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National Coalition for Sexual Freedom

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NEW YORK CITY (October 29, 2004) — Testimony concluded on October 28, 2004, in Barbara Nitke and National Coalition for Sexual Freedom v John Ashcroft, in the Federal District Court for the Southern District of NY, case # 01 CIV 11476 (RMB). This lawsuit is challenging an unconstitutional law called the Communications Decency Act (CDA) which criminalizes free speech on the Internet. Plaintiffs are represented by noted First Amendment attorney, John Wierenius.

The tone was civil and polite throughout the two days in court as images of SM and explicit sexual photographs were examined by the three judge panel. Supporters filled the courtroom to listen to expert testimony ranging from Arthur Danto, the Emeritus Johnsonian Professor of Philosophy at Columbia University, to the concerns of Dov Hechtman, a webmaster for the SM membership group The Eulenspiegel Society.

Barbara Nitke, fine art photographer whose work is an exploration of sexual relationships, testified that she feared prosecution in areas of the country where there is little understanding of alternative sexual expression. Noted columnists, photographer David Steinberg and sex educator Tristan Taormino, both provided sexually frank images to the court which they have not included on their websites because of the vagueness of obscenity laws.

The reliability of geolocation software was challenged by testimony from Ben Laurie of The Apache Software Foundation. Seth Finkelstein, a computer technical expert, testified about the conflicts between geolocation software and the protection of privacy. Geolocation software allows website hosts to block visitors from certain states or areas of states. This is a critical component of the case because obscenity is determined by "local community standards." Testimony was sharply divided over the accuracy of geolocation software, varying over a range of 60-95% effective.

The difficulty of determining local community standards was attested by Jeffrey Douglas, Chair of the Board of the Free Speech Coalition, who has compiled a study of obscenity prosecutions called "Know Censorship." Susan Wright, Spokesperson for NCSF, testified as to the significant variance in local community standards faced by individuals, groups, events and businesses in the SM-leather-fetish, swing and polyamory communities.

The government supplied only two witnesses. Thomas Miltonberger with Quova testified that the geolocation software currently available would cost a website owner several thousand dollars a month. Chris McCulluh with Sinetimore Internet Security Service Provider suggested that Barbara Nitke request the full

name and address of every user who wants to access her website, and then confirm their geolocation by mailing them a confirmation letter, a process that would take several weeks.

Written final arguments are due December 17th. This case is expected to reach the Supreme Court on appeal.

Attorney General John Ashcroft is currently prosecuting people and businesses for violating obscenity laws. The first target under obscenity law amended by the CDA was Extreme Associates which produces SM-themed pornography. Ashcroft continues to meet with religious political extremist groups and has promised to outlaw all "obscene" material. Under the Clinton administration, obscenity laws were not enforced, but the Bush administration has made obscenity prosecutions a priority.

NCSF is challenging the CDA law because personal websites and chat groups that include discussions and images of SM, swinging or polyamory are at risk of prosecution. Since alternative sexual expression is outside the mainstream, it is an easy target. Membership groups that have educational and social websites are also at risk, in the same way SM events were targeted by religious political extremist groups in the Midwest in 2002-03.

If you would like to donate to the CDA lawsuit expenses, go to:
<http://www.ncsfreedom.org/donations.htm> Every dollar goes directly to ensuring free speech on the Internet!

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A project of NCSF

The National Coalition for Sexual Freedom is a national organization committed to creating a political, legal, and social environment in the United States that advances equal rights of consenting adults who practice forms of alternative sexual expression. NCSF is primarily focused on the rights of consenting adults in the SM-leather-fetish, swing, and polyamory communities, who often face discrimination because of their sexual expression.

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