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18 **UNITED STATES DISTRICT COURT**
19 **DISTRICT OF ARIZONA**

20 The Suggestion Box, Inc.,

21 Plaintiff,

22 vs.

23 Alberto Gonzales, in his official
24 capacity as Attorney General of the
25 United States,

26 Defendant.

NO.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

27
28 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

29 **NOW COMES** the Plaintiff, THE SUGGESTION BOX, INC. (“TSB”), a
30 Nevada corporation, by and through its attorneys, WHITTEN BERRY, PLLC and the
31 LAW OFFICES OF CHARLES LEE MUDD JR., and complains of the Defendant
32 ALBERTO GONZALES, in his official capacity as ATTORNEY GENERAL OF
33 THE UNITED STATES, and states as follows:

34 **PRELIMINARY STATEMENT**

35 1. Through Section 113 of The Violence Against Women and Department
36 of Justice Reauthorization Act of 2005 (“Section 113”), Congress enacted and

1 President Bush signed into law an amendment to 47 U.S.C. §223 that imposes
2 criminal penalties on persons who send anonymous electronic mail communications
3 with the intent to annoy the recipient. 47 U.S.C. §223(a)(1)(C). These penalties
4 would apply to *any* anonymous electronic email communications sent with an intent
5 to annoy the recipient. Moreover, these penalties would apply to any person who
6 knowingly permits such anonymous electronic email communications to be sent using
7 their telecommunications facility with the intent that it be used for such activity. This
8 action seeks to have Section 113 and that portion of 47 U.S.C. §223(a)(1)(C)
9 referencing an intent to “annoy” declared unconstitutional under the First and Fifth
10 Amendments of the United States Constitution, both on its face and as applied to The
11 Suggestion Box, Inc., and to enjoin the United States Government from enforcing
12 them.

13 2. The constitutional flaws in Section 113 and 47 U.S.C. §223(a)(1)(C)
14 (collectively, the “Statute”) with respect to the term “annoy” appear on their face.
15 Specifically, there exists no definition to the term “annoy.” Consequently, the term
16 and the Statute are ambiguous, overbroad and vague as to what would constitute an
17 “intent to annoy.” The Statute is ambiguous, overbroad and vague as to what
18 anonymous electronic mail communications it prohibits.

19 3. Section 113 and 47 U.S.C. §223(a)(1)(C) have, in effect, cast into
20 disarray and uncertainty all anonymous communication on the Internet.

21 4. Section 113 and 47 U.S.C. §223(a)(1)(C) prohibit and restrict persons
22 from engaging in forms of protected anonymous speech. Indeed, the ambiguity,
23 overbreadth and vagueness of the term “annoy” significantly curtail persons from
24 engaging in forms of protected anonymous speech.

25 ...

26 ...

1 20. Under 47 U.S.C. §223(a)(1)(C), anyone who, in interstate or foreign
2 communications, “makes a telephone call or utilizes a telecommunications device,
3 whether or not conversation or communication ensues, without disclosing his identity
4 and with intent to annoy, abuse, threaten, or harass any person at the called number or
5 who receives the communications” shall be fined or imprisoned for not more than two
6 (2) years or both. 47 U.S.C. §223(a)(1)(C).

7 21. Section 1104 of the Internet Tax Freedom Act defines the Internet as
8 “collectively the myriad of computer and telecommunications facilities, including
9 equipment and operating software, which comprise the interconnected world-wide
10 network of networks that employ the Transmission Control Protocol/Internet
11 Protocol, or any predecessor or successor protocols to such protocol, to communicate
12 information of all kinds by wire or radio.” 47 U.S.C. §151 note.

13 22. Under 47 U.S.C. §223(a)(2), anyone who “knowingly permits any
14 telecommunications facility under his control to be used for any activity prohibited by
15 [47 U.S.C. §223(a)(1)] with the intent that it be used for such activity” shall be fined
16 or imprisoned not more than two years, or both. 47 U.S.C. §223(a)(2).

17 23. 47 U.S.C. §223(e)(1) attempts to exempt certain individuals from
18 liability by providing that “[n]o person shall be held to have violated subsection (a) or
19 (d) of this section solely for providing access or connection to or from a facility,
20 system, or network not under that person’s control, including transmission,
21 downloading, intermediate storage, access software, or other related capabilities that
22 are incidental to providing such access or connection that does not include the
23 creation of the content of the communication.” 47 U.S.C. §223(e)(1).

24 24. The defense and exemption provided in 47 U.S.C. §223(e)(1) does not
25 apply to a “person who is a conspirator with an entity actively involved in the creation
26 or knowing distribution of communications that violate this section, or who

1 knowingly advertises the availability of such communications.” 47 U.S.C.
2 §223(e)(2).

3 25. The defense and exemption provided in 47 U.S.C. §223(e)(1) does not
4 apply to a “person who provides access or connection to a facility, system, or network
5 engaged in the violation of this section that is owned or controlled by such person.”
6 47 U.S.C. §223(e)(3).

7 26. The Act does not define “annoy.”

8 27. Section 113 does not define “annoy.” 47 U.S.C. §223 does not define
9 “annoy.”

10 28. In certain circumstances, persons could find themselves defendants in a
11 civil cause of action for violation of the Statute.

12 **FACTUAL BACKGROUND**

13 **The Internet**

14 29. The Internet is a decentralized, global medium of communications that
15 links people, institutions, corporations and governments around the world. It is a giant
16 computer network that interconnects innumerable smaller groups of linked computer
17 networks and individual computers.¹

18 30. As of 2005, 225 million individuals use the Internet in North America.
19 More than 1 billion individuals use the Internet worldwide.²

20 31. As of 2004, nearly 300 million English-speaking individuals used the
21 Internet. Approximately 190 million of these individuals live in the United States.
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24 _____
25 ¹ Much of the content in the Factual Background relating to the Internet and the World Wide Web comes from
the Complaint filed in American Civil Liberties Union, et al. v. Janet Reno, 98-CV-5591 (E.D. Pa.).

26 ² <http://www.internetworldstats.com/stats.htm>.

1 An additional 8.5 million individuals in the United States use the Internet with
2 languages other than English.³

3 32. Because the Internet merely links together numerous individual
4 computers and computer networks, no single entity or group of entities controls the
5 material made available on the Internet or limits the ability of others to access such
6 materials. Rather, the range of digital information available to Internet users is
7 individually created, maintained, controlled and located on millions of separate
8 individual computers around the world.

9 33. The Internet presents extremely low entry barriers to anyone who
10 wishes to provide or distribute information or gain access to it. Unlike television,
11 cable, radio, newspapers, magazines or books, the Internet provides the average
12 citizen or small business with an affordable means for communicating with, accessing
13 and posting content to a worldwide audience.

14 The World Wide Web

15 34. The World Wide Web (the "Web") is the most popular way to provide
16 and retrieve information on the Internet. Anyone with access to the Internet and
17 proper software can post content on the Web, which may contain many different types
18 of digital information -- text, images, sound, and even video. The Web is comprised
19 of millions of separate but interconnected "Web sites," which in turn may have
20 hundreds of separate "Web pages," that display content provided by particular persons
21 or organizations. Any Internet user anywhere in the world with the proper software
22 can create her own Web page, view Web pages posted by others, and then read text,
23 look at images and video, and listen to sounds posted at these sites.

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25
26 ³ Source: Global Reach (global-reach.biz/globstats).

1 35. To gain access to the information available on the Web, a person uses a
2 Web "browser" -- software, such as Safari, Mosaic, or Internet Explorer -- to display,
3 print and download documents that use hypertext transfer protocol ("http"), the
4 standard Web formatting language. Each document on the Web has an address that
5 allows users to find and retrieve it. Most Web documents also contain "links." These
6 are short sections of text or image that refer and link to another document. Through
7 the use of these links from one computer to another, from one document to another,
8 the Web for the first time unifies the diverse and voluminous information made
9 available by millions of users on the Internet into a single body of knowledge that can
10 be easily searched and accessed.

11 36. A number of search engines and directories -- such as Google and
12 Yahoo! -- are available free of charge to help users navigate the Web. Once a user
13 has accessed the search service, she simply types a word or string of words as a search
14 request and the search service provides a list of sites that match the search string.

How Individuals Access the Internet

15
16 37. Individuals have several easy means of gaining access to the Internet
17 and Web. Internet service providers ("ISPs") offer their subscribers access to
18 computers or networks linked directly to the Internet through the use of modem (dial-
19 up) or broadband (cable and DSL) connections. Most ISPs charge a modest monthly
20 fee, but some provide free or very low-cost access. National "commercial online
21 services," such as America Online, CompuServe, and Microsoft Network, serve as
22 ISPs and also provide subscribers with additional services, including access to
23 extensive content within their own proprietary networks. In addition, many
24 educational institutions, libraries, businesses, and individual communities maintain a
25 computer network linked directly to the Internet and thus the Web, and provide
26 account numbers and passwords enabling users to gain access to the network.

1 38. Most users of the Internet are provided with a username, password and
2 e-mail address that allow them to log on to the Internet and to communicate with
3 other users. Many usernames are pseudonyms or pen names that provide users with a
4 distinct online identity and help to preserve their anonymity and privacy. The
5 username and e-mail address are the only indicators of the user's identity; that is,
6 persons communicating with the user will only know them by their username and e-
7 mail address (unless the user reveals other information about herself through her
8 communications).

9 **Other Means of Exchanging Information Through The Web**

10 39. The Web also allows individuals to communicate in discussion groups
11 and chat rooms and by e-mail using hypertext transfer protocol. Many Web sites use
12 software applications, sometimes called "middleware," to provide users of their sites
13 with access to discussion groups and chat rooms.

14 40. Discussion groups allow users of computer networks to post messages
15 onto a public computerized bulletin board and to read and respond to messages posted
16 by others in the discussion group. Discussion groups have been organized to cover
17 virtually every topic imaginable. Chat rooms allow users to engage in simultaneous
18 conversations with another user or group of users by typing messages and reading the
19 messages typed by others participating in the "chat."

20 41. Online discussion groups and chat rooms have created a global public
21 forum where individuals can associate and communicate with others who have
22 common interests, and engage in discussion or debate on every imaginable topic.

23 42. Finally, it is possible to set up an account for electronic mail, commonly
24 referred to as "e-mail," using the Web. Several commercial Web sites such as Yahoo
25 and Hotmail will provide free e-mail accounts to individuals. These accounts allow
26 individuals to use the Web to create, send, and receive e-mails with other individuals.

1 Such accounts allow individuals who do not possess their own computer or Internet
2 access account to establish a permanent e-mail address and to correspond with other
3 individuals by using the Web at public libraries and other public Internet access sites.

4 43. In 2001, email mailboxes were projected to increase to 1.2 billion in
5 2005. Moreover, average daily worldwide email traffic was projected to reach 36
6 billion.

7 44. As can be seen from the various ways that individuals can exchange
8 information and communicate via this technology, the Web is "interactive" in ways
9 that distinguish it from traditional media. For instance, users are not passive receivers
10 of information as with traditional broadcast media; rather, users can easily respond to
11 the material they receive or view online. In addition, "interactivity" means that Web
12 users must actively seek out with specificity the information they wish to retrieve and
13 the kinds of communications in which they wish to engage. For example, to gain
14 access to material on the Web, a user must know and type the address of a relevant
15 site or find the site by typing a relevant search string into a search engine.

16 **The Range of Content Available on the Web**

17 45. Content on the Web is provided by the millions of Web users
18 worldwide and ranges from art, to humor, to literature, to medical information, to
19 music, to news, to sexually oriented material. For example, on the Web, one can view
20 the full text of the Bible, read The New York Times, or peruse an article on the
21 supermarket industry. One can browse through paintings from art galleries around the
22 world, view in detail images of the ceiling of the Sistine Chapel, or watch a video
23 about immigration. The overwhelming majority of information on the Web is
24 provided for free to users.

25 46. At any one time, the Web serves as the global communication medium
26 for literally tens of thousands of political debates and social dialogues among world-

1 class newspapers as well as small town citizens. Although the vast majority of the
2 information on the Web is not sexually oriented, there is material available on the
3 Web that might be considered "harmful to minors" in some communities. For
4 example, a Web user can access the entire Starr Report and related discussions,
5 explicit safer-sex information, pictures by well-known artists such as Robert
6 Mapplethorpe and Andres Serrano, and videos about AIDS.

7 47. The Web provides tremendous opportunities for individual
8 entrepreneurs, start-up companies, and home-based businesses, as well as businesses
9 that also exist in the offline world. There are currently a wide range of individuals
10 and companies communicating on the Web for commercial purposes, from
11 booksellers and online magazines to party suppliers and pizza parlors.

12 48. The use of the Web for commercial purposes has often been referred to
13 as "E-Commerce." In 2000, E-Commerce sales amounted to approximately 600
14 billion dollars in the United States alone. In 2004, E-Commerce sales had grown to
15 nearly 3.5 trillion dollars in the United States alone.⁴

16 Anonymous Communications on the Internet

17 49. The United States Constitution protects anonymous speech. This
18 protection extends to anonymous speech on the Internet.

19 50. The Internet provides a myriad of opportunities for individuals to
20 communicate pseudonymously or anonymously.

21 51. Individuals can create email accounts using pseudonyms. Individuals
22 can also become subscribers to message boards, blogs, and other communication
23 forum without providing their real names. In doing so, the subscribers use "screen
24 names" or "usernames" that may or may not have any relation to their true identity.

25
26 ⁴ Source: Global Reach (global-reach.biz/globstats).

1 52. Individuals can also use a variety of services to browse the Internet
2 anonymously, such as www.the-cloak.com. Individuals can use services such as
3 those provided by Plaintiff TSB to send electronic mail completely anonymously.

4 53. The benefits of anonymous communication are immense. Internet users
5 can communicate anonymously to make political claims, engage in whistle-blowing,
6 conduct commercial transactions, and research sensitive medical issues, to name a
7 few.

8 54. The ability to communicate anonymously encourages people to become
9 more open, to reveal information they would otherwise withhold, and use resources
10 they would otherwise avoid.

11 **Impact of Section 113 and 47 U.S.C. §223 on Anonymous Communications**

12 55. In some cases, anonymous communications will be annoying.

13 56. In some cases, anonymous communications will have been sent with an
14 intent to annoy.

15 57. In some cases, if not all, anonymous, annoying speech and speech
16 intended to be annoying constitute protected anonymous speech.

17 58. The ambiguity, vagueness and overbreadth of Section 113 and 47
18 U.S.C. §223 have created uncertainty in assessing the legality of anonymous
19 communications on the Internet.

20 59. By and through their ambiguity, vagueness and overbreadth, Section
21 113 and 47 U.S.C. §223 diminish the openness of the Internet and chill otherwise
22 protected anonymous speech.

23 60. By and through their ambiguity, vagueness and overbreadth, Section
24 113 and 47 U.S.C. §223 ban constitutionally protected speech.

25 ...

26 ...

1 61. Moreover, by and through their ambiguity, vagueness and overbreadth,
2 Section 113 and 47 U.S.C. §223 create potential criminal liability for those who
3 advertise and provide the availability of anonymous communication services.

4 62. Although some anonymous speech will undoubtedly exhibit on its face
5 the absence of any intent to annoy, a broad range of protected anonymous speech
6 could be deemed to have been sent with an intent to annoy. Indeed, there exists no
7 means to determine the scope of “intent to annoy” considering the absence of any
8 definition of the word “annoy” in the Act, Section 113 or 47 U.S.C. §223.

9 **Impact of Section 113 and 47 U.S.C. §223 on the Sarbanes-Oxley Act**

10 63. Not only do Section 113 and 47 U.S.C. §223 chill anonymous speech in
11 general, they also chill anonymous speech specifically provided for by Congress.

12 64. Section 301(4) of the Sarbanes-Oxley Act amended Section 10A of the
13 Securities and Exchange Act of 1934 (15 U.S.C. §78f) to require publicly traded
14 companies to provide for “the confidential, anonymous submission by employees of
15 the issuer of concerns regarding questionable accounting or auditing matters.”

16 65. Section 113 and 47 U.S.C. §223 creates ambiguity and vagueness as to
17 whether anonymous electronic mail communications from an employee regarding
18 questionable accounting or auditing matters would be exempt from the imposed
19 criminal penalties for anonymous communications intended to be annoyed.

20 66. Even should a court ultimately find an anonymous communication to be
21 a legitimate concern raised under the Sarbanes-Oxley Act, Section 113 and 47 U.S.C.
22 §223 deter individuals from sending complaints anonymously to their employer for
23 fear that the complaint could be construed as annoying or that the employer could
24 retaliate by filing a complaint that the anonymous communication had been sent with
25 an intent to annoy.

26 . . .

1 **Ineffectiveness of Section 113 and 47 U.S.C. §223 and Effective Alternatives**

2 67. As written without a definition for “annoy,” the statute does not
3 specifically target the conduct and communications with which Congress has concern.

4 68. Even with a definition for “annoy,” Section 113 and 47 U.S.C. §223
5 might be overbroad in their scope. However, in the absence of the definition, the
6 effectiveness of Section 113 and 47 U.S.C. §223 has been greatly diminished because
7 Internet users cannot determine what conduct and communications Congress seeks to
8 prohibit. In fact, Section 113 and 47 U.S.C. §223 also deter communications
9 Congress specifically intended to encourage through the Sarbanes-Oxley Act.

10 69. There exist a number of alternatives to the existing construct of Section
11 113 and 47 U.S.C. §223. Congress could delete the word “annoy” and subsume it
12 within “harass,” if such was their intention.

13 70. Congress could define “annoy.” For example, the definition provided
14 for harass under the Model Penal Code specifically articulates the conduct
15 encompassed therein: “(1) makes a telephone call without purpose of legitimate
16 communication; or (2) insults, taunts or challenges another in a manner likely to
17 provoke violent or disorderly response; or (3) makes repeated communications
18 anonymously or at extremely inconvenient hours, or in offensively coarse language;
19 or (4) subjects another to an offensive touching; or (5) engages in any other course of
20 alarming conduct serving no legitimate purpose of the actor.” Model Penal Code
21 §250.4.

22 71. Congress could also provide delineations on the boundaries for “annoy”
23 such as the Model Penal Code does for harass. Specifically, “[t]he import of the
24 phrase . . . is broadly to exclude from this subsection any conduct that directly
25 furthers some legitimate desire or objective of the actor.” Model Penal Code §250.4,
26 comment 5, at 368.

1 **Relationship of the Plaintiff to Section 113 and 47 U.S.C. §223**

2 72. Plaintiff TSB operates anonymous email facilities and services at
3 www.theanonymousemail.com.

4 **Communications**

5 73. TSB engages in interstate and foreign communications. TSB also
6 provides telecommunications devices and facilities for other persons to engage in
7 interstate and foreign communications.

8 74. TSB engages in communications without disclosing its identity. TSB
9 also provides the means through which other persons may engage in communications
10 without disclosing their identity.

11 75. TSB fears prosecution under 47 U.S.C. §223 for engaging in
12 anonymous interstate and/or foreign communications that may be deemed to be with
13 an “intent to annoy” the person who receives the communications.

14 **Services Provided to Others**

15 76. TSB advertises the use of anonymous email for many purposes such as
16 sending “jokes and gossip to friends, compliments or complaints to co-workers, share
17 secrets, intervene with destructive behavior, flirt, tease, rant, or express whatever
18 you’ve been longing to say”

19 77. TSB also provides companies with the means through which employees
20 may send anonymous complaints regarding accounting and auditing practices.

21 78. TSB also provides schools with the means through which parents,
22 students and faculty may send communications anonymously to school authorities.

23 79. TSB fears prosecution under 47 U.S.C. §223 for knowingly permitting
24 the facilities (which could be deemed telecommunications facilities) under its control
25 to be used for sending anonymous communications that could be deemed to have
26 been sent with an “intent to annoy.” TSB fears prosecution under the 47 U.S.C. §223

1 because it intends for its facilities to be used to send anonymous communications that
2 could be deemed to be sent with an “intent to annoy.”

3 80. With respect to an “intent to annoy,” TSB does not understand what 47
4 U.S.C. §223 prohibits. Consequently, TSB is unable to determine with certainty what
5 anonymous speech is prohibited and what anonymous speech is not prohibited. For
6 example, do communications that serve to convey a complaint but sent with an intent
7 to annoy violate 47 U.S.C. §223? Do anonymous communications that are intended
8 to “intervene with destructive behavior” constitute anonymous communications
9 intended to annoy? Does the intent to tease equate to the intent to annoy?

10 81. TSB knows that many people may in fact use its facilities to send
11 anonymous communications with an intent to annoy. However, TSB is further
12 practically, physically and contractually unable to monitor anonymous
13 communications by and through their very nature. Even if it could monitor the
14 anonymous communications, it has no means to monitor the subjective intent of
15 others and could only impose its own subjective belief as to what could have been
16 intended to be sent with an intent to annoy.

17 **Absence of Viable Defenses**

18 82. Section 113 and 47 U.S.C. §223 do not provide for a defense for merely
19 informing users not to use its services with intent to annoy, abuse, threaten, or harass
20 any person. Even if Section 113 and 47 U.S.C. §223 did provide such a defense, it
21 would not resolve the uncertainty as to what defines an intent to annoy.

22 83. 47 U.S.C. §223 provides a defense to any person who “solely [provides]
23 access or connection to or from a facility, system, or network not under that person’s
24 control, including transmission, downloading, intermediate storage, access software,
25 or other related capabilities that are incidental to providing such access or connection
26

1 that does not include the creation of the content of the communication.” 47 U.S.C.
2 §223(e)(1).

3 84. Even if this defense would otherwise apply to TSB, TSB fears that the
4 exceptions to the defense in subsections (e)(2) and (e)(3) would make it inapplicable.
5 Additionally, 47 U.S.C. §223(e)(2) excepts from the (e)(1) defense any person “who
6 knowingly advertises the availability of” communications that violation 47 U.S.C.
7 §223. 47 U.S.C. §223(e)(2). Specifically, 47 U.S.C. §223(e)(3) excepts any person
8 “who provides access or connection to a facility, system, or network engaged in the
9 violation of this section that is owned or controlled by that person.” 47 U.S.C.
10 §223(e)(3).

11 85. The defenses provided in 47 U.S.C. §223 are unavailable to TSB.

12 86. TSB fears liability and prosecution under 47 U.S.C. §223 for knowingly
13 distributing anonymous communications of others that could be construed to violate
14 47 U.S.C. §223 as having been sent with an “intent to annoy.”

15 87. TSB fears prosecution under 47 U.S.C. §223 for knowingly advertising
16 the availability of anonymous communication services for purposes that could be
17 deemed as “intent to annoy.”

18 88. TSB is unable to determine with certainty what purposes for anonymous
19 communications may be permissibly advertised. For example, may TSB advertise a
20 purpose that does not specifically mention the word “annoy” that, albeit the absence
21 of the word “annoy”, could be deemed to be with an intent to annoy?

22 89. At present without a delineation of what constitutes an “intent to
23 annoy,” TSB has no possible means to know whether it complies with 47 U.S.C.
24 §223.

25 ...

26 ...

1 90. At present without a delineation of what constitutes an “intent to
2 annoy,” TSB has no way to comply with 47 U.S.C. §223. Consequently, TSB has no
3 choice but to risk prosecution under the Act or shut down its facilities.

4 **CLAIMS FOR RELIEF**

5 **COUNT ONE**

6 **AS AND FOR A FIRST CAUSE OF ACTION**

7 **Violation of the First and Fifth Amendments**
8 **of the United States Constitution**

9 91. The allegations in Paragraphs 1-90 above are incorporated by reference
10 in this First Count as if fully restated herein.

11 92. The Act violates the First and Fifth Amendments of the United States
12 Constitution on its face and as applied because it creates an effective ban on
13 constitutionally protected speech.

14 93. The Act violates the First and Fifth Amendments of the United States
15 Constitution because it is not the least restrictive means of accomplishing any
16 compelling governmental purpose.

17 94. The Act violates the First and Fifth Amendments of the United States
18 Constitution because it is substantially overbroad.

19 **COUNT TWO**

20 **AS AND FOR A SECOND CAUSE OF ACTION**

21 **Violation of the Right to Communicate Anonymously Under the**
22 **First and Fifth Amendments of the United States Constitution**

23 95. The allegations in Paragraphs 1-94 above are incorporated by reference
24 in this Second Count as if fully restated herein.

25 96. The Act violates the First and Fifth Amendment right to communicate
26 anonymously.

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COUNT THREE

AS AND FOR A THIRD CAUSE OF ACTION

**Vagueness in Violation of the First and Fifth Amendments
of the United States Constitution**

97. The allegations in Paragraphs 1-96 above are incorporated by reference in this Third Count as if fully restated herein.

98. The Act is unconstitutionally vague in violation of the First and Fifth Amendments of the United States Constitution.

GENERAL

99. Where conditions precedent are alleged, The Suggestion Box, Inc. avers that all conditions precedent have been performed or have occurred.

PRAYER FOR RELIEF

WHEREFORE, THE SUGGESTION BOX, INC. accordingly and respectfully requests that the Court enter judgment as follows:

- A. Declare that 47 U.S.C. §223 violates the First and Fifth Amendments of the United States Constitution;
- B. Preliminarily and permanently enjoin defendants from enforcing the above-noted statutory provision;
- C. Award Plaintiff costs and attorneys fees pursuant to 28 U.S.C. §2412; and,

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D. Grant Plaintiff any such other and further relief as this Court may deem just and proper or to which Plaintiff may be entitled as a matter of law or equity.

DATED this 6th day of February, 2006.

WHITTEN BERRY, PLLC

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Co-Counsel for **Plaintiff**

ORIGINAL AND ONE COPY E-FILED
this 6th day of February, 2006, with:

UNITED STATES DISTRICT COURT
District of Arizona
401 W. Washington
Phoenix, AZ 85003

By /s/ Jodi Taylor