

# THE MEDIA COALITION INC

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## MEMO IN OPPOSITION TO HOUSE BILL 2660

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The members of Media Coalition believe that Arizona House Bill 2660 would jeopardize the dissemination of First Amendment protected content by creating third-party liability for producers, distributors, and retailers of such material. The members of Media Coalition represent most of the publishers, booksellers, librarians, recording, movie and video game manufacturers, and recording, video, and video game retailers in Arizona and the rest of the United States and they have asked me to explain their objections.

H.B 2660 would create a civil cause of action against any producer or distributor of “dangerous” material that is found to produce or incite a felony if the person knew or should have known that the material would result in a person committing a felony and the material was a cause in committing the felony. “Dangerous” material is that which is found to produce felony.

Imposing third-party liability for injuries on producers or distributors of First Amendment protected material is wrong for two reasons: first it makes innocent third parties responsible for the acts of criminals and, second it diminishes the responsibility of the criminal, since he can claim that something he saw or heard "made me do it." H.B. 2660 also raises serious Constitutional problems. The prospect of being responsible for each viewer, reader or listener is likely to frighten producers and distributors to the point where it will severely chill the dissemination of constitutionally protected works.

The speech potentially at issue clearly enjoys the full protection of the First Amendment for both adults and minors. It could be a book about civil engineering that teaches how to implode a building. It could be a video game instructor for flying an airplane. It could be a video on how to beat the house at blackjack or poker. All of these can be used to learn how to commit a felony if the reader or viewer is inclined. And unfortunately, in this day and age, any producer or distributor of such content should know that someone could use it to commit a felony, regardless of the producer or retailer’s intent, and a jury may then consider it a cause of such action.

Given the potential third-party liability, there is a substantial chilling effect on the producers and distributors of such material. Due to this potential chilling effect, courts have repeatedly held that absent an actual incitement to lawless action, those who produce or sell First Amendment-protected material may not be subjected to financial liability for the unlawful or violent acts of third parties,

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 in the United States.

even if they were influenced by specific media. *Brandenburg v. Ohio*, 395 U.S. 444 (1969). Even in cases where the perpetrator or victim had copied what they saw or read, courts have barred or thrown out suits seeking civil damages. See, *DeFilippo v. NBC* 446 A.2d 1036 (R.I. 1982) (parents of deceased minor brought wrongful death action after their son hanged himself copying a stunt he saw on the Tonight Show); *Herceg v. Hustler Magazine, Inc.* 814 F.2d 1017 (5<sup>th</sup> Cir. 1987) (court reversed jury verdict in wrongful death action brought by parents against publisher for adolescent's death allegedly caused by article which described autoerotic asphyxia); *Yakubowicz v. Paramount Pictures Corp.*, 404 Mass. 624 (1989), (wrongful death action brought by father of person killed by perpetrator who had just seen the movie *The Warriors* even though he quoted lines from the movie while committing the crime); *Zamora v. CBS, Inc.*, 480 F.Supp. 199 (S.D. Fla. 1979) (teenager sued the television networks for violent programming that he alleged caused him to commit criminal acts).

Finally, because they consider third party liability so deadly to free speech, the members of Media Coalition challenged an Indianapolis ordinance in 1984 that sought to give victims of sex crimes a cause of action against producers and distributors of the material that allegedly caused the crime. The ordinance was struck down. The decision was upheld unanimously by a three-judge panel of the appeals court, and summarily affirmed by the U.S. Supreme Court. *American Booksellers Assn. v. Hudnut*, 771 F.2d 323 (7th Cir. 192660), *aff'd*, 475 U.S. 1001 (1986). A virtually identical ordinance was enacted in Bellingham, Washington and was also struck down. *Village Books v. City of Bellingham*, No. C88-1470D (W.D. Wash. Feb 9, 1989).

If you would like to further discuss our position on this bill, please contact David Horowitz at 212-587-4025 #11 or at [horowitz@mediacoalition.org](mailto:horowitz@mediacoalition.org). If enacted, H.B. 2660 will suppress speech protected by the First Amendment. Please protect free speech. Oppose H.B. 2660.