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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DANIEL J. BERNSTEIN )  
) C 95-00582 MHP  
Plaintiff, )  
) PLAINTIFF'S NOTICE OF MOTION AND  
v. ) MOTION FOR PARTIAL SUMMARY  
) JUDGMENT AND/OR SUMMARY ) ADJUDICATION OF ISSUES  
UNITED STATES DEPARTMENT OF ) F. R. C. P. 56  
STATE et al., )  
) Date: September 20, 1996 ) Time: 12:00 p.m.  
Defendants. ) Judge: Honorable Marilyn Hall Patel  
)  
)

TO DEFENDANTS AND THEIR ATTORNEY OF RECORD:  
NOTICE IS HEREBY GIVEN that on September 20, 1996, at 12:00 p.m., or as soon thereafter as counsel may be heard by the above-entitled court, located at 450 Golden Gate Avenue, San Francisco, CA 94102,

Plaintiff Daniel J. Bernstein will and hereby does move this court as follows:

1. For summary adjudication about the appropriate legal tests to be applied to the Arms Export Control Act and International Traffic and Arms Regulations ("ITAR Scheme") to the extent it controls protected expression about the science of cryptography. Plaintiff argues,

a) As to the prior restraints, the ITAR Scheme must pass the test provided in New York Times Co. v. United States 403 U.S. 713 (1971).

b) As to the application of the ITAR Scheme as subsequent punishment for speech about cryptography, Plaintiff submits that the tests of strict scrutiny apply.

2. This motion also seeks partial summary judgment that there is no genuine issue of material fact that the ITAR Scheme, to the extent it reaches protected expression about the science of cryptography, fails three standards of First Amendment jurisprudence:

a) It lacks procedural safeguards required by Freeman v. Maryland 380 U.S. 51 (1965),

b) It is vague, and

c) It is overbroad.

3. This motion is based upon this Notice of Motion and Motion, the accompanying

1. PLAINTIFF'S NOTICE OF MOTION FOR PARTIAL SUMMARY

JUDGMENT AND/OR SUMMARY ADJUDICATION OF ISSUES;

2. MEMORANDUM OF POINTS AND AUTHORITIES;

3. DECLARATION OF DANIEL J. BERNSTEIN,

4. DECLARATION OF HAROLD ABELSON,

5. DECLARATION OF ANDREW W. APPEL,

6. DECLARATION OF MATTHEW BISHOP,

7. DECLARATION OF BRIAN BEHLENDORF,

8. DECLARATION OF JAMES T. DEMBERGER,

9. DECLARATION OF CARL M. ELLISON,

10. DECLARATION OF DR. PAUL GINSPARG,

11. DECLARATION OF MICHAEL PAUL JOHNSON,

12. DECLARATION OF LAWRENCE MILLER,

13. DECLARATION OF PETER JUNGER,

14. DECLARATION OF BRUCE SCHNEIER,

15. DECLARATION OF RICHARD M. STALLMAN,

16. DECLARATION OF PHILIP R. ZIMMERMANN and

17. DECLARATION OF LEE TIEN

filed herewith, all pleadings and papers on file in this action, and upon such other and further matters as may be presented to the court at the time of the hearing.

Dated: \_\_\_\_\_ McGLASHAN & SARRAIL

Professional Corporation

By \_\_\_\_\_

CINDY A. COHN

Attorneys for Plaintiff