



**Court Narrows Ohio “Harmful to Minors” Law
Communications on Websites, in Public Chatrooms,
and on email Listservs Cannot Be Prosecuted
After Federal Appeals Court Ruling**

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NEW YORK – An Ohio statute which imposes fines and prison terms for providing non-obscene, sexually-explicit material to minors cannot be applied to communications on websites, in public chatrooms, and through email listservs and mailing lists, a federal appeals court ruled today.

“Today’s decision is a victory for free speech,” said David Horowitz, Executive Director of Media Coalition, an association that defends the First Amendment rights of mainstream media, whose members include many of the plaintiffs in the Ohio litigation. “The narrow construction of the statute recognizes that the First Amendment protects the right of adults to use websites, email listservs, email mailing lists, and public chatrooms for communications which might be inappropriate in a one-to-one communication with a minor,”

The United States Court of Appeals for the Sixth Circuit, sitting in Cincinnati, Ohio, ruled that Ohio’s “harmful to minors” statute should be construed narrowly. The court held that persons could be prosecuted for sending sexually-explicit, non-obscene material to minors through “personally directed” electronic communications, such as person-to-person email, and in

private chatrooms, just as they can be prosecuted for giving such materials to a minor in person. But the court also held that the statute could not be used to prosecute persons who post such materials on websites or in public chatrooms, or transmit them through email listservs or mailing lists.

Persons convicted of violating the law with non-obscene materials can be imprisoned up to six months or fined \$1,000, and those convicted of violating the law with obscene material can be imprisoned up to eighteen months or fined \$5,000.

The ruling came in a lawsuit brought by mainstream website publishers, newspapers, book publishers, booksellers, and music and video retailers. The lawsuit initially challenged an earlier version of the statute which imposed criminal penalties for the electronic transmission, to minors, of a wide range of materials protected by the First Amendment—including not only non-obscene, sexually-explicit materials, but also materials that use “foul language” or depict or describe nudity, extreme violence, or criminal activity. The original statute threatened to sweep within its coverage online communications with content similar to this year’s Oscar-winning films, *The Hurt Locker*, *Inglourious Basterds*, and *Precious: Based on the Novel ‘Push’* by Sapphire.

After United States District Judge Walter Herbert Rice in 2002 ruled against that broader statute, the Ohio legislature narrowed the statute, limiting it to non-obscene, sexually-explicit material. In 2007, Judge Rice again found that the law was too broad, and unconstitutionally interfered with legitimate adult-to-adult online communications.

When the State of Ohio appealed to the federal appeals court, the Ohio Attorney General decided not to defend the full breadth of the statute, and suggested that the statute should be construed narrowly, and limited to one-to-one communications such as emails, instant messages, and messages in private chat rooms. The Ohio Attorney General conceded that there is no

method, in generally-accessible websites and public chatrooms, to exclude minors from adult-to-adult communications which are protected by the First Amendment. In response to certified questions posed by the federal appeals court, the Ohio Supreme Court adopted the Attorney General's narrow construction of the statute.

“We should certainly have in place adequate legal safeguards to shield children from objectionable content, but those safeguards cannot unreasonably interfere with the rights of adults to have access to materials that are protected by the First Amendment,” said Michael Bamberger of Sonnenschein Nath & Rosenthal LLP, general counsel of Media Coalition, who represented the plaintiffs in the Ohio case. Bamberger said that the case represented two victories for First Amendment rights. “This lawsuit made the Ohio legislature recognize that the original law's restrictions on the use of foul language, or the depiction or description of violence or criminal activity, violated freedom of speech. After years of litigation, the Ohio Attorney General declined to defend the full breadth of the statute, and recognized that the statute should be construed narrowly, to fully and limited to personally directed communications, directed to a minor.”

Horowitz noted that parental controls software, pre-loaded in many computers and also available online, enables parents to block access to sexually explicit materials on the Web, to prevent minors from giving personal information to strangers by email or in chat rooms, and to maintain a log of all online activity on a home computer.

Members of Media Coalition have successfully challenged similar restrictions on speech on the Internet in Vermont, Virginia, Arizona, South Carolina, New Mexico and New York. The United States Supreme Court and other courts have regularly found such laws unconstitutional both because they censor valuable speech for adults and because the nature of most Internet communications makes it impossible to exclude minors from such communications.

The appeals court noted the rapidly developing nature of electronic communications, stating, “in determining whether a new communication technology or device is covered under section 2907.31(D), future courts must determine whether that technology is more similar to ones which are personally directed, like an email, or those that are generally accessible, like postings on a public website.”

The appeals court’s ruling in *American Booksellers Foundation for Free Expression v. Strickland* is online at www.mediacoalition.org

Plaintiffs in the lawsuit include American Booksellers Foundation For Free Expression, Association of American Publishers, Freedom to Read Foundation, National Association of Recording Merchandisers, The Sexual Health Network, Inc., Video Software Dealers of America (now Entertainment Merchants Association), and the Ohio Newspaper Association.

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A copy of the decision and other rulings in the case are available at www.mediacoalition.org