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

R. BRUCE RICH
Counsel of Record
JONATHAN BLOOM
RANDI W. SINGER
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

Attorneys for Amici Curiae

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INTEREST OF THE *AMICI*[1]

This brief *amici curiae* is submitted on behalf of a spectrum of businesses, trade associations, and public interest organizations 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* variously constitute and represent:

- authors, publishers, editors, and distributors of textual, audio, and audio-visual material ranging from books, magazines, newspapers, newsletters, and comic books to sound recordings;
- educators and librarians whose students and patrons desire access to the widest possible range of informative material;
- Internet and online service providers through which the public obtains access to the Internet and the ability to navigate through it;
- software developers and technology concerns who, responding to the market's demands, have been developing ever more effective means for parents to protect minors from exposure to age-inappropriate materials; and
- public interest organizations reflecting parental and community concerns that possibly well-intentioned, but nonetheless broadly censorious, government regulation of the Internet not smother this medium in its infancy.[2]

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1. Pursuant to Rule 37.6 of the rules of the Court, counsel for the *amici* discloses that counsel for the parties did not take part in authoring this brief in whole or in part, and no persons or entities other than the *amici*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief. Pursuant to Rule 37(3)(a), *amici* have obtained, and are herewith lodging, the written consents of the parties to the filing of this brief.

2. *Amici* are more fully described in Appendix A.

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 2681-741 (codified at 47 U.S.C. § 231 (Supp. V. 1999)) (hereinafter "COPA") suffers the same crippling constitutional flaws that condemned the CDA insofar as it:

- targets a potentially broad category of speech that is entirely lawful as to adults, but is "harmful to minors";
- criminalizes the offer of such speech by a potentially large number of Internet speakers, unless such speech is rendered inaccessible to minors; and

- presupposes that credit card and age-verification techniques adopted by Congress as affirmative defenses impose no burden on speech, when, in fact, they surely will discourage readers of controversial or potentially controversial material and burden many would-be speakers.

For these reasons, among others, Judge Lowell A. Reed, Jr. of the United States District Court for the Eastern District of Pennsylvania, following a five-day evidentiary hearing, entered a preliminary injunction against the enforcement of COPA, *see ACLU v. Reno*, 31 F. Supp. 2d 473 (E.D. Pa. 1999) ("*COPA I*"), which was upheld by the Court of Appeals for the Third Circuit. *See ACLU v. Reno*, 217 F.3d 162 (3d Cir. 2000) ("*COPA II*").

The district court found that respondents had set forth compelling evidence of COPA's chilling effects through the testimony of certain Web site owners that, although they did not believe any material on their sites was harmful to minors, they would "self-censor the content of the site" because they feared prosecution under COPA. *COPA I*, 31 F. Supp. 2d at 485. In the face of the many ambiguities of the harmful-to-minors standard as embodied in the statute, *amici*'s constituents, like respondents, find themselves in the untenable posture of choosing between gambling on offering speech that a local federal prosecutor may believe is "harmful to minors," thereby subjecting themselves to potential criminal and civil penalties, or engaging in self-censorship and avoiding that risk. *Amici* fervently believe that the First Amendment protects Internet speakers from that untenable choice.

None of *amici*'s constituents are engaged in the business of commercial pornography, yet *amici* appear here because they fear that the speech they produce, distribute, use as teaching aids, and otherwise provide access to via the World Wide Web stands at risk of challenge under COPA. It is far from inconceivable, for example, that a prosecutor could rely on

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 that include graphic sexual content

- A newspaper's Web site that provides hyperlinks to Web sites that include graphic sexual content

On its face, COPA applies to any Web site that, in the regular course of business, communicates *any* material that is harmful to minors. 47 U.S.C. § 231(a)(1)-(3); 47 U.S.C. § 231(e)(2)(B). *See COPA I*, 31 F. Supp. 2d at 480 (COPA "imposes liability on a speaker who knowingly makes any communication for commercial purposes 'that includes any

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 of Education's proposal to eliminate from the curriculum literary works containing profanity, including *Catcher in the Rye*, *The Adventures of Huckleberry Finn*, *Gone With the Wind*, *Romeo and Juliet*, *Macbeth*, and *Farenheit 451*,[4] illustrate how widely views diverge in different parts of the country as to what material is suitable for minors. Such incidents also suggest the special danger to free speech rights posed by arming prosecutors with a censorious tool such as COPA to regulate a new medium

3. *See* "High School Yanks 'Mockingbird' From Reading List," *Chicago Tribune*, Aug. 4, 2001, at A12.

4. *See* Teresa Stepzinski, "Profanity Ban Outcry Shocks Glynn Board," *Florida Times-Union*, Aug. 15, 2001, at A1.

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. THE CONSTITUTIONAL STANDARDS APPLIED IN *ACLU v. RENO* TO STRIKE DOWN THE CDA ARE EQUALLY APPLICABLE HERE, AND REQUIRE THAT COPA BE INVALIDATED AS WELL

A. Content-Based Regulations of Speech Must Be the Least Restrictive Means of Advancing a Compelling Government Interest

It is a well-settled precept of this Court's First Amendment jurisprudence that strict scrutiny shall be applied to content-based regulations of speech and that regulations based on the content of protected speech are permissible only if they constitute the least restrictive means of furthering a compelling governmental interest. *See Sable Communications of California, Inc. v. FCC*, 492 U.S. 115, 126 (1989); *COPA II*, 217 F.3d at 173. This Court has confirmed the appropriateness of this test with respect to the Internet. *See ACLU*, 521 U.S. at 870 (law provides "no basis for qualifying the level of First Amendment scrutiny that should be applied" to the Internet).

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*, 521 U.S. at 877. Congress no more may regulate constitutionally-protected speech flowing to, from, and through Web sites operated "for commercial purposes" than it can those operated for non-commercial purposes. Thus, Congress' narrowing of the statute to apply only to "communication[s] for commercial purposes" "by means of the World Wide Web" does not eliminate COPA's core constitutional infirmity, which arises from the fact that there is no practicable means by which the vast majority of those who provide content over the Internet — whether profit-motivated or not — can screen out minors from accessing that content while not unduly burdening adults' access to their speech. *See COPA I*, 31 F. Supp. 2d at 495 ("[I]t can be inferred that any barrier that Web site operators and content providers construct to bar access to even some of the content on their sites to minors will be a barrier that adults must cross as well.").

Moreover, the fact that a speaker may operate for profit, or make a profit from the sale of speech, in no way limits the First Amendment protection to which the speaker or the speech is entitled. As this Court made clear in *Burstyn v. Wilson*, "[t]hat books, newspapers, and magazines are published and sold for profit does not prevent them from being a form of expression whose liberty is safeguarded by the First Amendment." 343 U.S. 495, 501 (1952). *See also Smith v. California*, 361 U.S. 147, 150 (1959) ("It is of course no matter

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

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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) Engaged in the business. The term " 'engaged in the business' " means that the person who makes a communication, or offers to make a communication, by means of the World Wide Web, that includes any material that is harmful to minors, devotes time, attention, or labor to such activities, as a regular course of such person's trade or business, with the objective of earning a profit as a result of such activities (although it is not necessary that the person make a profit or that the making or offering to make such communications be the person's sole or principal business or source of income). A person may be considered to be engaged in the business of making, by means of the

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"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 pre-enactment appraisal of the "commercial purposes" requirement as one of the more "confusing or troubling ambiguities" in the statute. *See* October 5, 1998 Letter from Department of Justice Letter to Honorable Thomas Bliley, Chairman of House Committee on Commerce ("DOJ Ltr.") at 3-4. The ambiguity of COPA's "commercial purposes" requirement exacerbates its very real potential to chill a substantial amount of constitutionally-protected speech.

2. The revised definition of "harmful to minors" still will result in suppressing protected speech

In *ACLU*, this Court held that the CDA was unconstitutional because it had the impermissible effect of suppressing speech that adults have the constitutional right to receive and transmit to one another. *See ACLU*, 521 U.S. at 874. That holding would apply equally to COPA, which, no differently than the CDA, purports to restrict the offer of, and adult access to, constitutionally-protected speech when there are less restrictive ways to protect children. Thus viewed, the change from the CDA's "indecent/patently offensive" standard to COPA's "harmful to minors" standard is immaterial from a First Amendment standpoint. To the extent imposition of the "harmful-to-minors" standard on Web sites will, as with the CDA, have the effect of restricting the offer of, and adult access to, constitutionally-protected speech, such regulation is

(Cont'd)

> World Wide Web, communications for commercial purposes that include material that is harmful to minors, only if the person knowingly causes the material that is harmful to minors to be posted on the World Wide Web or knowingly solicits such material to be posted on the World Wide Web.

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 limited. For example, in applying COPA's "contemporary community standards" requirement, is the relevant community the worldwide community of Internet users, the local community in which the user resides, or some other community? Further, does the statutory language "as a whole" refer to the single visible screen on which the "harmful" communication appears (which may be significantly less than a single Web page)? To the Web site as a whole? Does it also include linked Web sites? To what age(s) of minors is the statute directed? On this latter issue, prior to enactment of COPA, the Department of Justice itself queried whether material covered by COPA

includes that which lacks serious value "for all minors, for some minors, or for the 'average' or 'reasonable' 16-year-old minor?" *See* DOJ Ltr. at 6.

The government's present assurances as to the narrow scope of COPA cannot rectify its facial overbreadth. The Court should not uphold the Act based on an asserted limiting construction that is at odds with the plain language of the statute. Rather, the Court "may impose a limiting construction on a statute only if it is 'readily susceptible' to such a construction." *ACLU*, 521 U.S. at 884. In *ACLU*, the Court reiterated its belief that

> [i]t would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of the government.

Id. at 884 n.49.

3. Limiting COPA to the World Wide Web does not eliminate the interference with the First Amendment rights of adults

No different from its change in the standard for covered speech, Congress' narrowing of the statute to apply only to communication[s] "by means of the World Wide Web" does not render COPA constitutional. The attempt to address the overbreadth problem this Court identified with respect to the CDA by "circumscribing" COPA so that it applies only to the World Wide Web, 47 U.S.C. § 231(a)(1), fails because many Web sites feature newsgroups, chat rooms, or other interactive features that are not susceptible to age screening. *See COPA I*, 31 F. Supp. 2d at 483 (noting existence of interactive Web-based chat rooms, e-mail, and newsgroups). As this Court noted in *ACLU*, "there is no effective way to determine the identity or the age of a user who is accessing material through e-mail, mail exploders, newsgroups or chat rooms." *ACLU*, 521 U.S. at 855 (quotations omitted).

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 chosen to accomplish the State's objectives are too imprecise, so that in all its applications the statute creates an unnecessary risk of chilling free speech, the statute is properly subject to facial attack.").

4. The affirmative defenses do not cure COPA's defects

The affirmative defenses provided by COPA are essentially identical to those contained in the CDA: A content-provider may attempt to restrict minors' access "(A) by requiring use of a credit card, debit account, adult access code, or adult personal identification number; (B) by accepting a digital certificate that verifies age; or (C) by any other reasonable measures that are feasible under available technology." 47 U.S.C. § 231(c)(1). This Court has already decided that the availability of these defenses "do[es] not constitute the sort of 'narrow tailoring' that will save an otherwise patently invalid unconstitutional provision." *ACLU*, 521 U.S. at 882. *See also ACLU v. Johnson*, 194 F.3d 1149, 1160 (10th Cir. 1999). In fact, this Court acknowledged the impracticability of such defenses for many commercial Web sites, particularly in view of the prevalence of Web sites that provide content free of charge:

> There is concern by commercial content providers that age verification requirements would decrease advertising and revenue because advertisers depend on a demonstration that the sites are widely available and frequently visited . . . . Even if credit card verification or adult password verification were implemented, the Government presented no testimony as to how such systems could ensure that the user of the password or credit card is in fact over 18. The burdens imposed by credit card verification and adult password verification systems make them effectively unavailable to a substantial number of Internet content providers.

ACLU, 521 U.S. at 857 (quotations omitted).

Amici can attest (and the record before the district court affirms) that these realities have not changed. *See COPA I*, 31 F. Supp. 2d at 495 ("implementation of credit card or adult verification screens in front of material that is harmful to minors may deter users from accessing such material and [] the loss of users to such material may affect the speakers' economic ability to provide such communications"). Requiring credit card or age-verification screening for access to all potentially "harmful-to-minors" material on covered Web sites would severely burden expression, both of users and of content providers. First, would-be recipients of information will be deterred by pre-access screening requirements. The district court found that "consumers on the Web do not like the invasion of privacy from entering personal information" and that "COPA would have a negative effect on users because it will reduce anonymity to obtain the speech . . . resulting in a loss of traffic to Web sites." *COPA I*, 31 F. Supp. 2d at 487, 491. This is consistent with the experience of many *amici* and the Internet industry in general: many Web users will leave a site if required to register. *See id.* at 487 ("[I]n general, users of the Web are reluctant to provide personal information to Web sites unless they are at the end of an online shopping experience and prepared to make a purchase.").

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:

> [T]he First Amendment protects against government inhibition as well as prohibition. An identification requirement exerts an inhibitory effect, and such deterrence raises First Amendment issues comparable to those raised by direct state-imposed burdens or restrictions . . . . [It is enough to invalidate a law where it is shown that] access codes will chill the exercise of some users' right to hear protected communications.

Fabulous Assocs., Inc. v. Pennsylvania Pub. Util. Comm'n, 896 F.2d 780, 785-86 (3d Cir. 1990) (citations omitted). *See also ACLU v. Johnson*, 4 F. Supp. 2d 1029, 1033 (D.N.M. 1998) (analogous state statute violated the First and Fourteenth Amendments "because it prevents people from communicating and accessing information anonymously") (citations omitted), *aff'd*, 194 F.3d 1149 (10th Cir. 1999).[6]

Finally, *amici* note that the price of adult verification has increased since the time of the district court's decision. Specifically, evidence presented to the district court showed that an Adult Check identification number was less than $20 per year; however, a recent visit to the Adult Check Web site reveals that an Adult Check identification number now costs approximately $20 for three months, raising the annual cost to approximately $80.[7]

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6. *See also Denver Area Educ. Telecomm. Consortium, Inc. v. FCC*, 518 U.S. 727, 754 (1996) ("[W]ritten notice requirement[s] will further restrict viewing by subscribers who fear for their reputations should the operator, advertently or inadvertently, disclose the list of those who wish to watch the 'patently offensive' channel."); *Fabulous Assocs., Inc. v. Pennsylvania Pub. Util. Comm'n.*, 693 F. Supp. 332, 338 (E.D. Pa. 1988) (access codes impose a self-identification process, which carries with it "the societal opprobrium associated with dial-a-porn messages and the probable undesirability of having one's name and address at the disposal of message providers and other third parties"), *aff'd*, 896 F.2d 780 (3d Cir. 1990).

7. *Amici* respectfully submit that pursuant to Rule 201 of the Federal Rules of Evidence the Court may take judicial notice of the (Cont'd)

The burden is equally severe if viewed from the perspective of the operators of Web sites. As an initial matter, the affirmative defenses provide little comfort in that they do not immunize speakers from criminal prosecution under the Act, but only provide affirmative defenses — on which the speaker will bear the burden of proof — to be asserted following prosecution. As such, they are unlikely to curb the Act's severe chilling effect. As this Court reasoned in *Speiser v. Randall*, 357 U.S. 513 (1958), in holding unconstitutional an analogous procedure that placed an affirmative burden on the speaker of proving that its speech was "legitimate": "The man who knows that he must bring forth proof and persuade another of the lawfulness of his conduct necessarily must steer far wider of the unlawful zone . . . [which] can only result in a deterrence of speech which the Constitution makes free." *Speiser*, 357 U.S. at 526.

And as Chief Judge Sloviter explained with respect to the CDA:

> [I]t is difficult to characterize a criminal statute that hovers over each content provider, like the proverbial sword of Damocles, as a narrow tailoring. Criminal prosecution, which carries with it the risk of public obloquy as well as the expense of court preparation and attorneys' fees, could itself cause incalculable harm. No provider, whether an individual, non-profit corporation, or even large publicly held corporation, is likely to willingly subject itself to prosecution for a miscalculation of the prevalent community standards or for an error in judgment as to what is indecent. A successful defense to a criminal prosecution would be small solace indeed.

(Cont'd)
increased costs of an Adult Check identification number by visiting the Adult Check Web site. *http://secure.adultcheck.com/en/regular/3month_apply.shtml?9999*>(last visited Sept. 19, 2001).

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); H.R. Rep. No. 105-775, at 26 (1998) ("Credit card verification is commonly used today in both the dial-a-porn and Internet context and it should be easy to use and implement for commercial entities that sell pornography on the Web."). Indeed, as the government's own expert made clear, the Adult Check system advocated by the government is used in connection with "adult entertainment sites." Joint Appendix at 480. In addition, COPA's affirmative defenses would impose an onerous and ongoing burden on *amici* to redesign Web sites in order to segregate "harmful to minors" content.[8] *See* DOJ Ltr. at 3 (recognition of constitutional problems in applying a harmful-to-minors standard to the Internet in view of inherent difficulty in segregating "adult speech" in context of "the dynamic, interactive nature" of this medium).

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8. This burden is particularly onerous in light of the vagueness of the "harmful to minors" standard, as discussed in section I.B.2 above, such that a chilling of protected speech as a result of *amici*'s self-censoring is almost a foregone conclusion.

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 interactive environments such as chat rooms will destroy the promise of such media of communication by fundamentally interfering with the spontaneity and flow of dialogue that occurs within them. Further, those who sponsor such fora on their Web sites (as do many of the entities represented by *amici*), faced with the costly and difficult prospect of monitoring the speech occurring on them and the concomitant risk of prosecution under the Act for allowing ill-defined "harmful to minors" speech to transpire, necessarily will think twice about offering such fora. *See COPA I*, 31 F. Supp. 2d at 495 ("there is no way to restrict the access of minors to harmful material in chat rooms and discussion groups . . . without screening all users before accessing any content, even that which is not harmful to minors, or editing all content before it is posted to exclude material that is harmful to minors").

These profound shortcomings of COPA's affirmative defenses leave *amici*'s speech sponsors, who are representative of many other Internet speakers, with two equally untenable alternatives: (1) offer speech that is unquestionably constitutionally-protected as to adults but which may be construed as "harmful to minors," and thereby risk criminal prosecution and civil penalties under COPA;

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 itself that Congress could have made less restrictive:

> [T]he sweeping category of forms of content that are prohibited – "*any communication*, picture, image, graphic image file, article, recording, *writing*, or *other matter of any kind*" . . . could have been less restrictive of speech on the Web and more narrowly tailored to Congress' goal of shielding minors from pornographic teasers if the prohibited forms of content had included, for instance, only pictures, images, or graphic image files, which are typically employed by adult entertainment Web sites as "teasers."

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 utility in accomplishing its goal of protecting minors because it "would not eliminate much of the harmful material which a minor could access," such as material published by noncommercial Web publishers and by foreign Web publishers. *COPA II*, 217 F.3d at 177 n.21. For these reasons alone, COPA does not pass constitutional muster.

* * *

Amici submit that COPA is unconstitutional because it presents a content-based restriction on speech that is not narrowly-tailored to advance a compelling government interest. Rather, COPA suffers the same constitutional flaws that its predecessor statute, the CDA, suffered. Therefore, this Court need not reach the grounds relied upon by the court of appeals in order to find that a preliminary injunction was properly granted.

II. THE COURT OF APPEALS CORRECTLY FOUND THAT COMMUNITY STANDARDS ARE UNWORKABLE ON THE INTERNET

The court of appeals found that COPA fails strict scrutiny on several grounds, including its imposition of "an overreaching burden and restriction on constitutionally protected speech." *COPA II*, 217 F.3d at 177. However, the court's holding rested on the conclusion that "COPA essentially requires that every Web publisher subject to the statute abide by the most restrictive and conservative state's community standards in order to avoid criminal liability." *Id*. at 166. Although, as noted, this Court need not reach the "community standards" issue in order to strike down COPA as a facial violation of the First Amendment, the court of appeals was right to highlight this problematic aspect of

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 based on recognition that standards vary from state to state, and that the people of Maine should not

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9. The court of appeals recognized that "in focusing on the 'contemporary community standards' aspect of COPA [it was] affirming the district court's ruling on a ground other than that emphasized by the district court." *COPA II*, 217 F.3d at 174 n.19. However, the court of appeals did not, as the government contends, reject the district court's recognition that less restrictive alternatives for furthering the government's interest in protecting minors exist. *See* Pet. Br. at 14. Rather, the court of appeals recognized that it was pioneering new legal terrain — noting that "no federal court has yet ruled on whether the Web/Internet may be constitutionally regulated in light of differing community standards" — but chose to rest its decision on the "community standards" aspect of the law. In so doing, it pointed to an alternative basis for finding that COPA violates the First Amendment.

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); *Roth v. United States*, 354 U.S. 476 (1957) (affirming conviction under federal statute for mailing

10. Even if community standards were "reasonably constant" from state to state, this would offer little comfort to Web users, for even the existence of *some* variation from community to community will impose on Web speakers the impossible burden of ensuring that all of the material they disseminate conforms to the most restrictive standard.

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."

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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 Newton v. Slye*, 116 F. Supp. 2d 677, 682 n.3 (W.D. Va. 2000) ("students having an interest in reviewing any of the titles of the books, or even the books themselves . . . may view such lists through computers utilizing on-line ordering via Internet web sites of companies like Amazon.com").

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,

R. BRUCE RICH
Counsel of Record
JONATHAN BLOOM
RANDI W. SINGER
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

Attorneys for Amici Curiae

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.

Appendix

The Center for Democracy and Technology ("CDT") is a non-profit public interest and Internet policy organization. CDT represents the public's interest in an open, decentralized Internet reflecting constitutional and democratic values of free expression, privacy, and individual liberty. CDT's staff have conducted extensive policy research, published academic papers and analyses, and testified before Congress on the impact of Internet content regulations and the availability of alternative methods for protecting individuals online, including user-empowerment tools and technologies.

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 COPA would have a chilling effect on its many members who continue to explore and evolve the comic book art form.

Appendix

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

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

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.

Appendix

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.