

THE MEDIA COALITION INC

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MEDIA COALITION HIGHLIGHTS 2002

Media Coalition Wins Challenge to Broad Ohio Censorship Law

In August 2002, U.S. District Court Rice issued a preliminary injunction barring the enforcement of Ohio House Bill 8. Members of Media Coalition led a large and diverse group of plaintiffs in filing a constitutional challenge in U.S. District Court in Dayton, OH. The law would have criminalized the dissemination to minors of any material that contains a verbal or visual depiction of “nudity, extreme or bizarre violence, cruelty or brutality, repeated uses of foul language, torture, destruction, dismemberment, death of a human being or criminal activity that tends to glorify or glamorize the activity.” It is a substantially overbroad restriction on minors access to First Amendment protected material and, like laws struck down in six other states, unconstitutional in its application to the Internet. The law potentially criminalizes books such as *Dead Man Walking* and *Without Sanctuary*, *Lynching Photography in America* and movies such as *Unforgiven* and *Goodfellas*.

Media Coalition Leads Fight to Defend Speech on the Internet

The members of Media Coalition and their members continue their successful challenges to state restrictions on the dissemination of “material harmful to minors” by Internet. We have successfully defended the First Amendment in Virginia, Arizona, Vermont, New Mexico and New York. Each of these laws would have reduced what is available on the Internet for adults to what is appropriate for minors. In April 2002, U.S. District Court Judge Murtha issued a final injunction to bar enforcement of the Vermont law, stating, “Because the level of discourse reaching an adult’s Internet mailbox cannot be limited to that which would be suitable for a sandbox.” In February 2002, U.S. District Judge Marquez found Arizona’s Internet law to be a violation of the First and Fifth Amendments and the Commerce Clause. In October 2001, U.S. District Judge Michael granted summary judgment and permanently barred enforcement of the Virginia law, finding it both overbroad and contrary to the Commerce Clause.

Tattered Cover Wins Major Victory for Customer Privacy

In April 2002, the Supreme Court of Colorado ruled unanimously that a search warrant seeking information about a book purchased by a Tattered Cover customer violated both the First Amendment and the Colorado Constitution. The Court further held that a warrant for bookstore purchase records could only be issued after a hearing at which the store owner had an opportunity to oppose the warrant. Media Coalition members joined a broad group to file an amicus brief with the Supreme Court of Colorado supporting Joyce Meskis’s fight to defend

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
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Treasurer
Gail Markels
Entertainment Software
Association

General Counsel
Michael A. Bamberger
Sonnenschein Nath &
Rosenthal LLP

customer privacy. This case was the most recent and strongest decision in a growing body of law that states that a search of a bookstore's purchase records has clear First Amendment implications.

Two Significant Decisions Issued by the Supreme Court

In April 2002, the Supreme Court found overbroad and unconstitutional the Child Pornography Prevention Act. The law passed in 1996 radically expanded the definition of child pornography to include images that depict adults who "appear" to be minors and computer generated or other visual images that appear to be of a minor. Justice Kennedy writing for the majority stated, "where speech is neither obscene nor the product of sexual abuse, it does not fall outside the protection of the First Amendment." He added that the suggestion that speech would cause unlawful acts without showing direct causation is not an acceptable basis to ban the speech. While the members of Media Coalition strongly oppose child pornography, in June 2001, they filed an amicus brief with the Supreme Court to reiterate their concerns with the CPPA's criminalization of visual depictions of material ranging from the movies *Titanic* and *Traffic* to drawings and sculptures to ads with the Coppertone baby. In May 2002, the U.S. Supreme Court ruled that inability to determine community standards with respect to the Internet is not sufficient reason to find the Child Online Protection Act unconstitutional. There was strong language in the opinion suggesting that the law has serious constitutional flaws. COPA is a second attempt at a broad federal restriction on using the Internet to transmit non-obscene material with sexual content. Members of Media Coalition joined the suit as plaintiffs and as signatories to a friend of the court brief, along with a wide range of groups

Broad Alliance Argues Against Extra-territorial Application of French Law

In April 2002, members of Media Coalition joined other advocates for free speech, privacy and the Internet to file an amicus brief with the U.S. Ninth Circuit Court of Appeals in *LICRA v Yahoo!*. This is an appeal of a U.S. District Court decision refusing to recognize a French civil judgement against Yahoo! for allowing pictures of Nazi paraphernalia to be posted on its U.S. auction site. A French court had ruled that the posted pictures violate French human rights laws and imposed a fine of \$13,000 per day the pictures remained on the site. Amici argued that to enforce the ruling of the French court would be contrary to the First Amendment and would subject speakers on the Internet in the United States to sanction by the countries with the most in the world. Presently, there is no way to restrict Internet users based on geography or age. Yahoo!'s U.S. site was only available in English, it was not advertised in France and Yahoo!'s French site complies with French law.

Media Coalition Continues to Defend Speech With Violent Content

The Media Coalition continues to educate the media and public regarding the mis-perceptions about the influence of media with violent content by talking with reporters, speaking publicly and distributing our report, *Shooting the Messenger: Why Censorship Won't Stop Violence*, in response to media stories or public statements. *Shooting the Messenger* debunks the claim that there is a relationship between reading, watching or listening to media and committing acts of violence. The report demonstrates that the causes of violence are both complex and varied but there is no causal link between violent media and actual violence. The report also emphasizes that past efforts to protect minors by restricting their access to media, from half-dime novels to comic books to jazz and rock and roll, has never prevented real life violence. It is up to parents and mentors to help their kids understand and digest different media.

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