

THE MEDIA COALITION INC

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DAVID HOROWITZ
Executive Director

March 14, 2008

American Booksellers
Foundation for Free
Expression

Senator Andrew J. McDonald, Co-Chair
Joint Committee on the Judiciary
Room 2500, Legislative Office Building
Hartford, Connecticut 06106

Association of American
Publishers, Inc.

Comic Book Legal
Defense Fund

Representative Michael P. Lawlor, Co-Chair
Joint Committee on the Judiciary
Room 2500, Legislative Office Building
Hartford, Connecticut 06106

Entertainment Consumers
Association

Entertainment Merchants
Association

Entertainment Software
Association

Re: Letter in opposition to Raised Bill 363

Freedom to Read
Foundation

Dear Chairmen McDonald and Lawlor,

Magazine Publishers of
America, Inc.

Motion Picture
Association of America,
Inc.

The members of Media Coalition are concerned that Connecticut Raised Bill 363 could be unconstitutional. Media Coalition members represent most of the publishers, booksellers, librarians, recording, movie and video game manufacturers, and recording, video, and video game retailers in Connecticut and the rest of the United States.

National Association of
Recording Merchandisers

Publishers Marketing
Association

Recording Industry
Association of America,
Inc.

Under R.B. 363 a person would commit the crime of using an “interactive computer service” to display obscenity to a minor if that person uses an “interactive computer service” to disseminate to a minor material that is harmful to minors. “Interactive computer service” is defined as any information service, system or access software provider that enables computer access by multiple users to a server, including a server that allows access to the Internet.

Chair
Sean Devlin Bersell
*Entertainment Merchants
Association*

Immediate Past Chair
Judith Krug
*Freedom to Read
Foundation*

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Chris Finan
*American Booksellers
Foundation for
Free Expression*

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*Sonnenschein Nath &
Rosenthal LLP*

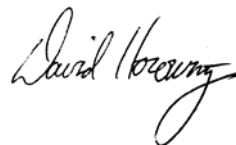
We are uncertain if this applies to providers of content on the Internet or to those who provide Internet access generally. To the extent that R.B. 363 applies to either group, it could have significant constitutional defects. While material harmful to minors may be illegal for minors, it enjoys the full protection of the First Amendment with respect to adults. Courts have repeatedly made clear that such material cannot be made illegal for minors if it unduly burdens the right of adults to access such material. If this law would apply Connecticut’s harmful to minors law to the Internet it would treat material in cyberspace as if there were no difference between a computer transmission and a book or magazine or DVD. But cyberspace is not like a bookstore. There is no way to know whether the person accessing “harmful” material is a minor or an adult. As a result, the effect of banning the computer dissemination of material “harmful to minors” is to force a provider, whether a publisher or an on-line carrier, to deny access to both minors

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.

and adults, depriving adults of their First Amendment rights. The U.S. Supreme Court has already declared unconstitutional two federal laws that restrict the availability of matter inappropriate for minors on the Internet. *Reno v. ACLU*, 117 S.Ct. 2329 (1997); *ACLU v. Gonzalez*, 478 F. Supp. 2d (E.D. Pa. 2007) (on remand from *Ashcroft v. ACLU*, 124 S. Ct. 2783 (2004)). The Second Circuit Court of Appeals has also ruled that a ban on dissemination of material harmful to minors on the Internet is unconstitutional. *ABFFE v. Dean*, 342 F. 3d 96 (2nd Cir 2003). There is a substantial body of law striking similar state laws attempting to restrict access to material harmful to minors. Every other court that has considered a state law that restricts dissemination by Internet of material harmful to minors has ultimately found it unconstitutional. See, *Cyberspace_Communications, Inc. v. Engler*, 238 F.3d 420 (6th Cir. 2000); *ACLU v. Johnson*, 194 F.3d 1149 (10th Cir. 1999), *PSINet v. Chapman*, 362 F.3d 227 (4th Cir. 2004); *American Libraries Ass'n v. Pataki*, 969 F. Supp. 160 (S.D. 1997); *ACLU v. Goddard*, Civ No. 00-505 (D. Ariz. Feb. 21, 2002); *ABFFE v. Strickland*, 512 F. Supp. 2d 1082 (S.D. Ohio 2007). In addition to First Amendment deficiencies, many of the various courts have also ruled that these state laws violate the Commerce Clause of the U.S. Constitution, which reserves to Congress the regulation of interstate commerce and prevents a state from imposing laws extraterritorially.

Enactment of R.B. 363 could prove costly to the extent it applies to Internet dissemination of material harmful to minors. If a court declares it unconstitutional, there is a good possibility that the state will be ordered to pay the plaintiffs' attorneys' fees. In recent cases attorney's fees have ranged from \$245,000 to \$750,000. The members of Media Coalition strongly urge you to defend the First Amendment rights of all the citizens of Connecticut and defeat R.B. 363.

Sincerely,

A handwritten signature in black ink, appearing to read "David Horowitz", with a stylized, cursive script.

David Horowitz,
Executive Director

cc: members of the Joint Committee on the Judiciary by email.