No. 99-2064
In The
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Cyberspace Communications, Inc.; Abornet; Marty Klein; AIDS Partnership of Michigan; Art on the Net; Mark Amerika of Alt-X; Web Del Sol; Glad Day Bookshop, Inc.; Litline; American Civil Liberties Union,

Plaintiffs-Appellees,

v.

John Engler, Governor of the State of Michigan; and Jennifer M. Granholm, Attorney General of the State of Michigan,

Defendants-Appellants.

Appeal from the United States District Court
Eastern District of Michigan, Southern Division
Honorable Arthur J. Tarnow

BRIEF AMICI CURIAE OF AMERICAN BOOKSELLERS FOUNDATION FOR FREE EXPRESSION, ASSOCIATION OF AMERICAN PUBLISHERS, COMIC BOOK LEGAL DEFENSE FUND, FREEDOM TO READ FOUNDATION, INTERNATIONAL PERIODICAL DISTRIBUTORS ASSOCIATION, MAGAZINE PUBLISHERS OF AMERICA, NATIONAL ASSOCIATION OF COLLEGE STORES, PERIODICAL AND BOOK ASSOCIATION OF AMERICA, INC., PUBLISHERS MARKETING ASSOCATION AND RECORDING INDUSTRY ASSOCIATION OF AMERICA IN SUPPORT OF PLAINTIFFS-APPELLEES AND FOR AFFIRMANCE

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DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

Pursuant to 6th Cir. R. 25, the *Amici Curiae* make the following disclosure:

1. Are said parties subsidiaries or affiliates of a publicly-owned corporation? No, *amici* are not corporate entities for which a corporate disclosure statement would apply (*i.e.*, such entities do not have any parent corporations and/or any publicly-held company that owns 10% or more of its stock, *see* FRAP 26.1).

   If the answer is YES, list below the identity of the parent corporation or affiliate and the relationship between it and the named party.

2. Is there a publicly-owned corporation, not a party to the appeal, that has a financial interest in the outcome? No.

   If the answer is YES, list the identity of such corporation and the nature of the financial interest:

Michael A. Bamberger
Counsel for *Amici Curiae*

Dated: February 3, 2000

THE *AMICI*

This brief *amici curiae* is submitted on behalf of a group of trade associations and their members, listed below[1] and more fully described at Appendix A to this brief, that share a deep commitment to ensuring that the Internet achieves its full promise as a revolutionary medium of communication suitable for both children and adults. *Amici's* members include authors, publishers, editors and distributors of textual, audio and audio-visual material ranging from books, magazines, newspapers, newsletters and comic books to sound recordings and video games, as well as educators and librarians whose students and patrons desire access to the widest possible range of informative material.[2]

INTEREST OF THE *AMICI*

Amici's members (hereinafter "*amici*") have websites on the Internet and create scholarly, literary, artistic, scientific and entertaining content which appears on the websites of others. They are concerned lest a medium, which the United States Supreme Court has recognized to be a "dynamic, multifaceted category of communication" – the Internet – be turned into a child-proof medium whose "level of discourse" would be reduced to that "suitable for a sand box." This the First Amendment to the Constitution does not allow.

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1 American Booksellers Foundation for Free Expression, Association of American Publishers, Comic Book Legal Defense Fund, Freedom To Read Foundation, International Periodical Distributors Association, Magazine Publishers of America, National Association of College Stores, Periodical and Book Association of America, Publishers Marketing Association and the Recording Industry Association of America.

2 Consents of appellants and appellees to the filing of this brief are submitted herewith.

Various of the *amici* have been plaintiffs in the federal court cases which have uniformly invalidated laws similar to the Michigan statutory provisions before this Court. *See ACLU v. Reno*, 521 U.S. 844 (1997) *aff'g* 929 F. Supp. 824 (E.D. Pa. 1996) (invalidating the federal Communications Decency Act) ("*Reno I*") ("CDA"); *ACLU v. Johnson*, 194 F.3d 1149 (10th Cir. 1999), *aff'g* 4 F. Supp.2d 1029 (D.N.M. 1998) (invalidating a New Mexico state statute) ("*Johnson*") ("New Mexico statute"); *ACLU v. Reno*, 31 F. Supp.2d 473 (E.D. Pa. 1999) (invalidating the federal Child Online Protection Act) ("*Reno II*"); and *American Library Ass'n v. Pataki*, 969 F. Supp. 160 (S.D.N.Y. 1997) (invalidating a New York statute).

In the current environment of rapidly developing and integrating media technology, the once discrete worlds of print, visual and electronic media are discrete no longer. *Amici* once devoted exclusively to the publication of books and magazines, and production of films are now or soon will be making some of those same materials available online via Internet-capable personal computers and Internet-ready television sets.

Amici draw no comfort from the proposed narrowings with regard to the requisite knowledge and other elements suggested by the State. Faced with potential criminal penalties [3] for guessing wrong as to what a local federal prosecutor might believe is "harmful to minors" in a given community, *amici* engaged in providing speech for adults will be faced with the constitutionally impermissible dilemma of risking prosecution or engaging in self-censorship.

Under such a regime, frank and provocative discussions, whether generated by "affairs of the state," public health issues such as AIDS and abortion, readings from and critiques of classical and modern fiction, reviews of sound recordings and motion pictures, reader, viewer and listener reactions to literary, music, and television fare dealing in some manner with the topic of sex or sexual relationships, to

[3] "Distributing obscene matter to a minor is a misdemeanor, punishable by imprisonment for not more than 2 years or a fine of not more than $10,000.00 or both." M.C.L. § 722. 675 (5).

name a few, may well fall in the category of speech that is viewed as too risky and thus could be forsaken for other, "safer" speech. The necessary effect of the Michigan act will thus be to force speakers to "steer far wider of the unlawful zone." *Speiser v. Randall*, 357 U.S. 513 (1958).

Rather than being so threatened, *amici* are constitutionally entitled to participate fully in the growth and development of the Internet. Indeed, *amici* work every day in myriad ways to fulfill the best vision of the Internet, continually searching for means of responding to the public interest in all manner of information and entertainment, while preserving the wondrously spontaneous and interactive quality of this medium. Through their Web sites, the varied communications entities whose speech interests are fostered by *amici* are affording the American public access to more information and entertainment, faster and more cheaply than ever before. The functions of publishers' catalogs, magazine and newspaper kiosks, book and record stores, indeed, entire libraries, are captured in the Web site offerings of *amici*. And this is just the beginning.

The Michigan statute at issue here threatens to impede this valuable development by attempting to extract from mainstream Internet sites all speech arguably not suitable for minors in derogation of the First Amendment, and imposes this unconstitutional standard on all sites throughout the country in derogation of the Commerce Clause. The court below correctly enjoined that attempt.

I. The Court Below Properly Ruled That The New Provision Violated The First Amendment

The State concedes that the New Provision is a content-based regulation of speech and thus is subject to strict scrutiny. Brief on Appeal of Defendants-Appellants at 13 ("Br."). As such, the New Provision, like all content-based regulations, is presumptively invalid, *R.A.V. v. St. Paul*, 505 U.S. 377, 381 (1992), and will be struck down unless the State demonstrates that the New Provision is necessary to further a compelling government interest and is narrowly tailored to achieve that interest. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983).

A. The New Provision Violates The First And Fourteenth Amendments Of The Constitution Because It Effectively Bans Speech That Is Constitutional As To Adults

Because the current state of technology does not allow Internet speakers to exclude minors from their Internet communications, in any practical way, the effect of the New Provision is to unconstitutionally and criminally prohibit adults from engaging in speech constitutionally protected as to them but deemed harmful to minors. Thus, like similar statutes, it unconstitutionally infringes on First Amendment rights. *Reno I; Reno II; Johnson*.

Internet speech, in some sense, is intangible and once released, it cannot be contained. Once speech has entered cyberspace it can be accessed by anyone, regardless of age, who is able to log on to the Internet. *Reno I*, 521 U.S. at 851 ("[t]aken together, these tools constitute a unique medium – known to its users as 'cyberspace' – located in no particular geographical location but available to anyone, anywhere in the world, with access to the Internet.") Therefore, unlike any other medium of communication considered by the courts, an Internet speaker has no control over the audience to whom he speaks and thus cannot contain his speech to an audience that does not include minors. *Reno I*, 521 U.S. at 853. Because of this unique aspect of the Internet, to avoid the possibility of prosecution, an adult can comply with the New Provision only by speaking in language suitable for children. The Supreme Court has declared, however, that the "level of discourse reaching a mailbox simply cannot be limited to that which would be suitable for a sandbox." *Reno I*, 521 U.S. at 875 (*quoting Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 74-75 (1983)). Yet, contrary to this well-settled principle, the New Provision makes it a crime for an adult to communicate with regard to a constitutionally protected class of speech for adults -- non-obscene speech deemed harmful to minors.

There is no question that this class of non-obscene speech criminalized by the New Provision is constitutionally protected as to adults. The Supreme Court has "made it perfectly clear that '[s]exual expression which is indecent but not obscene is protected by the First Amendment.'" *Reno I*, 521 U.S. at 874 (*quoting Sable Comm. v. F.C.C.*, 492 U.S. 115, 126 (1989)).

In an attempt to try to avoid the obvious unconstitutionality of the New Provision, the State makes the same losing *Ginsberg* argument as did the defendants in *Reno I, Reno II* and *Johnson*. The State argues that because the New Provision tracks the language of *Miller v. California*, 413 U.S. 15 (1973) and *Ginsberg v. New York*, 390 U.S. 629 (1968), it is constitutional. However, in *Ginsberg*, the Supreme Court did not approve the type of wholesale ban on speech "harmful to minors" which would result from implementation of the New Provision. Rather, the Court created a category of non-obscene speech that was *constitutionally protected for adults* even though it could be restricted for sale to children.

Recognizing these time-tested principles, the courts in *Reno* and *Johnson* both specifically held *Ginsberg* inapplicable because, unlike the statute in *Ginsberg*, the Internet statutes at issue in *Reno I, Reno II* and *Johnson*, prevent adults from accessing materials arguably harmful only to minors. The New Provision is no different. For instance, under the New Provision, an adult conversing with another adult on a bulletin board, in a chat room, or on a website about a nude painting or medical problem related to sexual intercourse, which could be construed by some persons as containing material harmful to minors, could be criminally penalized if a minor intercepted their conversation. Similarly, those who have a more limited view of appropriate discussion topics among adults could impose a "heckler's veto" by announcing the presence of a minor, whether or not a minor is in fact present. *Reno I*, 521 U.S. at 880. As a consequence of this overbroad New Provision, adults would be forced to self-censor their speech or stifle it completely, thus resulting in an impermissible restriction on speech.

B. The New Provision Is Substantially Overbroad Because It Criminalizes Speech That Is Constitutionally Protected For Older Minors

The New Provision is also unconstitutionally overbroad because it proscribes speech that is constitutionally protected for minors, especially older minors. The First Amendment protects minors, as well as adults. The Supreme Court teaches that minors have the constitutional right to speak and to receive the information and ideas necessary for their intellectual development and their participation as

citizens in a democracy,[4] including non-obscene information about reproduction and sexuality. *Carey v. Population Servs., Int'l.*, 431 U.S. 678, 693-95 (1977). Thus, it is unconstitutional for the government to restrict minors' participation in the marketplace of ideas with certain exceptions not relevant here.

The statute impermissibly burdens the right of older minors to obtain ideas and information about sexuality, reproduction and the human body – subjects which are of special interest to maturing adolescents. The New Provision makes no distinction between "nudity" and "sexual conduct" that may arguably be inappropriate for younger minors and "nudity" and "sexual conduct" – such as explicit safe sex information – that may be valuable when communicated to teenagers.

The fact that the statutory definition of "harmful to minors" basically parallels that blessed by the U.S. Supreme Court in *Ginsberg*, as modified to meet the standard enunciated in *Miller*, does not solve the problem. There is an important and dispositive difference between a "sale" prohibition, like that in *Ginsberg*, and broad generally applicable prohibitions like those at issue here. While a traditional *Ginsberg* sales prohibition permits one to distinguish among minors of differing ages and maturity levels, the general prohibition of the New Provision does not permit such a distinction.[5] The decision of the U.S.

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[4] *See, e.g., Board of Educ. v. Pico*, 457 U.S. 853, 864 (1982); *Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975); *Tinker v. Des Moines Indep. Comm. School Dist.*, 393 U.S. 503 (1969); *West Virginia State Bd. Of Educ. v. Barnette*, 319 U.S. 624 (1943).

[5] The traditional meaning of "harmful to minors" considered the appropriateness of the material in the context of the age and maturity of the specific minor to whom the material was sold. *See, e.g.,* Illinois Supreme Court Committee on Pattern Jury Instructions, Illinois Pattern Jury Instructions § 9.31A (1992): "You should consider whether the predominant appeal of the material is to a prurient of interest by judging it with reference to average children of the same general age of the child to whom such material allegedly was offered, distributed, sent, or exhibited, unless it appears from the nature of the matter or the circumstances of its dissemination, distribution, or exhibition that it is designed for specially susceptible groups. In that case, you should judge the predominant appeal of the material with reference to the group who was intended to or probably would receive it."

Supreme Court in *Virginia v. American Booksellers Ass'n*, 484 U.S. 383 (1988), demonstrates that wide-ranging prohibitions such as the New Provision fall afoul of the First Amendment unless the meaning of "harmful to minors" is so narrow that it only applies to an insignificant amount of expressive materials.

Recognizing this problem, courts in some states have upheld statutes regulating the dissemination of material deemed "harmful to minors" only after construing them to prohibit solely that material that would lack serious value for older minors. *See American Booksellers v. Webb*, 919 F.2d 1493, 1504-05 (11th Cir. 1990) (concluding that "if any reasonable minor, including a seventeen-year-old, would find serious value, the material was not 'harmful to minors'" for purposes of the Georgia statute); *Amer. Booksellers Ass'n v. Virginia*, 882 F.2d 125 (4th Cir. 1989) (concluding that "if a work is found to have a serious literary, artistic, political or scientific value for a legitimate minority of normal, older adolescents, then it cannot be said to lack such value for the entire class of juveniles." (quoting *Commonwealth v. Amer. Booksellers Ass'n*, 236 Va. 168, 372 S.E.2d 618, 624 (1988)); *Davis-Kidd Booksellers v. McWherter*, 866 S.W.2d 520 (Tenn. Sup. Ct. 1993).

Mich. Comp. Laws § 722.674(4)(c) (1999) (hereinafter "M.C.L.") does not cure this constitutional deficiency. That subsection provides that "[i]n determining whether sexually explicit material applies to the prurient interest, the matter shall be judged with reference to average 17-year-old minors." By applying the "17-year-old standard" to only one of the three prongs of the *Ginsberg-Miller* test (prurience, § 722.674(4)(a)(i)), content providers on the web will nevertheless have to censor both (a) that which is considered patently offensive to what the community deems suitable for 12-year-olds, but which is suitable for 17-year-olds and thus is constitutionally protected as to them (§ 722.674(4)(a)(ii)), and (b) that which has no serious value as to 12-year-olds, but which has serious value for 17-year-olds and thus is constitutionally protected as to them (§ 722.674(4)(a)(iii)).

For these reasons, like the CDA and the New Mexico statute, the New Provision is an overbroad content-based restriction of constitutionally permissible speech which does not withstand strict scrutiny. Although the New Provision may be minutely different from the statutes in *Reno I* and *Johnson*, "the essence of the Supreme Court's rationale [in *Reno I*], and the similarities between the [] statutes, do

compel the same result." *Johnson*, 194 F.3d at 1158. That result is to find the New Provision unconstitutional.

C. The New Provision Cannot Be Narrowly Construed To Avoid Its Constitutional Defects

The New Provision is susceptible of no narrowing construction that would make it constitutional. No fewer than seventeen federal judges - - including all nine Supreme Court justices - - have rejected a narrowing construction in striking down statutes similar to the New Provision. *See Reno I; Reno II; Johnson.* The reason is simple: until technology is developed which allows an Internet speaker to definitively contain his speech to adults, any attempt to restrict Internet speech harmful to minors other than in a one-to-one closed circumstance will effect a ban on constitutionally permissible adult communication over the Internet.

Nor can the State advance any reasonable narrowing construction. A court may not "rewrite a … law to conform it to constitutional requirements." *Reno I*, 521 U.S at 854-55 (*quoting Virginia,* 484 U.S. at 397); *Johnson*, 194 F.3d at 1159 (same). Rather, it is black letter law that a court may impose a narrowing construction to save an otherwise unconstitutional statute only where the statute is "readily susceptible" of that construction. *Virginia*, 484 U.S. at 397. This is not such a case.

Fully aware of these precedents and the seeming technological impossibility of narrowing the New Provision, the State insists on pressing forward with the very same construction already rejected by both the *Reno I* and *Johnson* courts: that the New Provision's "knowledge" requirement when coupled with its "specific minor" requirement defeats overbreadth. The State's argument conflicts directly with the Supreme Court's decision in *Reno I* that "[e]ven the strongest reading of the 'specific person' requirement cannot save the statute." *Reno I*, 521 U.S. at 880. The State is unable to advance any reason why the result here should be any different.

The State proposes that, under the New Provision, " a speaker is only liable if the speaker has *actual knowledge* that the person the speaker is *specifically communicating* with is a child." Br. at 20 (emphasis added). Thus, it argues, the types of "[g]eneral speech in a chat room [or] the posting of

material on a web page" with which the courts were troubled in *Reno I* and *Johnson* "are not within the purview of [the New Provision, rather] [o]ne-on-one communication is what is required." *Id.*

The words "actual knowledge" appear nowhere in the New Provision. In fact, this proposed interpretation is directly at odds with the statutory language itself. Under the New Provision, "[a] person knows the status of a minor if the person is either aware that the person … is under 18 years of age or *recklessly disregards a substantial risk* that the person … is under 18 years of age." M.C.L. § 722.675(4) (emphasis added). As discussed above, the Supreme Court found that "[g]iven the size of the potential audience for most messages, in the absence of a viable age verification process, the sender must be charged with knowing that one or more minors will likely view it." *Reno I*, 521 U.S. at 876.

In a futile attempt to distinguish the New Provision from this controlling precedent, the State argues that the New Provision is much narrower than the CDA. Incredibly, the State's argument in support is that because *Reno I* was decided before enactment of the Michigan statute, this Court must interpret the New Provision to require the type of specific intent described in *Reno I*. Br. at 20. Of course, the Court is required to do no such thing, as the absence of any case citations on the point make clear.

Moreover, as in *Johnson* and *Reno I*, the New Provision does not, as the State contends, criminalize only "one-on-one" communications where the only recipient is a single minor. In fact, it forbids dissemination of materials to "one or more specific minors." M.C.L. § 722.675(7). Further, as the Tenth Circuit noted in *Johnson*, interpreting the New Provision to apply solely to communications from a single adult to a single child would lead to the absurd result that no violation of the statute would occur if a person sent a message to a minor and an adult or to a chat room full of minors without specifically targeting one or more, but would occur if the same message was sent to one or two "specific" children.

D. There Are Less Restrictive Means Of Furthering The State's Interest

The New Provision fails strict scrutiny even under the narrow construction proposed by the State because it is an ineffective means to further the State's asserted interest and there are less restrictive and

more effective means available. To satisfy strict scrutiny, the State must do more than assert a valid and compelling interest; it must demonstrate that "the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate those harms in a direct and material way." *Turner Broadcasting Sys., Inc. v. F.C.C.*, 512 U.S. 622, 664 (1994). As the District Court held, the State cannot meet this burden.

As the District Court noted, there is a more effective and less restrictive means to prevent children from being exposed to sexually explicit material harmful to them: parental monitoring. Such monitoring, in the form of blocking and filtering devices, subscriptions to child-friendly ISPs, as well as old-fashioned visual monitoring of children's whereabouts on the Web, will be more effective at protecting children from harmful speech while protecting First Amendment interests.

II. The New Provision Violates The Commerce Clause

The national scope and breadth of *amici*, representing all fifty states of the United States, highlights the national impact of Michigan's regulation of Internet content. As more extensively discussed in plaintiffs-appellees' brief and supported by the findings of the trial court (findings 28-37), there is no way for *amici's* members, wherever located, which have websites or provide content for the Internet, to avoid regulation by the State of Michigan. As the court below, the U.S. District Court for the Southern District of New York in *Pataki* and the Tenth Circuit in *Johnson* all held, the imposition of Michigan law outside the state and the potential for the imposition of 50 differing regulatory schemes on interstate businesses is intolerable and in conflict with the Commerce Clause of the United States Constitution.

CONCLUSION

For the reasons set forth above, *amici* urge this Court to affirm the decision of the District Court.

Dated: February 3, 2000

Respectfully submitted,

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Certificate of Compliance

I certify that this brief complies with the type-volume limitation of F.R.A.P. 32(a)(7)(B). Using Microsoft Word '95 word processing program the word count is 3,845.

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Michael A. Bamberger

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APPENDIX A: THE *AMICI*

The American Booksellers Foundation for Free Expression ("ABFFE") was organized in 1990. The purpose of ABFFE is to inform and educate booksellers, other members of the book industry, and the public about the dangers of censorship and to promote and protect the free expression of ideas, particularly freedom in the choice of reading materials. ABFFE's members have websites and contribute to the websites of others.

The International Periodical Distributors Association ("IPDA") is the trade association for the principal national periodical distributors engaged in the business of distributing or arranging for the distribution of paperback books and periodicals to wholesalers throughout the United States for ultimate distribution to retailers and the public.

The Association of American Publishers, Inc. ("AAP") is the major national association in the United States of publishers of general books, textbooks and educational materials. Its approximately 200 members include most of the major commercial book publishers in the United States. For AAP's members, the Internet creates a new "electronic" marketplace in which both product and mode of delivery are assuming different forms. Increasingly competing for the consumer dollar with traditional paper versions of all manner of literature are works of similar content online. AAP's members are eager participants in this exciting new marketplace.

The Comic Book Legal Defense Fund ("**CBLDF**") is an organization dedicated to defending the First Amendment rights of the American comic book industry. CBLDF represents artists, publishers, and distributors, as well as the broader community of specialty retailers and readers. Largely because comics are a graphic-based art form, the comic industry was quick to embrace the Internet, not only as a means to advertise and distribute its product, but as a new environment in which to create comics. Today, the largest individual retailers of comic books in the United States are Internet-based and online commerce in comics is steadily increasing. Past experience has shown that comics are particularly vulnerable to misapplication of "harmful-to-minors" standards as they are commonly perceived as an inherently juvenile art form. In reality, however, many comics are read by and geared to an adult audience. The CBLDF, therefore, fears that the New Provision would have a chilling effect on its many members who continue to explore and evolve the comic book art form.

The Freedom to Read Foundation ("FTRF") is an organization established in 1969 by the American Library Association to promote and defend First Amendment rights, support the rights of libraries to include in their collections and make available to the public any work they may legally acquire, and help shape legal precedent for the freedom to read on behalf of all citizens. The FTRF and its library members serve both as access and content providers on the Internet. Many member libraries post a diverse array of content on their Web sites, as well as sponsor chat groups. In view of past attempts by some persons to ban literature and reference items from library collections, many of the FTRF's members fear prosecution under COPA should they post materials on the Internet that might be deemed "harmful to minors" in some community. FTRF is thus concerned that the library patrons served by FTRF's members will be denied access to constitutionally-protected materials.

Magazine Publishers of America ("MPA") is a national trade association including in its present membership more than 200 publishers of approximately 1,200 consumer interest magazines sold at newsstands and by subscription. MPA member publications provide broad coverage of domestic and international news, literature, religion, law, politics, science, agriculture, business and industry, and many other interests, avocations and pastimes of the American people. MPA members actively publish a substantial volume of content on the Internet and utilize the Internet in a variety of ways, including solicitation via Web sites of subscriptions for their publications, marketing of print and online publications to advertisers and agencies, promoting events, and sharing information with other publishers. Some MPA members publish electronic versions or excerpts from their magazines that might in some communities be deemed "harmful to minors." MPA believes that credit card verification and adult

identification systems would be economically burdensome and technologically infeasible for its members, and would, in the end, repel rather than attract visitors to its members' Web sites.

The National Association of College Stores ("NACS") is a trade association composed of approximately 3,000 college stores located throughout the United States. NACS fears that certain materials that might be considered "harmful to minors" by a local federal prosecutor might be posted or sold over the Internet by a college store or professor in the context of online classes, or even by an entity linked to a college or college store Internet site. NACS's members will thus be required to restrict the teaching and other college-related activities promoted through this medium.

The Periodical and Book Association of America, Inc. is an association of magazine and paperback book publishers who distribute their wares through independent national distributors, wholesalers, and retailers, many of whom conduct business over the Internet.

The Publishers Marketing Association ("PMA") is a trade association representing more than 3,000 publishers across the United States and Canada. Many of PMA's members are small, independent publishers who publish a variety of works, including many concerning controversial topics or involving experimental approaches to writing, which more mainstream publishers have not acquired. A number of PMA members have developed Web sites which offer book samples, chat rooms, and other for a for the discussion of their publications. The Internet is an essential tool for marketing and disseminating the unique voices represented by PMA's members, and often is a significant source of their publishing income. The imposition of criminal sanctions for communications containing materials deemed "harmless to minors" is a real and tangible threat to these independent publishers, who provide a rich alternative to mainstream publishing houses. The PMA believes that the use of credit card and other user-identification systems defeat the purchase of this democratic medium by discouraging the informal perusal of works otherwise not accessible to the majority of Internet users.

The Recording Industry Association of America, Inc. ("RIAA") is a trade association whose member companies produce, manufacture and distribute over 90% of the sound recordings sold in the United States. The RIAA is committed to protecting the free expression rights of its member companies.