

February 14, 2011

Senator Hollis French, Chair  
Senator Bill Wielechowski, Vice-Chair  
Senate Judiciary Committee  
Alaska State Senate  
Juneau, AK 99801

Delivered by email

Re: Section 9 of Senate Bill 72

Dear Chairman French and Vice-Chair Wielechowski,

The members of Media Coalition have asked me to communicate their concerns regarding S.B. 72 sec. 9. The trade associations and other organizations that comprise Media Coalition have many members throughout the country, including Alaska: publishers, booksellers and librarians as well as manufacturers and retailers of recordings, films, videos and video games and their consumers. Some of our members are plaintiffs in *American Booksellers Foundation for Free Expression (ABFFE) v. Burns* (preliminary injunction granted as *ABFFE v. Sullivan*) a First Amendment challenge to 11.61.128(a).

Section 9 of S.B. 72 would narrow AS 11.61.128(a) to only criminalize the distribution of material “harmful to minors” by an adult if the recipient is under 16 years old and the adult is reckless regarding the recipients age or the adult believes the recipient is less than 16 years old. The legislation would also add a knowledge requirement as to the content being sent to the minor.

This bill is an improvement on AS 11.61.128(a) which was enjoined October 21, but even with these changes the law would still violate the First Amendment and the Commerce Clause of the U.S. Constitution. We welcome the opportunity to work with the Attorney General and this Committee to amend Section 9 to make it constitutionally sound. We believe that modest changes to the bill would cure the constitutional problems in Section 9 while still providing law enforcement with the means to protect minors from adults looking to prey on them.

We appreciate the chance to share our concerns with the Judiciary Committee. If you

would like to discuss further our position on this bill, please contact me at 212-587-4025 #3 or at [horowitz@mediacoalition.org](mailto:horowitz@mediacoalition.org).

Respectfully submitted,

/s/ David Horowitz

David Horowitz  
Executive Director  
Media Coalition, Inc.

cc: Senator Paskvan  
Senator McGuire  
Senator Coghill