

*PSINET, INC. V. CHAPMAN**362 F.3d 227 (4th Cir. 2004)*

The Fourth Circuit upheld a district court ruling that Virginia's attempt to limit the online dissemination of pornographic materials harmful to children violated both the First Amendment and the Commerce Clause of the U.S. Constitution.

In 1985, Virginia banned "brick and mortar" stores from knowingly displaying indecent materials in a way accessible to juveniles, a statute upheld by the Fourth Circuit in 1989. In 1999 and again in 2000, seeking to ensure the prohibition reached cyberspace, Virginia amended the statute to cover visual materials including any "electronic file or message." A coalition of business interests and individuals challenged the statute, arguing it was facially unconstitutional. Virginia contended that because the statute merely "clarified" a law already upheld, a facial challenge was prohibited.

In invalidating the statute, the court first noted that the 1999 and 2000 amendments were not merely redundant or meaningless, but constituted a "purposeful extension of the [original law] to a new area of communication." The court then found that the amended statute was overbroad and penalized constitutionally protected speech. In particular, the court found that the narrow construction of the statute urged by the states—that adult websites need only use age-verification PIN technology to immunize themselves from prosecution—violated the First Amendment. Moreover, a still-narrower construction of the statute exempting all bulletin boards and chat rooms from regulation would leave the law "virtually powerless" and thus unconstitutional for failing to advance a compelling state interest.

The court also upheld the district court's invalidation of the law under the Commerce Clause. First, the court noted that if the statute was interpreted to force out-of-state websites to comply with Virginia law, it clearly constituted an impermissible direct regulation of interstate commerce. Second, if the statute were interpreted narrowly to apply only to websites operating within Virginia, it would nonetheless be an invalid indirect regulation of interstate commerce. Even a slight burden on interstate commerce outweighs a non-existent local benefit, and no local benefit exists because regulating Virginia websites would do nothing to staunch the flow of online pornography accessible to juveniles from myriad other out-of-state sources.