

THE MEDIA COALITION INC

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MEDIA COALITION HIGHLIGHTS 2004

American Booksellers
Foundation for Free
Expression

Media Coalition Fights Retail Display Restrictions

Association of American
Publishers, Inc.

In November 2004, U.S. District Judge Eisele ruled unconstitutional an Arkansas law that bans the display of material harmful to minors unless a retailer keeps the material behind “blinder racks” and segregated in a part of the store inaccessible to minors. The Arkansas Supreme Court interpreted the law as requiring material be restricted if it is harmful to minors on either the cover or in the contents even if not visibly displayed. The court also ruled that harmful to minors is determined based on the age of a given minor. This means a retailer would have to monitor each child in their store based on their ages. The state has appealed the case to the Eighth Circuit Court of Appeals. The Media Coalition filed this challenge in June 2003 with ABFFE and That Bookstore in Blytheville among the plaintiffs.

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

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Gail Markels
Entertainment Software
Association

General Counsel
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Sonnenschein Nath &
Rosenthal LLP

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 display is limited to material on the cover or spine of a book or magazine but does not include the contents. Also, the judge found that determining 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 or peruse such material if the retailer or staff knew of the activity. The law would also prevent adults from browsing mainstream art, health and other material that are appropriate for adults. The Media Coalition filed this suit in January 2004. ABFFE and GLBA were part of the group of plaintiffs.

In addition, during the year, The Media Coalition helped resolve incidents where local authorities tried to restrict display of *Maxim*, *FHM* and *Stuff* magazines. Most recently, the general manager of the Denver Int'l Airport sent a letter to the magazine distributor for the airport requiring that the three magazines be covered and located with the adult magazines. His letter came after he received several complaints from airport users that the magazines were “not appropriate for open display . . . due to the large number of families with children and teenagers who visit the airport shops.” The Media Coalition pursued the matter over six months and despite stiff resistance from the Airport and the City Attorney the policy was formally rescinded.

Victory for Internet Speech in Supreme Court and the States

In June 2004, the Supreme Court upheld the preliminary injunction barring enforcement of the Child Online Protection Act (COPA). The case was returned to U.S. District Court for a factual determination of whether the law is the least

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.

restrictive means of barring minors' access to material harmful to minors and more effective than existing technological solutions. COPA is a second attempt at a broad federal restriction on transmitting non-obscene material on the Internet. Some Media Coalition members are plaintiffs and others are signatories to an amicus brief submitted to the Supreme Court.

The members of The Media Coalition continue their successful challenges to state restrictions on the dissemination of "material harmful to minors" by Internet. We have successfully defended the First Amendment rights on the Internet in Virginia, Arizona, Vermont, New Mexico, and New York with cases pending in South Carolina and Ohio. Each of the laws would reduce what is available to adults on the Internet to what is appropriate for minors.

In June 2004, the Virginia case was resolved when the Fourth Circuit denied the defendants' motion for rehearing en banc and the state decided not to appeal. In March 2004, the Fourth Circuit Court of Appeals upheld the decision of the District Court and found Virginia's Internet harmful to minors law was a violation of the First Amendment.

In April 2004, U.S. District Judge Marquez again ruled that Arizona's Internet harmful to minors law was a violation of the First and Fifth Amendments and the Commerce Clause. This is the second version of this law struck down by Judge Marquez.

Media Coalition Files Comments on Regulation of TV Violence

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 this content on minors and the effect of the content on minors. The filing reiterated our position that regulation of any media for violent content is unconstitutional. Every court that has addressed this issue has ultimately come to this conclusion, including a significant number of recent decisions. The comment also questioned the putative effect on minors of viewing, reading or listening to media with violent content, the underlying assumption used to justify the proposed regulation of such content. As we have stated in our report, *Shooting the Messenger*, the causes of actual violence are myriad and complex and the research fails to support assertions of any causal relationship between media consumption and actual violence.

Media Coalition Speaks Out on Ratings Hearing in U.S. Senate

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 to remind 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.

Media Coalition Continues to Defend Right to Access to Violent Speech

In August 2004, U.S. District Court Judge Lasnik found unconstitutional a Washington state law that makes it illegal to sell or rent any "violent video" to anyone under 18 years old. A "violent video" is any video containing "realistic or photographic-like depictions of aggressive conflict in which the player kills, injures or otherwise causes violence to a human form, depicted, by dress or other recognizable symbols, as a public law enforcement officer." In January 2004, the members of The Media Coalition submitted an amicus brief supporting the plaintiffs.

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