

No. 00-1293

IN THE

JOHN ASHCROFT, Attorney General,

Petitioner,

v.

AMERICAN CIVIL LIBERTIES UNION, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Brief of The Association of American Publishers, Inc.; The American Society of Newspaper Editors; The Center for Democracy and Technology; The Comic Book Legal Defense Fund; The Computer & Communications Industry Association; The Freedom to Read Foundation; The National Association of Recording Merchandisers; Newspaper Association of America; The Periodical and Book Association of America, Inc.; The Publishers Marketing Association; The Recording Industry Association of America; and The Society for Professional Journalists as *Amici Curiae* in Support of Respondents

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INTEREST OF THE *AMICI*

This brief *amici curiae* is submitted on behalf of a spectrum of businesses, trade associations, and public interest

Amici are deeply concerned about Congress' latest attempt to censor what this Court has recognized to be a "dynamic, multifaceted category of communication" – the Internet – by transforming it into a child-proof medium whose "level of discourse" would be reduced to that "suitable for a sand box." *Bolger v. Young Drug Prods. Corp.*, 463 U.S. 60, 74 (1983). The First Amendment does not allow such misguided sanitizing of public discourse.

Congress' first effort at regulating speech on the Internet took the form of the Communications Decency Act of 1996, Pub. L. No. 104-104, §502, 110 Stat. 103 (hereinafter "CDA"). That legislation criminalized speech over the Internet that was "patently offensive" or "indecent" for minors. In the ensuing legal challenge to the CDA, first a three-judge panel of the Eastern District of Pennsylvania, and then this Court, found the CDA to be facially unconstitutional because of its inevitable consequence: "In order to deny minors access to potentially harmful speech, the CDA effectively suppresses a large amount of speech that adults have the constitutional right to receive and to address to one another," thereby impermissibly "reduc[ing] the adult population . . . to . . . only what is fit for children." *ACLU v. Reno*, 521 U.S. 844, 874-75 (1997) ("*ACLU*") (citations omitted).

After the CDA was struck down, Congress again attempted to enact "minors access" legislation for the Internet. Unfortunately, the Child Online Protection Act, Pub. L. No. 105-277, Div. C, §§ 1401-1406, 112 Stat. 2681-736 to 2681-

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COPA in attempting to suppress material on mainstream Web sites such as the following:

- A publisher's Web site that makes available excerpts from a romance novel that contain graphic sexual content and photographs of male genitalia from a fine art photography book
- An online bookstore's Web site that contains quotations from books in its catalogue, including from textbooks concerning human sexuality
- An online library's Web site that allows users to "check out" and read books about human sexuality
- A record company's Web site that includes clips of songs or videos containing sexually-explicit material
- A Web site for fans of a musician or author that offers a message board or chat room where sexually-explicit messages have been posted
- An online dictionary that includes definitions of various sexual practices
- Search engines that provide hyperlinks to Web sites

material that is harmful to minors’ ”). Thus, the government’s contention that “COPA’s principal effect is to require . . . commercial pornographers to place their free teasers behind adult verification screens,” Brief for the Petitioner (“Pet. Br.”) at 39, finds no support in the law itself and thus affords no protection to *amici*’s constituents. As the district court observed, “[t]here is nothing in the text of the COPA . . . that limits its applicability to so-called commercial pornographers only.” *COPA I*, 31 F. Supp. 2d at 480.

Moreover, because COPA imposes “contemporary community standards” as to what is of “prurient interest” and “patently offensive with respect to minors” on speech available nationwide on the World Wide Web, it effectively gives a heckler’s veto to communities with the most restrictive standards. As the court of appeals noted, because “Web publishers cannot restrict access to their site based on the geographic locale of the Internet user visiting their site,” *COPA II*, 217 F.3d at 176, they will be “compelled to abide by the ‘standards of the community most likely to be offended by the message.’ ” *Id.* at 177 (quoting *ACLU*, 521 U.S. at 877-78). Incidents involving material widely considered American literary classics, such as the removal of the Pulitzer Prize-winning novel *To Kill A Mockingbird* from the required reading list at an Oklahoma high school,³ and one Florida county Board

that is susceptible neither to geographic nor age-based restriction of its audience.

Rather than being threatened with civil or criminal sanctions, the enterprises represented by, and whose Internet speech is facilitated and encouraged by, *amici*, are constitutionally entitled to participate fully in the growth and development of the Internet. Indeed, *amici* every day work in myriad ways to fulfill the *ACLU* courts' 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*'s constituents. And this is just the beginning.

In addition, *amici* in the Internet/online service provider industry have built dynamic, two-way communications networks that permit users to send and receive information of their choice, thereby enhancing the uniquely user-controlled and interactive quality of this medium. They are investing in ever-faster networks and are expanding the array of rich multimedia applications available to consumers.

COPA threatens to impede this exploration by adopting "rules of the road" that invite the cleansing from central Internet speech sites of speech for "commercial purposes" that arguably is not suitable for minors, all in derogation of the First Amendment. That a particular speaker may publish for "commercial purposes" does not diminish his or its First Amendment freedom. This nation's free-speech tradition is fulfilled no less robustly by the *Philadelphia Inquirer* than a not-for-profit newspaper or newsletter; no less by Time Warner's Cable News Network than C-SPAN; no less by Barnes

& Noble than a public library. The CDA litigation reaffirmed that the ability of the Internet to achieve its potential as a speech medium is dependent upon the diversity of the speech it protects and fosters. Because the inevitable consequence of COPA is a substantial contraction of such speech, this Court should affirm the court of appeals and strike it down as unconstitutional on its face.

SUMMARY OF ARGUMENT

In *ACLU*, this Court reasoned that the burden imposed by the CDA on adult speech was unacceptable because the technological means proposed by the CDA for screening unsuitable materials from minors while, at the same time, not unduly burdening adult speech were, in combination, ineffective and unproven. (These proposed screening mechanisms were presented in the CDA as affirmative defenses.) At the same time, the Court found that a less restrictive means of accomplishing the statute's objectives — user-driven technology that gives parents greater ability to regulate their children's access to material they believe is inappropriate for them to receive over the Internet — would soon be widely available.

Central to the Court's ruling in *ACLU* were the unique attributes of the Internet, which make it fundamentally different from any medium preceding it: its ability to support a spontaneous and cost-free "never-ending worldwide conversation," in which each participant, irrespective of his or her means, has a voice. *See American Civil Liberties Union v. Reno*, 929 F. Supp. 824, 883 (E.D. Pa. 1996), *aff'd*, 521 U.S. 844 (1997). This Court in *ACLU* contrasted the Internet with the broadcast medium in that "the 'odds are slim' that [an Internet] user would enter a sexually-explicit site by accident." *See ACLU*, 521 U.S. at 854.

Congress' "fix" in COPA fails to remedy the CDA's fundamental defect. Despite attempts to circumscribe the scope of the restriction, COPA still impermissibly burdens constitutionally-protected speech because its regulations are not

narrowly tailored to meet a compelling government interest, as strict scrutiny requires. Specifically, despite the purported narrowing of its application to “commercial speech” on the World Wide Web and its revised “harmful to minors” test, COPA’s attempted protection of minors still would deprive adults of speech that is constitutionally-protected as to them. This attempted deprivation still would violate the First Amendment, and COPA’s affirmative defenses are insufficient to remedy the threat of criminal prosecution and sanctions for entities that offer constitutionally-protected speech. In addition, as the court of appeals recognized, the “community standards” aspect of COPA is unworkable in the “virtual” community of the Web and would result in the suppression of a substantial amount of speech that Web users are constitutionally entitled to receive. COPA’s provisions therefore inevitably will result in the chilling of speech in the most democratic medium ever developed.

ARGUMENT

I.

Amici recognize that the government has a compelling interest in protecting minors, and they share the government's concern with the psychological well-being of minors. But "even where speech is indecent and enters the home, the objective of shielding children does not suffice to support a blanket ban if the protection can be accomplished by a less restrictive alternative." *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 814 (2000). And even if speech is not completely banned but merely burdened, the restrictions nonetheless require strict scrutiny by the Court. *See id.* at 812 ("The distinction between laws burdening and laws banning speech is but a matter of degree. The Government's content-based burdens must satisfy the same rigorous scrutiny as its content-based bans.").

The government thus bears the burden of demonstrating that the regulations at issue are the least restrictive means of accomplishing a compelling government interest. *See Playboy*, 529 U.S. at 818 ("When First Amendment compliance is the point to be proved, the risk of non-persuasion — operative in all trials — must rest with the Government, not with the citizen.") (citations omitted). *Amici* submit that the government cannot meet this burden with respect to COPA because the content-based restrictions that COPA places upon Internet speech effectively deprive adults of access to protected speech.

B. The Constitutional Flaws Inherent in the CDA Are Not Remedied by COPA

As explained below, the means by which Congress attempted to remedy the constitutional defects in the CDA that were identified by this Court in *ACLU* are cosmetic in nature and do not rectify the underlying infirmities that continue to pervade — and require the invalidation of — COPA on the ground that it is overbroad and will chill a substantial amount of constitutionally-protected expression.

1. Whether speech is commercial or noncommercial is immaterial to its status under the First Amendment

Congress' attempt to limit COPA's scope to communications made "for commercial purposes," 47 U.S.C. § 231(a)(1), does not remedy the facial overbreadth of the statute. In drawing this distinction between commercial and noncommercial speech, COPA misapprehends the findings in the CDA litigation, which manifested concern over the censorious impact of federal "minors access" legislation on *all* manner of Internet speech, wherever originated, and whether profit-motivated or not. *See ACLU*

that the dissemination [of speech] takes place under commercial auspices.”).

It thus is by no means clear that COPA “applies only to entities that display harmful material regularly and for profit,” Pet. Br. at 40, as the government asserts, or even whether “for profit” would cover material made available for free. For instance, if it is to reach the free teasers that commercial pornographers provide, COPA must extend potentially to all speech provided on the Web by a commercial entity even if that speech is provided for free, *i.e.*, the entity does not seek to profit directly by means of the speech but rather seeks to generate interest in its profit-making activities. If that is so, then free excerpts from forthcoming novels, news and magazine articles offered by advertiser-supported Web-based publications, and artistic images posted by art galleries to generate interest in exhibitions all potentially would be subject to the Act.

Furthermore, COPA’s “commercial purposes” requirement is unacceptably vague.⁵ What is the meaning of “regular” versus

5. 47 U.S.C. § 231(e)(2) provides:

(A) Commercial purposes. A person shall be considered to make a communication for commercial purposes only if such person is engaged in the business of making such communications.

(B) ~~o e~~ ~~in~~ ~~rl~~ § 5 bc T 2 y s u b a s 4 . 0 f g n i k a m s person

“principal,” and how does the latter differ from the former? Is a covered entity one that regularly transmits communications that are harmful to minors, or simply one that regularly transmits communications over the Web? These uncertainties as to COPA’s intended reach are reflected in the Department of Justice’s proposed regulations, 47 C.F.R. § 1.1201, which define a “covered entity” as a person or entity that “regularly transmits communications that are harmful to minors” or “regularly transmits communications over the Web.” These definitions are broad and could encompass a wide range of entities, including those that are not primarily engaged in the transmission of communications.

unconstitutional. COPA will have just such an unconstitutional effect.

The government asserts that the “harmful to minors” standard limits COPA’s coverage to “materials that are clearly pornographic,” Pet. Br. at 36, and that it “narrowly cabins the material that is covered by the Act, so that COPA applies primarily to pornographic teasers that appear on the sites of commercial pornographers.” *Id.* at 33-34. Although the government does not contend that respondents are commercial pornographers, it asserts that “[s]ome of respondents’ exhibits . . . plainly do test, and likely exceed, the legal limitations imposed by those three prongs [of the ‘harmful to minors’ test].” Pet. Br. at 37. This claim weakens the government’s assertion that COPA applies “primarily” to Web sites devoted to commercial pornography, whose operators “already place most of their pornographic material behind adult verification screens” and highlights the broad imprecision of COPA’s language, which will lead *amici* to self-censor their Web sites rather than risk prosecution.

The danger of prosecution is underscored by the Department of Justice’s pre-enactment, candid appraisal of the “harmful to minors” standard as another of “the more confusing or troubling ambiguities” in the statute. DOJ Ltr. at 4. *Amici* agree with the government’s pre-litigation appraisal. The “harmful to minors” standard, on its face, is neither clear nor

includes that which lacks serious value “for all minors, for some

Even if it were technologically feasible to block minors from materials that are “harmful to minors,” the Court found that there is no way to “block their access to that material and still allow them access to the remaining content, even if the overwhelming majority of that content was not indecent.” *ACLU*, 521 U.S. at 856 (quotations omitted). *See also COPA I*, 31 F. Supp. 2d at 483. This problem exists regardless of whether the statute applies to the Internet as a whole or is limited to the World Wide Web. In either case, the regulations will chill protected speech in violation of the First Amendment. *See Secretary of State of Maryland v. Joseph H. Munson Company, Inc.*, 467 U.S. 947, 967-68 (1984) (“Where, as here, a statute imposes a direct restriction on protected First Amendment activity, and where the defect in the statute is that the means

Responding to this concern, the commercial entities that comprise many of *amici*'s constituents have in recent years enhanced and refined their models for doing business on the Web, and the model that is becoming prevalent is the advertiser-supported site that can be accessed by users free of charge. *COPA I*, 31 F. Supp. 2d at 486 (“the most popular business model [on the Web] is the advertiser supported or sponsored model, which is illustrated by the variety of online magazines which operate on the Web”). While most sites devoted exclusively to “pornography” do require credit cards or adult verification, advertiser-supported sites are an important part of the array of options available for those seeking more diverse content.

Were advertiser-supported Web sites to employ the adult verification schemes required by the COPA, they would likely alienate many users. By effectively forcing users of the Web to register with the sites they choose to access, implementation of the affirmative defenses will require individuals to disclose personal information (*e.g.*, name, address, social security number, credit card) to a third party prior to being afforded access to constitutionally-protected speech. Reliance on such systems will create records of individuals' First Amendment activities — records that will be available for use and misuse regardless of statutory provisions seeking to protect them.

Conditioning adult access to constitutionally-protected speech on the disclosure of one's identity raises troubling First Amendment and privacy issues. The defenses pose an untenable choice to individuals seeking access to information: protect privacy and forgo access to information, or exercise First Amendment freedoms and forgo privacy. *See ACLU*, 929 F. Supp. at 847 (“adult users, particularly casual Web browsers, would be discouraged from retrieving information that required use of a credit card or password”).

As the Third Circuit concluded in striking down a law requiring adults to obtain access codes or other identification numbers in order to place a call to a telephone message service:

ACLU, 929 F. Supp. at 855-56. *See also COPA I*, 31 F. Supp. 2d at 497 (entering preliminary injunction based in part on COPA's "imposition of possibly excessive and serious criminal penalties" and placement of "the burden of establishing an affirmative defense [on the speaker]").

Moreover, compliance with the affirmative defenses will essentially require Internet purveyors of speech for "commercial purposes" whose sites contain some degree of sexually-frank content to create "adults-only" zones, thereby stigmatizing the speech by equating it with pornography. *See Shea v. Reno*, 930 F. Supp. 916, 943 (S.D.N.Y. 1996) (finding it burdensome for commercial and noncommercial content providers of non-pornographic content, as well as users wishing to access such material, to associate with adult verification services, which are identified with pornographic materials and users of same), *aff'd*, 521 U.S. 1113 (1997);

Finally, Web sites, particularly many created and maintained by *amici's* constituents, are increasingly employing interactive technology, which permits visitors to communicate with one another in discussion groups and chat rooms, as well as by electronic mail. To the extent the law applies to these features of Web sites, it causes additional burdens. While the employment of interactive technology greatly enhances the First Amendment value of the Internet by permitting listeners seamlessly to transform into speakers and speakers into listeners, implementation of one or more of the verification schemes envisioned by the government will bring such technological strides to a halt.

For one, employment of verification schemes in

or (2) suppress such speech by self-censorship, thereby denying adults access to constitutionally-protected material. Requiring *amici*'s constituents to face this dilemma is antithetical to fundamental First Amendment principles.

C. COPA Is Not the Least Restrictive Means of Protecting Minors from “Harmful to Minors” Material on the Internet

In *ACLU*, the government attempted to meet its burden of proof by relying on “the incorrect factual premise that prohibiting a transmission whenever it is known that one of its recipients is a minor would not interfere with adult-to-adult communications.” *ACLU*, 521 U.S. at 876. As was the case in *ACLU*, this argument must fail here because the decentralized nature of the World Wide Web allows entrée to *all* of the publicly-available information to anyone with Web access. There simply is no way for a content-provider to ascertain whether a particular computer is being operated by an adult or by a minor. Any attempt to protect minors from exposure to a particular type of speech therefore necessarily must take the form of removing targeted speech from the domain of free public accessibility. Accordingly, COPA fails strict scrutiny because it is not narrowly-tailored. Notwithstanding its recognition that blocking or filtering software is “not perfect” in that it is both under- and over-inclusive in the material it blocks and filters, the district court noted that

blocking or filtering technology may be at least as successful as COPA would be in restricting minors’ access to harmful material online without imposing the burden on constitutionally protected speech that COPA imposes on adult users or Web site operators. Such a factual conclusion is at least some evidence that COPA does not employ the least restrictive means.

COPA I, 31 F. Supp. 2d at 497. Several other courts have also recognized that less restrictive alternatives exist.

See, e.g., PSINet, Inc. v. Chapman, 108 F. Supp. 2d 611, 625 (W.D. Va. 2000) (“Less intrusive and more effective means of limiting online access by children to adult materials are widely available to parents and other users who wish to restrict or block access to online sites . . . that they feel are inappropriate.”); *Cyberspace Communications, Inc. v. Engler*, 55 F. Supp. 2d 737, 750-51 (E.D. Mich. 1999) (noting the availability to parents of screening software and taking “judicial notice of the fact that every computer is equipped with an on/off switch”), *aff’d*, 238 F.3d 420 (6th Cir. 2000); *ACLU v. Johnson*, 4 F. Supp. 2d at 1033 (“Commercial online services . . . provide parents with a wide range of mechanisms that parents can use to prevent their children from accessing material online they do not want their children to view). *See also Playboy*, 529 U.S. at 826 (holding that law restricting hours that cable channels may offer sexually explicit programming was not narrowly-tailored, in part because the government “has not shown that . . . a regime of added communication and support [instead of completely blocking the channels during certain hours], would be insufficient to secure its objective”).

In addition, the district court identified aspects of COPA
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COPA I, 31 F. Supp. 2d at 497 (emphasis in original). The existence of these less restrictive alternatives necessarily means that COPA is not “narrowly tailored.”

Further, as the court of appeals noted, COPA is of limited

Congress' attempt to impose the "harmful to minors" test on the World Wide Web.⁹

The court of appeals pointed out that this Court in *ACLU* had noted the problematic nature of "community standards" on the Internet — namely, that "any communication available to a nationwide audience will be judged by the standards of the community most likely to be offended by the message," 521 U.S. at 877-78 — and that it did not believe COPA had sufficiently remedied this problem. *See COPA II*, 217 F.3d at 174. *Amici* agree with that assessment.

The government's assertions that "there is every reason to expect to expect a far greater degree of agreement from community to community concerning what appeals to the prurient interest and is patently offensive with respect to minors" than with respect to what is obscene for adults, Pet. Br. at 38, and that community standards are likely to be "reasonably constant" throughout the country, *id.* at 37 (*quoting* H.R. Rep. No. 775 at 28), are pure speculation, as well as being counterintuitive. Notably, in *Miller v. California*, 413 U.S. 15, 32-33 (1973), this Court adopted a "local," rather than a "national," community standard test for obscenity bas as ut thatnt tcogs aiInter, ads are likvary-13.5 TD -0.0984 T120.5939 T96f

be required to accept sexually-explicit material found tolerable in Las Vegas or New York City. This reality takes on particular significance in the context of the Internet, given the inability of Web site operators to geographically restrict their content.¹⁰

It is, therefore, not the case that there is nothing unreasonable about requiring a “person who chooses to conduct a nationwide business” – a Web site operator – to “observe community standards throughout the nation.” Pet. Br. at 30. In contrast to the owner of a physical store, for example, a content provider on the World Wide Web has no reasonable means of controlling or preventing minors from particular communities from gaining access to material made available to the public through Web sites. *See ACLU*, 521 U.S. at 877. Each case relied upon by the government arose in a context in which the nature of the communication made compliance with local community standards feasible. *See, e.g., Sable*, 492 U.S. 115 (not unconstitutional to require operator of dial-a-porn business to comply with varying community standards); *Hamling v. United States*, 418 U.S. 87 (1978) (affirming conviction under federal statute for mailing obscene brochure and noting that federal obscenity statute need not be interpreted as requiring proof of uniform national standards); *Miller*, 413 U.S. 15 (state may regulate mailing of sexually-explicit brochure if work meets tripartite test); *United States v. 12 200-Foot Reels of Super 8 M.M. Film*, 413 U.S. 123 (1973) (holding constitutional a statute proscribing the importation of obscene motion picture even though the material was for the importer’s private, personal use and possession);

obscene matter).¹¹ In the context of the Web, by contrast, where such compliance is not presently feasible, the First Amendment does not permit the government to require *amici*, who are engaged in the “business” of disseminating expression nationwide, to curtail this expression to conform to the lowest community denominator of what is suitable for minors.

The government further attempts to rescue COPA by analogizing it to constitutionally accepted state display laws, claiming that “Congress adopted the same basic approach for the Web that states have adopted for local stores.” Pet. Br. at 25, 27. But the inability of Web site operators to limit access of minors to their content, without depriving adults of the same material, means that standards that may pass constitutional muster in the physical world cannot be transposed into cyberspace without creating a constitutionally intolerable effect:

Magazines or brochures can be brown bagged or hidden in the backroom of purveyors. With the Internet, you would have to ‘close the bookstore’ because the disseminator and the recipient are not face to face. A magazine can be regulated or censored by the county in which it is located. A person’s age can be verified because that person is physically there, and the disseminator can logically be held responsible for conveying “sexually explicit matter” to a minor. The Internet

11. See also *United States v. Thomas*, 74 F.3d 701 (6th Cir. 1996) (application of community standards to electronic bulletin board upheld where access was limited to members who were given a password after submitting a signed application that required applicant’s age, address, and telephone number); *Crawford v. Lungren*, 96 F.3d 380 (9th Cir. 1996) (statute prohibiting sale or display in unsupervised sidewalk vending machine located in a public place); *Upper Midwest Booksellers Ass’n v. City of Minneapolis*, 780 F.2d 1389 (8th Cir. 1986) (requiring display of harmful-to-minors material in sealed wrapper).

does not distinguish between minors and adults in their audience. To comply with the Act, a communicant must speak only in language suitable for children.

Cyberspace Communications, 55 F. Supp. 2d at 747.¹²

Thus, the court of appeals was correct in concluding that the unique attributes of the Web render unworkable the community standards that have been upheld for communications in other media. A contrary conclusion would force content providers to sanitize their communications “to that which is fit for a sandbox” in accordance with the most restrictive community standards or refrain altogether from engaging in certain valuable speech rather than run the risk of contravening a local prosecutor’s notion of what is “harmful to minors.”

12. In fact, at least one court has justified a ban on student access to material deemed inappropriate for them because the prohibited material is available on the Internet. *See*

CONCLUSION

For the foregoing reasons, *amici* respectfully submit that COPA is an unconstitutional restraint on free speech and that the entry of a preliminary injunction should be affirmed.

Respectfully submitted,

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APPENDIX: *THE AMICI*

The Association of American Publishers, Inc. (“AAP”) is the national trade association of the U.S. book publishing industry. AAP’s 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 societies. AAP members publish hardcover and paperback books in every field, educational materials for the elementary, secondary, postsecondary, and professional markets, computer software, and electronic products and services. The Association represents an industry whose very existence depends upon the free exercise of rights guaranteed by the First Amendment. 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 American Society of Newspaper Editors (“ASNE”) is a nationwide, professional organization of more than 850 members who hold positions as directing editors of daily newspapers throughout the United States and Canada. Founded more than seventy-five years ago to improve the manner in which the journalism profession carries out its responsibilities in providing an unfettered and effective press in the service of the American people, ASNE is committed to the proposition that, pursuant to the First Amendment, the press has an obligation to provide the citizenry of this country with complete and accurate reports.

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The Computer & Communications Industry Association (“CCIA”) is an international trade association whose members include major, midsize, and small independent software providers, computer equipment manufacturers, telecommunications and online service providers, resellers and systems integrators. CCIA’s members collectively generate approximately \$250 billion in revenue annually and have approximately one million employees. For twenty-six years, CCIA has advocated open, barrier-free competition in the computer and communications industry.

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. The FTRF is thus concerned that the library patrons served by the FTRF’s members will be denied access to constitutionally-protected materials.

The National Association of Recording Merchandisers (“NARM”) is a not-for-profit trade association founded in 1958 which serves the music retailing

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community in the areas of advocacy, networking, information, education, and promotion. The Association's more than 1,000 members include retailers, wholesalers, distributors, and suppliers of products and services, many of whom conduct business over the Internet. Some of NARM's members are online music retailers who market their recordings by permitting Internet users to download music samples before making a purchase with their credit cards. Permitting users to sample music before identifying themselves is an important feature of this marketing strategy. NARM members are concerned that they may be exposed to criminal liability under COPA simply for misjudging what may be deemed "harmful to minors" under an ambiguous standard.

Newspaper Association of America ("NAA") represents the interests of more than 2,000 newspapers in the U.S. and Canada. Most NAA members are daily newspapers, accounting for eighty-seven percent of the U.S. daily circulation. Many of these newspapers are currently on the Internet. A strong advocate of the press' First Amendment rights, NAA is particularly concerned with protecting the free flow of information over the Internet.

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

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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 fora 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 "harmful 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 defeats the purpose 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 ("RIAA") is a national trade association whose member companies produce, manufacture, and distribute more than ninety percent of the sound recordings sold in the United States. The RIAA is committed to protecting its members' free expression rights across all communications media, including the Internet.

The Society of Professional Journalists ("SPJ") is dedicated to improving and protecting journalism. It is the nation's largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior.

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Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry; works to inspire and educate the next generation of journalists; and protects First Amendment guarantees of freedom of speech and press across all mediums, including the Internet.