] 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 [REDACTED] and Section 2709(c), I have not disclosed information about [REDACTED] 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 [REDACTED] [REDACTED] I have no doubt that [REDACTED] 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 [REDACTED] Furthermore, because of the gag, [REDACTED] 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 [REDACTED] [REDACTED] 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 [REDACTED]

[REDACTED] Because of the gag provision, however, I cannot to talk to friends and family about the stress that I have experienced [REDACTED]

29. Because of the gag provision, I have not disclosed information about [REDACTED] 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 [REDACTED] But I am afraid to talk about the NSL power in [REDACTED] 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 [REDACTED] I freely engaged in political debate on the government's use of the Patriot Act. [REDACTED] I know much more about the way the Patriot Act works [REDACTED] [REDACTED] 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]

Declaration

Exhibit 1

REDACTED IN ITS ENTIRETY

REDACTED IN ITS ENTIRETY



REDACTED IN ITS ENTIRETY
