

THE MEDIA COALITION INC

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MEDIA COALITION HIGHLIGHTS 2005

Protecting Internet Speech: New Challenges and New Victories

In June 2005, members of the Media Coalition filed a lawsuit challenging a new Utah law that contains three provisions that would limit expression on the Internet. First, the law applies Utah's "harmful to minors" law to the Internet. Second, the law would require Utah's Attorney General to create a blacklist of all websites that the Attorney General's office deems as including any "harmful to minors" material. Last, ISPs must block all sites listed on the blacklist at a customer's request. To do this, an ISP would likely also have to block hundreds or thousands of unrelated sites.

In May 2005, U.S. District Judge Patrick Michael Duffy in Charleston, South Carolina, granted summary judgment and issued a permanent injunction barring enforcement of a South Carolina law that would have applied "harmful to minors" law to the Internet. In his decision, Judge Duffy agreed with plaintiffs' arguments that the restrictions of the law were overbroad and reduced what would have been available on the Internet for adults to what was appropriate for children. This joins the series of successful Media Coalition challenges to laws restricting content on the Internet in Vermont, New Mexico, New York, Arizona, and Virginia. A case is pending in Ohio.

In February 2005, U.S. District Judge Lowell Reed set a trial schedule in the *ACLU v. Ashcroft* litigation, the challenge to the Child Online Protection Act (COPA), to address the question of whether or not parental use of filters is the least restrictive and most effective means for preventing minors from accessing material "harmful to minors" on the Internet. Last year, the Supreme Court remanded the case to determine this issue. Some members of the Media Coalition are plaintiffs in the challenge and some members are signatories to an amicus brief.

Media Coalition Opposes State Legislation Restricting Violent Content

This year, The Media Coalition has tracked and opposed dozens of bills that would restrict access to material with violent content. In June 2005, The Media Coalition drafted a letter signed by companies and bookseller associations representing most of the booksellers in Michigan to express their concerns about House Bill 416, which would bar the sale or display to a minor of any media that contains certain violent content. The Media Coalition has also submitted letters in opposition to bills that would restrict access to material with violent content in Alabama, Minnesota, Washington, North Carolina, Georgia, Maryland, Arkansas, Illinois, California, and the District of Columbia. The Media Coalition has supported litigation to strike down similar laws, most recently in *VSDA v. Maleng*. In August 2004, U.S. District Court Judge Lasnik found unconstitutional a

The Media Coalition is a trade association that defends the First Amendment rights of publishers, booksellers, librarians, periodical wholesalers and distributors, recording, motion picture and video games producers, and recording and video retailers in the United States.

American Booksellers
Foundation for Free
Expression

Association of American
Publishers, Inc.

Comic Book Legal
Defense Fund

Entertainment Software
Association

Freedom to Read
Foundation

Interactive Electronic
Merchants Association

Magazine Publishers of
America, Inc.

Motion Picture
Association of America,
Inc.

National Association of
Recording Merchandisers

Publishers Marketing
Association

Recording Industry
Association of America,
Inc.

Video Software Dealers
Association

Chair
Judith Krug
Freedom to Read
Foundation

Immediate Past Chair
Chris Finan
American Booksellers
Foundation for
Free Expression

Treasurer
Gail Markels
Entertainment Software
Association

General Counsel
Michael A. Bamberger
Sonnenschein Nath &
Rosenthal LLP

a Washington state law that makes it illegal to sell or rent any “violent video” depicting violence toward law enforcement officers to anyone under 18 years old. Members of the Media Coalition submitted an amicus brief supporting the challenge to the statute.

Media Coalition Submits Amicus Brief Questioning “Creative Necessity” Test

In February 2005, members of The Media Coalition filed an amicus brief with the California Supreme Court that highlighted the potential impact of the “creative necessity” test announced by the California Court of Appeals in *Lyle v. Warner Brothers*. In the suit, plaintiff Amaani Lyle claimed that the sexual banter among writers during the script writing process for the show *Friends*, where she was an assistant, amounted to sexual harassment. The “creative necessity” test lets a jury decide whether these discussions among writers were part of the creative process and necessary to write a script. The Media Coalition filed a brief addressing the concerns of other media with the potential intrusion in the creation of books, magazines and other media.

Media Coalition Fights Retail Display Restrictions

In November 2004, U.S. District Judge Eisele struck down the display provisions of an Arkansas law after finding them an unconstitutional restraint on access to First Amendment protected material. The decision came after the Arkansas Supreme Court defined language in several parts of the law, which banned the display of material harmful to minors unless retailers kept the material behind “blinder racks” and segregated in a part of the store inaccessible to minors. The court found that under the law, material would have to be restricted if it were “harmful to minors” on either the cover or in non-displayed contents. The court also ruled that “harmful to minors” is determined based on the age of a given minor and that under the law retailers would have to monitor children in their store based on their individual ages.

In September 2004, U.S. District Court Judge Diggs clarified parts of a similar Michigan law that bans the display of material harmful to minors unless it is shrink-wrapped or segregated. Judge Diggs ruled that the display restriction pertains only to material on the cover or spine of a book or magazine, and not to content. Judge Diggs also found that what is prurient for minors is to be judged by what is prurient for 17 year olds. Finally, the judge ruled that a retailer could only be liable for allowing a minor to browse such material if the retailer or staff was aware of it.

Media Coalition Speaks out Against Federal Regulation

In October 2004, The Media Coalition filed comments in response to the Federal Communications Commission’s notice of inquiry on regulating violent content on broadcast, cable and satellite television and the effects of violent content on minors. The filing reiterated our position that regulation of any media for violent content is unconstitutional, a conclusion that every court addressing the issue, including in significant recent cases, has ultimately reached. Our comment also questioned the underlying assumption of the putative effect on minors of viewing, reading, or listening to media with violent content, which is used to justify proposing regulation. As stated in our report, *Shooting the Messenger*, the causes of actual violence are myriad and complex and research does not show that media with violent content is the cause.

In September 2004, Senator Brownback chaired a hearing of the Senate Commerce Committee to review existing media rating systems and to consider a universal system for all media. The Media Coalition issued a statement reminding senators that neither individual nor universal ratings created, mandated, or enforced by the government are constitutional. The government cannot require creators or distributors of First Amendment-protected material to pejoratively label their speech.

-June 14, 2005