

THE MEDIA COALITION INC

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MEDIA COALITION HIGHLIGHTS 2007

American Booksellers
Foundation for Free
Expression

Media Coalition Members Welcome COPA Ruling

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.

On March 22, 2007, U.S. District Court Judge Reed ruled the Child Online Protection Act (COPA) unconstitutional for a second time, reaffirming the right to make available First Amendment-protected material on the Internet. The law, originally passed in 1998, threatened to reduce what is available to adults on the web to what is suitable for children. Under the law, commercial websites that make material available on the web that could be harmful to minors must have age-verification restrictions to block access or face a fine of up to \$50,000, up to six months in prison, or both. The judge ruled that requiring credit card registration for age verification seriously deters adults from accessing material that is constitutionally protected for them, and that leaving website owners responsible for determining whether certain content was illegal would chill speech substantially. The judge ruled that voluntary use of Internet filters is a less restrictive – and more effective – way to prevent minors from accessing material with sexual content than requiring users to submit credit cards because many minors would circumvent the age verification procedures and because much material is hosted abroad and therefore beyond the reach of U.S. law. 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 Defend Media with Violent Content

In 2006, various laws barring the sale or rental of material with violent content to minors in California, Illinois, Louisiana, Michigan, Minnesota and Oklahoma were found unconstitutional in legal challenges brought by Media Coalition members. In November 2006, Media Coalition members submitted a brief to the Eighth Circuit Court of Appeals in *ESA v. Swanson*. The brief made it clear that violent content, including violent content in video games, is protected by the First Amendment. The 2006 decisions have added to a growing body of case law protecting violent speech. Despite the undefeated row of victories in the courts, legislation attempting to bar the sale or rental of media with violent content was introduced in seven more states this year.

In April 2007, the Federal Communications Commission asked Congress to grant it the authority to regulate violent content on television in addition to its existing authority to regulate sexual content. Media Coalition issued a statement rebutting the main points in the FCC's report justifying this new power to regulate. The FCC's request for regulatory control comes despite the fact that the television industry already uses a voluntary ratings system. A hearing in the Senate Commerce Committee is expected in June and Media Coalition will submit testimony outlining the legal precedents that bar the regulation of speech with violent content. The FCC's report follows a Notice of Inquiry in 2005 to which Media Coalition submitted a comment. The FCC cited Media Coalition's comment in its report to note several points of opposition.

National Association of
Recording Merchandisers

National Association of
Theatre Owners

Publishers Marketing
Association

Recording Industry
Association of America,
Inc.

Chair
Sean Devlin Bersell
Entertainment Merchants
Association

Immediate Past Chair
Judith Krug
Freedom to Read
Foundation

Treasurer
Chris Finan
American Booksellers
Foundation for
Free Expression

General Counsel
Michael A. Bamberger
Sonnenschein Nath &
Rosenthal LLP

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

Media Coalition Challenges Government Mandated Ratings Systems

The previously noted Minnesota law seeks to bar the sale or rental to minors of video games by enforcing the voluntary industry rating system. The law was enjoined by a District Court and an appeal is pending in the Eighth Circuit. Media Coalition submitted an amicus brief that argues the state may neither create its own ratings system based on content nor give legal power to a voluntary ratings system. Industry rating systems are voluntary systems designed to assist parents in determining what is appropriate for their kids. The brief also argued that the definitions in the video game industry's ratings system are unconstitutionally vague. Despite the Eighth Circuit's decision, the New York State Senate has recently introduced a bill that would similarly grant legal power to the video game industry's voluntary ratings system.

Media Coalition Members Defeat Labeling and Signage Laws

In 2006 and 2007, Media Coalition has opposed legislation that would require retailers to pejoratively label First Amendment-protected material and post signs about the content of the speech. Laws were passed in Louisiana, California, and Illinois, and each was found unconstitutional. Specifically, the laws required retailers to label video games, based on content, with a four-square-inch black and white label reading "18." At risk of criminal charges, retailers would have been required to label the games and post large, prominent signs detailing a voluntary ratings system at all points of sale, wherever games were displayed, and at all information desks. Media Coalition opposed the legislation in each state and submitted an amicus brief to the Seventh Circuit Court of Appeals in the challenge to the Illinois law arguing that it is compelled speech for the state to require such labels and signage. The brief also addressed a separate part of the Illinois law that was both prior restraint and banned the sale of material with sexual content to minors, because the definition in the Illinois law did not meet the Miller/Ginsberg test, which requires material to lack literary, artistic, political or scientific value to be deemed harmful to minors.

Media Coalition Members Protect Internet Speech in the States: The Challenge Continues

On April 30, 2007, plaintiffs filed an amended complaint in *The King's English v. Shurtleff*, Media Coalition's challenge to a Utah law applying harmful to minors law to the Internet. 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. The law is a state version of COPA with the same constitutional problems that require retailers to limit First Amendment-protected material on the web or face criminal charges. It also would hold website hosting companies responsible for the content on pages they host and Utah-based Internet Service Providers would be required to block any websites listed on a blacklist created by the Attorney General at a customer's request. Due to the way the Internet is built, it would also likely force ISPs to block countless other sites unrelated in content. 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. Another case is pending in Ohio.

Media Coalition Opposes "Adult" Zoning on Mainstream Retailers & Exhibitors

In the first half of 2007, Media Coalition has monitored increasing instances of legislation intended to regulate mainstream book, video, movie stores, movie theaters, and other retailers of First Amendment-protected material as if they were "adult businesses." Media Coalition has sent memos in opposition to bills in California, Missouri, Tennessee, and Arkansas that would have required bookstores, video stores, movie theaters, and others with only a small percentage of stock, or revenue from the sale of stock with sexual content, to be classified as adult businesses. These mainstream book, video, record stores and movie theaters would be subjected to restrictions on their location and hours of operation or subjected to sales taxes and licensing requirements for employees. Media Coalition was part of the opposition to a proposed ordinance in Riverton, Wyoming, that would have required any movie theater showing films rated "NC-17" to acquire special business permits like an adult business.

–May 31, 2007