

ADULT INDUSTRY UPDATE

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With the end of the century being counted in months, the adult industry appears to have a bright economic future, but one fraught with constant battle. 1998 was another record year for adult video tapes, with the number approaching almost 10,000 new releases. I was fortunate enough to witness first hand the growing popularity of the adult video section at the Consumer Electronics Show (CES) in Las Vegas, Nevada, last month. Also notable was the nearly doubling in size of Interactive 2000, a trade show devoted to adult Internet sites, immediately following the CES show. Adult stars such as Ron Jeremy were also in attendance at the Internet convention for the first time. This phenomena confirms that although the video tape medium is growing to meet consumption, the heir apparent is clearly the World Wide Web. The rapid development of the online adult culture presents many challenges to those entrusted with creating laws applicable to this new medium, as well as those charged with interpreting and implementing new laws: the judges.

Legislating and judging controversial issues such as adult entertainment on the Internet will require the abandonment of old ideas of isolationism, and the acceptance of a global culture. The development of this new medium is too important to be stifled by the puritan notions of those who would censor an adult's right to choose his or her own form of entertainment.

Unfortunately, with the conspicuous exception of the unanimous Supreme Court's ruling on the Communications Decency Act (CDA), striking down that pitiful attempt at censorship, the track record of the courts nationwide when confronted with adult entertainment issues is abysmal. Virtually every decision published by the courts in the last two years has been against the parties seeking to present any form of adult entertainment. In New York, the Supreme Court has rubber stamped Mayor Giuliani's anti-smut campaign and held that the City was justified in eliminating virtually all of the preexisting adult businesses near Times Square. Numerous other courts have upheld similar eradication through zoning laws, severely restricted the hours of operation upon simple retail stores selling adult videos, imposed distance requirements between exotic dancers and patrons, upheld burdensome licensing processes, and approved of bad faith law enforcement actions against those who dare to exercise their First Amendment right to provide erotic entertainment.

Using these traditional laws to regulate adult Internet sites out of existence will pose a significant problem for the censors, however. Hours of operation restrictions will become irrelevant in a global environment where it is always two o'clock in the afternoon somewhere. Geographic zoning laws are likewise useless since web sites are not located in a geographic "zone", but exist only in the world wide cyber-zone. Distance restrictions are of no value to the censors since the government cannot legislate how close a private individual can get to his computer screen. The traditional type of harassment by law enforcement against adult entertainment establishments such as raids and intimidation, will be likewise ineffective against a computer server sitting alone in a dark office.

The immediate temptation will be to use such existing concepts as obscenity and child pornography laws to censor the Internet. And while we know that such prosecutions are being put together as we speak, these efforts will likewise be unsuccessful in altering the content available on the Internet given the ability to disseminate this information from global locations unregulated by vintage sex laws. Outdated concepts such as "obscenity" must give way to the free flow of information and right to free expression cherished in our country. Such lofty goals may, however, be too much for our sitting judges who are, more often than not, out of step with changing social

mores and the advent of new technology. As one federal judge recently noted in a sexual harassment case, federal judges are ill-suited to make decisions as to what is or is not appropriate sexual interaction between the genders. So we turn to our legislators in the (hopefully not vain) attempt to protect free speech, including erotic speech. Currently, the legislative branch of government is largely in the control of right wing conservatives who stand ready to react to complaints by fundamentalist groups about immorality in modern media. These knee jerk reactions have produced such legal gems as the doomed CDA, and the current hotbed of litigation, the Child Online Protection Act. As one lawmaker put it: "Sure it might be unconstitutional, but we have to do something about children's access to pornography on the web." With such blatant disregard for the oath of office,...it is no wonder then that groups such as Free Speech, EFF, the ACLU and others have their hands full in fighting censorship attempts across the country. It is only a matter of time until adult Internet providers form their own trade association to protect the interests unique to that industry. ASM readers should be acutely aware of the activities of such watchdog groups, and support them whenever possible. The continued viability of the industry depends on it.

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