

# THE MEDIA COALITION INC

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## MEDIA COALITION HIGHLIGHTS 2006

### ***Media Coalition Members Challenge Restrictions on Violent and Sexual Content***

In April 2006, Media Coalition members submitted an amicus brief to the Seventh Circuit Court of Appeals after Illinois appealed a District Court decision ruling unconstitutional a ban for minors of video games with certain violent or sexual content that also required all such material be labeled as 18+. The brief argues that sexual content cannot be banned for minors unless it is found to lack literary, artistic, political or scientific value for minors. The brief also agreed with the District Court judge that it is compelled speech to require retailers to label their stock as 18+ based on content and post signs explaining existing voluntary industry rating systems. The state did not appeal the part of the restriction that found unconstitutional the ban for minors on video games with violent content.

The Illinois law being challenged in *ESA v. Blagojevich* would ban the sale or rental of any video game with certain violent or sexual content. It would require retailers to label every restricted video game with a four-square-inch black and white label reading "18." The law also requires retailers to post signs explaining existing industry voluntary ratings system, and these signs would have to be posted at all points of sale, at all information desks, and wherever the games are displayed. Under the law, retailers would face criminal charges for not following these regulations.

In the fall of 2005, Media Coalition members Entertainment Software Association and Video Software Dealers Association won challenges to similar laws in Michigan and California. Legislatures routinely justify passing these bans on First Amendment-protected speech with the claim that that exposure to violent content leads to violent behavior. In the Michigan decision, U.S. District Court Judge Steeh discredited one of the leading theorizers of this view, Craig Anderson, writing "despite this claim, Dr. Anderson's studies have not provided any evidence that the relationship between violent video games and aggressive behavior exists. His tests fail to prove that video games have ever caused anyone to commit a violent act, as opposed to feeling aggressive, or have caused the average level of violence to increase anywhere." These cases add to a recent body of law protecting violent speech; the courts have held that regulation of violent content is unconstitutional in challenges in St. Louis County, the City of Indianapolis, and Washington state.

### ***Media Coalition Members Oppose Changes to §2257 Record-Keeping Law***

In February 2006, Media Coalition members joined a broad coalition signing onto a letter to Senator Hatch and others opposing legislation that would require records of ages for anyone appearing in any image of nudity or simulated sex. The records must be kept indefinitely and made available for government inspection during business hours. A label indicating compliance and the location of the records must be stamped on every DVD, video, book, magazine or other item that contains such an image. Retailers could not sell any DVD, video, book, magazine or other material without the label and disclaimer. The legislation would also eliminate the specific exemption from these requirements for retailers. It could require retailers to keep records about any image and label products with a disclaimer specifying records are being kept and where they are kept. The existing law requires such records only for images of actual sex and applies only to the creator of the image and explicitly exempts retailers.

In June 2004 the Department of Justice proposed changing the regulations for record-keeping requirements. Media Coalition filed a comment in response to the proposed changes

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

American Booksellers  
Foundation for Free  
Expression

Association of American  
Publishers, Inc.

Comic Book Legal  
Defense Fund

Entertainment Merchants  
Association

Entertainment Software  
Association

Freedom to Read  
Foundation

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.

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*Entertainment Merchants  
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Foundation*

*Treasurer*  
Chris Finan  
*American Booksellers  
Foundation for  
Free Expression*

*General Counsel*  
Michael A. Bamberger  
*Sonnenschein Nath &  
Rosenthal LLP*

that affected retailers and producers of First Amendment protected material. The final version of the regulations issued by Department of Justice were issued in June of 2005. Some of the points from Media Coalition's comment were incorporated in the final regulations but others were not. The new regulations would apply record-keeping requirements to content distributors on the Internet. Some parts of the new regulations are currently being challenged in U.S. District Court in Denver, Colorado.

### ***Media Coalition Submits Testimony in Hearing on Right to Access Video Games with Violent Content***

In March 2006, Media Coalition submitted written testimony in a hearing chaired by Senator Brownback (R-Kansas) in the Senate Judiciary Committee on regulation of video games with violent content. The Senator has held numerous hearings on the presumed effects of media with violent or sexual content. Media Coalition's testimony reiterated our position that any regulation of media because of violent content is unconstitutional, a conclusion that every court addressing the issue, including in several recent cases, has ultimately reached. Media Coalition's testimony also questioned the underlying assumption of the negative effect on minors of viewing, reading, or listening to media with violent content, which is used to justify such laws. As stated in the Media Coalition 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.

### ***Media Coalition Members Protecting Internet Speech: Challenges Continue***

In March of 2006, a litigation schedule was issued calling for a trial to start next winter in *The King's English v. Shurtleff*, a challenge to a Utah law that limits free speech on the Internet. The law would limit material on the Internet to what is appropriate for minors. Also, it would require the Utah Attorney General to create a blacklist for all websites his office deems to be "harmful to minors." Internet Service Providers would be required to block all the listed sites at any customer's request. However, due to the way the Internet is built, it would likely force them to block countless other sites with unrelated content. The defendants have agreed, in an order signed by the Court, not to enforce the act until a final ruling has been made.

The plaintiffs in this case include The King's English Bookstore and Sam Weller's Zion Bookstore, websites and ISPs in Utah, and Media Coalition members. This case is similar to other successful challenges Media Coalition has brought against laws restricting what content may be available on the Internet in South Carolina, Vermont, New Mexico, New York, Arizona, and Virginia. The most recent decision, in May of 2005, permanently enjoined enforcement of a South Carolina law that barred distribution of visual sexual material to minors on the Internet. Another case is pending in Ohio.

In March 2006, discovery ended in *ACLU v. Ashcroft*, the challenge to the Federal Child Online Protection Act (COPA). The preliminary injunction in this case was left in place by the Supreme Court but remanded to District Court for further fact finding. A trial is scheduled for October to determine whether filters are a less restrictive and more effective means of preventing minors from accessing "harmful to minors" material on the Internet than government regulation. COPA is a second attempt at a broad national restriction on transmitting non-obscene material on the Internet. Some members of Media Coalition are plaintiffs in the challenge and some are signatories to the several amicus briefs that have been filed in the case.

### ***Media Coalition Members Submit Amicus Brief to Supreme Court in Prisoner Reading Rights***

In March 2006, Media Coalition drafted some language for an amicus brief in *Beard v. Banks*, a Supreme Court case that is a challenge to a prison policy barring newspapers and magazines except for those that are legal or religious in nature. Prisoners were also barred from watching television, listening to radio, and ordering books. The brief argued that the First Amendment right of access to newspapers and magazines in prison is not inconsistent with the legitimate purpose of prison administration.

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