

ADULT INDUSTRY UPDATE

By Lawrence G. Walters

www.FirstAmendment.com

In this era of governmental hostility toward the adult entertainment industry, the censors are suffering some high profile setbacks in the courts. First, it was the United States Supreme Court that unanimously rejected the Government's first Internet censorship attempt called the Communications Decency Act, which sought to prohibit all "indecent" material from the Internet. The Feds responded with the Child Online Protection Act, which tried to prohibit minors from gaining access to adult material on the Web by requiring credit cards or age verification systems. This law was immediately challenged and enjoined based on the same free speech concerns expressed by the United States Supreme Court in the Decency Act case. We have recently learned that the Government has appealed this decision to the Circuit Court of Appeals. This case should be closely monitored by anyone wishing to continue unrestricted access to adult materials on the web.

The next victory came from Montgomery, Alabama where U.S. District Judge Lynwood Smith threw out an Alabama law which banned "sex toys" such as vibrators and dildos. Any person selling or distributing such devices faced up to a year in jail or a \$10,000.00 fine. The law was challenged by six women who either wanted to sell the devices or claimed that vibrators are necessary for sexual gratification which they could not obtain otherwise. The Court found that the devices are not obscene under the traditional definition, and that the law would deny "therapy for, among other things, sexual dysfunction." Great news for the women of Alabama!

In another Internet case, a U.S. Court of Appeals in Boston ruled that nudity itself is not sufficient to make a picture "pornographic". In this case, a man downloaded a nude picture of a young girl standing on the beach from the Internet. The man was charged with trafficking in child pornography and received a five year prison sentence. The appeals court threw out the conviction and sentence, ruling that just because a person may find a nude picture erotic is insufficient to turn the photo into child pornography. "If [the defendant's] subjective reaction were relevant, a sexual deviant's quirks could turn a Sears catalog into pornography." Be careful with those bathtub photos of your kids, folks.

Finally, an adult video store owner in Utah County, UT, breathed a sigh of relief with his acquittal on charges of distributing obscenity. Larry Peterman, the owner of the Movie Buffs video chain in Utah, embarrassed prosecutors by obtaining "not guilty" verdicts on all 15 charges. The process of vindicating his rights was not painless, however. During his 2 ½ year ordeal, Peterman lost his business, his wife, and his reputation after police raided 2 Movie Buffs video stores in 1996 and seized nearly one thousand tapes from the adults-only rooms. Lets hope a civil rights suit will follow and really teach these guys a lesson.

While the courts have not been overwhelmingly friendly to adult entertainment issues during the past couple of years, it is refreshing to see that there are some boundaries to the Government's censorship efforts. Unrestrained, groups like Morality in Media will pressure politicians and prosecutors to punish individuals who choose to exercise their right to free speech by disseminating

sexually oriented materials to the point where supply dries up because no one is willing to take the risk. Numerous free speech heroes from the adult video industry have fallen on the sword for constitutional rights by enduring countless prosecutions and even jail terms for their involvement with sexually explicit materials. If it were not for free speech warriors such as Larry Flint, Al Goldstein and Bob Guccione the puritanical censors would have had their way a long time ago and cleansed mainstream media for the rest of us.

Several free speech heroes are about to be made on the Internet, although some unintentionally. While the government has largely ignored the proliferation of sexual materials on the web, it cannot do so for long and some webmasters will have the guts to stand up and fight. Two of those heroes are Tammy and Herbert Robinson who have retained our services to fight the first Internet obscenity prosecutions in America, arising out of Polk County, Florida. We have asked the court to dismiss this case based on the Right of Privacy since all actions taken by the Robertsons occurred in the sanctity of their own private residence. We haven't even started with the free speech issues, yet.

Perhaps these positive judicial decisions reflect a recognition by the courts that the censorship groups are testing the boundaries of the First Amendment with their efforts. That's good news for the next round of soldiers preparing to go to battle to protect all of our rights.