

THE MEDIA COALITION INC

275 SEVENTH AVENUE • 15TH FLOOR • NEW YORK, NEW YORK 10001
PHONE: 212-587-4025 • FAX: 212-587-2436 • WWW.MEDIACOALITION.ORG

DAVID HOROWITZ
Executive Director

American Booksellers
Foundation for Free
Expression

Association of
American Publishers,
Inc.

Comic Book Legal
Defense Fund

Entertainment
Consumers Association

Entertainment
Merchants Association

Entertainment Software
Association

Freedom to Read
Foundation

Independent Book
Publishers Association

Magazine Publishers of
America, Inc.

Motion Picture
Association of America,
Inc.

National Association of
Recording
Merchandisers

Recording Industry
Association of America,
Inc.

Chair
Chris Finan
American Booksellers
Foundation for Free
Expression

Immediate Past Chair
Sean Devlin Bersell
Entertainment
Merchants Association

Treasurer
Sally Jefferson
Entertainment Software
Association

General Counsel
Michael A. Bamberger
Sonnenschein Nath &
Rosenthal LLP

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Senator Gene Davis
Utah State Capitol Complex
320 North State Street
P.O. Box 145115
Salt Lake City, Utah 84114

Delivered by email

Re: Request to Sustain Governor's Veto of House Bill 353

Dear Senator Davis

The members of Media Coalition ask that you support Governor Huntsman's veto of House Bill 353. We agree with the Governor that H. B. 353 potentially violates the First Amendment and the Commerce Clause of the U.S. Constitution and undermines existing industry rating systems. We also believe that it unnecessarily threatens retailers with costly lawsuits. The trade associations and other organizations that comprise Media Coalition have many members throughout the country including Utah: book and magazine publishers, booksellers and librarians as well as manufacturers and retailers of recordings, films, videos and video games and their consumers.

H.B. 353 would deem as a deceptive trade practice a retailer advertising that they will not sell or rent a product or service with an age-based restriction or recommendation in a way contrary to the restriction or recommendation and then doing so. "Advertisement" is defined as any representation or statement by a supplier in connection with soliciting business. A lawsuit can be brought by the state or any individual for actual costs or \$2,000 whichever is greater. A court can also provide injunctive relief or mandate corrective advertising.

First, it is important to remember that films, video games and books are not just any product. They are all types of speech fully protected by the First Amendment. Courts have repeatedly struck down state efforts to require that media be rated or that voluntary rating systems be enforced. Producers and retailers of content have tried to help parents where the government cannot by creating rating or age recommendation systems so parents can decide what their kids may watch, play, listen to, or read. H.B. 353 seeks to empower the state or an

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 and consumers in the United States.

an individual to coerce a retailer of First Amendment protected material to enforce such rating systems rather than face a financial penalty rather than a criminal penalty. No retailer wants to operate with the possibility of a lawsuit hanging over many transactions. The risk would not be limited to just a district attorney or the Attorney General. This bill would allow any customer with a willing trial lawyer to sue a retailer for a simple mistake by a store clerk that allows a minor to purchase or rent a movie or video game that the minor is legally entitled to buy or rent. The risk of owing up to \$2,000 plus legal fees that can add tens of thousands more dollars to the cost of a suit is an onerous burden for any retailer.

H.B. 353 would also have a serious chilling effect on retailers and producers. Some retailers would just not want to make a choice between the risk of being sued and gaining a bad reputation among its customers and could simply decide to stop selling or renting movies or video games all together.

Practically, this legislation will undermine the existing rating systems and hurt retailers. Retailers want to continue to work with film and video game producers to inform parents of the nature of their content, commit to enforcing the age recommendations, comply with all of the safe harbor provisions and let the public know their store will enforce the rating systems despite the risk of being sued by an opportunistic tort lawyer if a movie or video game is sold or rented contrary to its rating. But some may be forced to opt out of the rating system rather than risk a lawsuit with the associated legal costs whether they win or lose despite the risk that parents will choose to shop elsewhere for fear that their kid could buy or rent an inappropriate video game or film. Ultimately, there will be both fewer stores willing to participate in the ratings programs that help parents and more stores at risk of being sued.

We ask that you please protect the First Amendment rights of all retailers in Utah and sustain Governor Huntsman's veto of this legislation.

David Horowitz
Executive Director