



Sections 5 and 9 of House Bill 260, enacted on March 2, 2005, as applied through amended Utah Code § 76-10-1206 and Utah Code § 76-10-1233 (collectively the “Challenged Statutes”).

2. AAP, a not-for-profit New York corporation with offices in New York and Washington, is the national association of the United States book publishing industry. AAP’s approximately 300 members include most of the major commercial book publishers in the United States, as well as smaller and non-profit publishers, university presses and scholarly associations. AAP members publish hardcover and paperback books in every field and a range of educational materials for the elementary, secondary, post-secondary and professional markets. AAP members also produce computer software and electronic products and services.

3. AAP represents an industry whose very existence depends on the free exercise of rights guaranteed by the First Amendment. Although the business of AAP’s members is still primarily based on print publishing, they are also very actively involved in digital publishing, including on the internet. AAP’s members’ online activities include: (a) creating and marketing electronic products, sometimes to accompany and supplement their printed books and journals; (b) creating custom educational material on the Internet; (c) communicating with authors and others; (d) receiving manuscripts, and editing, typesetting and designing books electronically; (e) transmitting finished products to licensed end-user customers; (f) communicating with bookstores and other wholesale and retail accounts; and (g) promoting authors and titles online.

4. Many of AAP’s members have webpages and provide information to the world on the Internet. Some of the content provided by AAP’s members contains or describes nudity or sexual conduct, often in vivid terms. Many of the efforts to ban books in various communities have been directed at books published by AAP’s members. If the Challenged Statutes are not permanently enjoined and declared unconstitutional, AAP members will be forced either to risk

criminal liability or to stop providing online access to constitutionally-protected books and other related materials.

5. The AAP itself has a website, located at [www.publishers.org](http://www.publishers.org), which discusses challenged books and has links to other websites on the Internet, frequently quoting or otherwise referencing constitutionally protected materials that may be deemed “harmful to minors” under the Challenged Statutes.

6. The online information that AAP members provide serves both adults and minors.

7. Online users anywhere in the world can access the content provided by AAP and its members on the Web and via email.

### **Fear of Prosecution Under the Challenged Statutes**

8. AAP and its member publishers fear that they may be at risk of prosecution under the Challenged Statutes for providing constitutionally protected material on the Internet which might be deemed “harmful to minors” under the meaning of the Challenged Statutes

9. The only certain way for AAP and its members to prevent making available online material that is “harmful to minors” — and thus to avoid prosecution — is to entirely eliminate from their websites those materials that could conceivably fall within the Challenged Statutes. Even if one seeks to avoid liability under Utah Code § 76-10-1233, by rating and labeling the content in accordance with Utah Admin. R. 152-1a, the vagueness of the term “minors” makes this task extremely difficult. Labeling specific content as harmful to younger minors would certainly discourage and restrict older minors from accessing the content or cause them to believe that a law is being violated if they do access the labeled content.

10. In addition, it would be antithetical to the book industry in general to label and self-censor content at the risk of criminal liability.

11. AAP members sell books to retailers in the State of Utah. The Challenged Statutes would affect the discussion of, and including excerpts from, books by retailers in Utah which are displayed on member's websites. Application of the "harmful to minors" restriction could preclude discussion of, and including excerpts from, such popular, acclaimed, and socially important books as The Kite Runner by Khaled Hosseini, Middle Passage, by Charles Johnson, Beloved by Toni Morrison, The Handmaid's Tale by Margaret Atwood, The Glass Castle by Jeannette Walls, Running with Scissors by Austen Burroughs, romance novels, and graphic novels.

12. In addition to affecting retailers within the State of Utah, the Challenged Statutes also affect publishers' and booksellers' websites nationwide. Users of the Internet can often access actual excerpts from these books at such websites. Some of the language and depictions in those excerpts would inevitably be subject to the Challenged Statutes.

13. Many bookstores use their websites to list their available titles and show book covers. Some of these titles or book covers may contain material which depicts violence, foul language, sexual activity or sexual excitement, making their appearance on the Web subject to the Challenged Statutes.

#### **Internet Use by AAP Members is Interstate in Nature**

14. Much of the Internet use by publishers and booksellers is interstate in nature. For example, any publisher's webpage can be accessed by Internet users not only throughout the United States, but throughout the world. Similarly, AAP members from across the country communicate with one another, as well as with bookstores and other Internet users across the country, via email. Moreover, because AAP members cannot effectively prevent their websites or discussion groups from being accessed by Utah users, the only certain method of compliance with the Challenged Statutes is for AAP and its members to exclude from their websites anything

that might possibly fall under the purview of the Challenged Statutes, thus severely limiting the informational content and thus the usefulness of the websites. AAP strongly believes that adults are constitutionally entitled to unrestricted access to all First Amendment-protected material, even that which contains violence, foul language and sexual activity or excitement.

15. The Internet is an important source of interstate business for AAP members, who conduct business over the Internet in a variety of ways. If the Challenged Statutes are not enjoined and AAP members are forced to self-censor, they will suffer immeasurable injury through significant loss of sales and recognition otherwise generated by use of their websites with respect to both censored and uncensored materials and resources.

### **Conclusion**

16. For all the reasons stated above, AAP and its members fear prosecution under the Challenged Statutes. If the Challenged Statutes are not enjoined, they will be forced either to self-censor their communications to a great degree or to risk criminal liability.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 29<sup>th</sup> day of April 2011.

s/ Allan R. Adler

Allan R. Adler