

# THE MEDIA COALITION INC.

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April 3, 2003

The Honorable Dean Florez  
State Capitol, Room 4090  
Sacramento, CA 95814

## Re: California Senate Bill 900

Dear Senator Florez,

The members of The Media Coalition believe that California Senate Bill 900 threatens the distribution of First Amendment-protected material in California. Media Coalition members represent most of the publishers, booksellers, librarians, periodical wholesalers and distributors, recording, movie and video game manufacturers, and recording and video retailers in California and the rest of the United States.

S. B. 900 would require any business that takes an order for material harmful to minors by mail, telephone, facsimile or the Internet and delivers the material by private delivery service to take "reasonable measures" to determine that the person placing the order is an adult. "Reasonable measures" is defined as requiring the merchant to match personal information provided by the customer to establish that the customer is 18 or older with a private database of government records kept by the merchant or by third party business. The merchant must also check the billing address for the proffered credit card matches the address in the database. This provision is onerous for retailers and is potentially unconstitutional because it restricts the access and ability of adults to access material which is constitutionally protected as to them.

Although the courts have ruled that some limitation on the display of material "harmful to minors," as defined by the Supreme Court in Ginsberg v. New York, 390 U.S. 629 (1968), is permissible, they have also ruled that these limitations may not unreasonably hinder the access of adults to such material. S.B. 900 creates a number of practical and financial burdens both on adults ability to access and retailers ability to offer material that may be harmful to minors but is legal for adults. Some retailers would be reluctant to request personal records such as social security number, date of birth or driver license number from potential customers and many customers who would be reluctant to give such information by phone and, especially so, by Internet.

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 game producers, and recording and video retailers in the United States.

The reluctance by customers to give personal information is exacerbated when purchasing material with sexual content. Often customers choose to order by phone or the Internet specifically because they prefer to purchase the material anonymously.

Retailers would be additionally burdened by the requirement that they either create and maintain a database of government records to check personal records or pay a direct marketing firm to access its data base prior to making a sale. Many small book, record and video store owners would not be able to bear the cost of either maintaining a database or accessing a private database. Also, the requirement that retailers cross-check personal information would require employees to know all material that might be harmful to minors by name to initiate an age check. This is much more difficult than in a retail store where the employee can view the material and the customer at the register. Some retailers would have little choice but to stop selling all work with sexual content over the Internet, phone or fax, including much mainstream art, health and sex education material rather than risk up to six months in prison, a \$500 fine, or both. As a result, S. B. 900 would exercise an unconstitutional "chilling effect" on the sale of legally protected speech and significantly impair adults' access to material which they have a First Amendment right to read, see or hear.

Because it threatens the distribution of constitutionally protected works, S. B. 900 could be vulnerable to a legal challenge if it is enacted. If the law is overturned, the state could be ordered to pay the plaintiffs' attorneys' fees.

The members of Media Coalition strongly urge you to defend the First Amendment rights of retailers and all the citizens of California and withdraw or amend S. B. 900.

Sincerely,

David Horowitz,  
Executive Director

cc: The Honorable Bruce McPherson  
Chair, Senate Public Safety Committee