

February 10, 2012

Memorandum re: Iowa House Study Bill 525

Thank you for the opportunity to raise our concerns regarding H.S.B. 525. We believe strongly that H.S.B. 525 violates the First Amendment. The trade associations that comprise Media Coalition have many members throughout the country including Iowa: publishers, booksellers and librarians as well as manufacturers and retailers of recordings, films, videos and video games.

H.S.B. 525 would broaden the definition of “material” in 728.1 to include electronic dissemination. As a result, 728.2 would ban depictions and descriptions that are “obscene for minors” on the Internet, listserves and public chatrooms. The application to material generally available on the Internet is likely overbroad. It would threaten speech on the Internet that is legal for adults and neither intended nor directed to minors.

Iowa presently bans the dissemination to minors of sexual content that is illegal for them but legal for adults as permitted by *Ginsberg v. New York*, 390 U.S. 629 (1968) (and subsequently modified by *Miller v. California*, 413 U.S. 15 (1973)). The existing law is sensible for brick and mortar retailers who have the opportunity assess a customer’s age in a face to face transaction. However, the Internet is not like a book or video or video game store. There is no way to know whether the person accessing the “obscene for minors” material is a minor or an adult and there may be no reasonable way to bar access to minors without driving away adults. As a result, the effect of a blanket ban on the electronic dissemination of material “obscene for minors” is to force a content provider, whether a publisher or an on-line carrier, to either risk prosecution or restrict access to both minors and adults, thus infringing the First Amendment rights of adults. Online bookstores, sexual health websites, movie streaming businesses and many personal blogs and twitter feeds would all be at risk if a minor accessed such material even if such communication was intended solely for adults.

There is now a substantial body of case law striking down laws that criminalize speech that is generally available on the Internet. Courts have repeatedly ruled that such laws violate the First Amendment because they restrict the speech of adults on the Internet. Laws cannot reduce the speech of adults to only what is appropriate for minors.. Also, courts have held that there are less restrictive and more effective means for preventing minors from accessing such content that does not infringe on the speech of adults. Two federal laws, the Computer Decency Act (CDA) and the Child Online Protection Act (COPA), and eight similar state laws have been held

unconstitutional as violating the First Amendment. *Reno v. ACLU*, 117 S.Ct. 2329 (1997); *ACLU v. Gonzales*, 478 F. Supp. 2d 775 (E.D. Pa. 2007), aff'd sub nom. *Mukasey v. ACLU*, 534 F.2d 181 (3d Cir 2008), cert. den. 129 Sup. Ct. 1032 (2009); *PSINet v. Chapman*, 63 F.3d 227 (4th Cir. 2004); *ABFFE v. Dean*, 342 F.3d 96 (2d Cir 2003); *Cyberspace Communications, Inc. v. Engler*, 238 F.3d 420 (6th Cir. 2000); *ACLU v. Johnson*, 194 F.3d 1149 (10th Cir. 1999); *Southeast Booksellers v. McMasters* 282 F. Supp 2d 1180 (D.S.C. 2003); *ACLU v. Goddard*, Civ No. 00-0505 TUC AM (D. Ariz. 2002); *American Booksellers Foundation for Free Expression v. Coakley*, 2010 WL 4273802 (D. Mass. 2010); *American Booksellers Foundation for Free Expression v. Sullivan*, 799 F. Supp 2d 1078 (D. Alaska 2011). A ninth state law was struck down as violating the Commerce Clause of the Constitution. *American Libraries Ass'n v. Pataki* 969 F. Supp. 160 (S.D. 1997). The law at issue in *Coakley* was the most similar to this legislation. It also added electronic dissemination to the definition of "material" for the purpose of their "obscene for minors" law. After U.S District Judge Zobel granted a preliminary injunction barring enforcement of the law as likely unconstitutional, Attorney General Coakley asked the legislature to amend it rather than go forward with the litigation. Many of these cases, including *ABFFE v. Coakley*, were brought Media Coalition members who were represented by our general counsel. The court opinions in all of these cases are available on the litigation page of our website at: <http://www.mediacoalition.org/litigations.php>.

The only exceptions to these decisions have been laws that were limited to speech that was intended to be communicated to a specific person the speaker has actual knowledge, rather than general knowledge, is a minor or the speaker believes to be a minor.

We believe Iowa can protect minors while also respecting the First Amendment. We are ready to work with your office to address the scope of this legislation. If you have questions about the memo or would like to discuss further our concerns about H.S.B. 525, please contact me at 212-587-4025 #3 or at [horowitz@mediacoalition.org](mailto:horowitz@mediacoalition.org). We ask you to please protect the First Amendment rights of all the people of Iowa and amend or defeat H.S.B. 525.

Respectfully submitted,

/s/ David Horowitz

David Horowitz  
Executive Director  
Media Coalition, Inc.