

THE MEDIA COALITION INC

275 SEVENTH AVENUE • 15TH FLOOR • NEW YORK, NEW YORK 10001
PHONE: 212-587-4025 • FAX: 212-587-2436 • WWW.MEDIACOALITION.ORG

DAVID HOROWITZ
Executive Director

April 6, 2010

American Booksellers
Foundation for Free
Expression

Association of American
Publishers, Inc.

Comic Book Legal
Defense Fund

Entertainment Consumers
Association

Entertainment Merchants
Association

Entertainment Software
Association

Freedom to Read
Foundation

Independent Book
Publishers Association

Motion Picture Association
of America, Inc.

National Association of
Recording Merchandisers

Recording Industry
Association of America, Inc.

Senator Hollis French, Chair
Senate Judiciary Committee
State Capitol, Room 417
Juneau, AK 99801

Delivered by email

Re: Opposition to Section 8 of Committee Substitute E of Senate Bill 222

Dear Senator French,

The members of Media Coalition believe that Committee Substitute E is a substantial improvement on the existing law and also an improvement on House Bill 298. We still believe that Section 8's general application to the Internet violates the First Amendment rights of producers and retailers and their customers. However, we think small changes to the bill would cure the constitutional problems in Section 8 while still providing law enforcement with the means to protect minors from adults looking to prey on them.

We think the present version of Section 8 can be amended to avoid these constitutional weaknesses by limiting the law to speech by an adult communicated directly to a specific person either known or believed to be a minor.

The present version of Section 8 (1) could be amended to read:

- (1) the person, being 18 years of age or older, **knowing the character and content of the material**, knowingly and **intentionally** distributes to a **specific other** person any material that depicts the following actual or simulated:

These are small but very important changes to the bill that track language in the opinions by the Supreme Court and Circuit Courts cited above and other important cases addressing minors' access to sexually explicit material. They protect web sites that want to communicate with adults but are not able to bar access to minors. At the same time, we believe this language allows law enforcement to prosecute adults sending salacious materials to specific children but protects websites, blogs and other generally accessible material on the Internet. A law with very similar wording was passed in Florida and later was upheld by the Florida Supreme Court.

The Media Coalition is a trade association that defends the First Amendment rights of publishers, booksellers, librarians, recording, motion picture and video games producers, and recording, video, and video game retailers and consumers in the United States.

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Without these changes, as we noted in our previous letter, Section 8 likely violates the First Amendment as overbroad. Courts have not been willing to infringe the rights of adults if there are alternative ways to protect minors from such material. A very similar federal law and seven state laws have been found unconstitutional. *See 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); *American Libraries Ass'n v. Pataki* 969 F. Supp. 160 (S.D. 1997); *ACLU v. Goddard*, Civ No. 00-0505 TUC AM (D. Ariz. 2002). At issue in *Mukasey* was a federal law that barred dissemination to minors of material harmful to minors by commercial sites on the World Wide Web. The second time the case was before the Supreme Court (then *Ashcroft v. ACLU*), Justice Kennedy, writing for the majority, sent the case back to the U.S. District Court to determine if there were less restrictive means to protect minors from such material than a broad law that restricts the rights of adults. The district court ruled that the law was overbroad and that there are less restrictive and more effective means to protect minors from sexual content without infringing on adults. The Third Circuit upheld that ruling and the Supreme Court declined to hear the case a third time. We are happy to provide those cases if it would be helpful.

If you would like to discuss further our position on this bill, please contact me at 212-587-4025 #11 or at horowitz@mediacoalition.org. We appreciate the opportunity to work with the Committee to rework Sections 8.

Respectfully submitted,

/s/ David Horowitz

David Horowitz
Executive Director

cc: Sen. Bill Wielechowski, Vice Chair
Sen. Dennis Egan
Sen. Lesil McGuire
Sen. John Coghill