

MEDIA COALITION AND §2257 RECORD KEEPING REGULATIONS

Media Coalition has protected mainstream businesses from §2257 and its regulations since it was originally introduced.

Congress enacted the Child Protection and Obscenity Enforcement Act, 18 U.S.C. §2257, in 1988. The law may have been intended to aid in prosecuting child pornography by requiring records to be kept of all performers' ages. However, as enacted, it created overbroad restrictions on content producers, distributors, and retailers. Media Coalition organized a legal challenge to the overbroad sections of the law, leading to a 1989 decision in *American Library Ass'n v. Thornburgh*, 713 F. Supp. 469 (D.D.C. 1989), which found several key portions of the law unconstitutional.

When Congress and the Department of Justice expanded the §2257 law and regulations, the changes included:

- Expanding the kinds of images subject to recordkeeping requirements to include images of simulated sex or lascivious display of the genitals.
- Expanding the existing law explicitly to cover digital and digitally created images.
- Broadening the definition of “produces” to potentially include distributors and retailers who had no contact with models or subjects, and thereby
 - requiring them to keep records subject to inspection at any time, and
 - forcing those who suddenly found themselves within the scope of the law to purge their material of older images (because of the retroactive nature of the law) or become susceptible to criminal charges.
- Creating §2257A as a safe harbor for companies that maintain business records.
- Adding additional requirements to disclaimer labels to be in compliance.

Media Coalition takes action when proposed changes pose serious administrative obstacles for businesses.

- In July 2006, the Adam Walsh law passed with changes to §2257 and new §2257A. Media Coalition joined a broad group in opposition to proposed amendments to §2257. The group, representing a wide range of interests, sent letters to legislators in both the House and Senate. The negotiations resulted in improved language that mitigated the effect of the original changes.
- Media Coalition distributed to members and supporters a comprehensive briefing book with a complete history of §2257 containing all the court decisions, letters, comments, and other documents since its original enactment in 1988.
- In June 2007, Department of Justice proposed the first set of regulations pursuant to the 2006 law. Media Coalition responded by submitting a comment letter challenging certain provisions and seeking clarification on others. Department of Justice issued proposed regulations for §2257A the following year.
- In January 2009, Department of Justice released final regulations for §2257 and §2257A. Media Coalition distributed extensive analysis on both sections to members and supporters. The analysis discussed the practical impact on doing business and raised legal questions unanswered by the regulations.

Media Coalition continues to monitor recent challenges to different parts of the regulations in various federal courts.