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July 16, 1996

Hon. George Pataki
Governor of New York
State Capitol Building
State Street
Albany, NY 12224

Re: Senate Bill 210E

Dear Governor Pataki,

The members of The Media Coalition are writing to urge you to veto Senate Bill 210E. While the bill makes a commendable effort to protect minors from sexual advances communicated over computers, it is drafted in a way that would inhibit the dissemination of a wide range of constitutionally protected speech to adults and would have a serious adverse impact on the State of New York. Only last month, a three-judge federal court sitting in Philadelphia struck down a federal statute remarkably similar to S. 210E. (*American Library Assn. v. Reno, ACLU v. Reno*, Civ. Nos. 96-1458, 96-0963, June 11, 1996)

The Media Coalition represents companies that produce and distribute most of the books, magazines, recordings, videos and video games in New York and the rest of the country. Two members of The Media Coalition, the Association of American Publishers and the Magazine Publishers of America, represent most of the nation's book and magazine publishers. A great many of these publishers are based in New York, and many of them are actively engaged in developing new ways to publish or otherwise expand the markets for their works utilizing computer networks. For this reason, several are plaintiffs in *ALA v. Reno*, the lawsuit challenging the federal Communications Decency Act that is cited above.

New York is a vibrant creative center of new media developers and publishers, and it is the home of countless entrepreneurial businesses that offer on-line services and Internet services that are accessed by adults in their businesses and homes throughout the state. These companies help make New York the intellectual center of the country, if not the world, and are helping to generate new jobs and economic growth. S.B. 210E threatens these companies and the important cultural and economic roles they play.

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

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If there is a gap in New York's laws on sexual solicitation of minors so that harassment or solicitation by computer falls outside of current criminal law, we share the concern of the legislature and urge that defect be cured. But it cannot be cured by S.B. 210E.

The unique, technologically complicated and diverse world of cyberspace does not lend itself to the kind of simplistic formulas that are reflected in the legislation. Despite the bill's laudable goals, the result is certain to be ineffectual and to lead to a chilling effect on constitutionally-protected materials that include a broad range of subjects, including those that deal with human sexuality.

This does not mean that parents and teachers are powerless to control what children may see on computer networks. Indeed, an additional area of creative development and business growth has risen to meet those very legitimate societal needs. The answer to controlling a minor's access is to block it at the receiving computer. Many companies are offering an array of services and software to achieve that goal.

Even if the legislation were limited to the sender of an e-mail message to a single specific address, rather than material placed on a server that can be accessed by everyone or distributed to a common-interest forum or Usenet newsgroup, there is no way to ascertain the age of the recipient. The affirmative defenses regarding the age of the recipient in section 235.24 are meaningless. The other sections of the law depend on the fact that a retailer can establish eye contact with a customer, which provides an opportunity for barring access to minors. Eye contact is clearly impossible in cyberspace.

There is another reason to veto S. 210E. Regulation of computer communication is a subject that Congress has clearly preempted by the passage of the Communications Decency Act, both as to dissemination in the second degree (47 USC 223 (d)), which was invalidated in *ALA v. Reno* and *ACLU v. Reno* and as to dissemination in the first degree (18 USC 2422 (b)), which was not challenged in the suit. The Communications Decency Act included a specific section delineating Congress' intent to preempt (47 USC 223 (f) (2)). Thus, New York State is barred from legislating as to the subjects covered by S. 210E.

The sponsors of S.B. 210E obviously believe there is an urgent need for legislation on this subject. However, the State of New York should not be hurried into passing a bill that so