

ADULT INDUSTRY UPDATE

By Lawrence G. Walters

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Well, it finally happened - amateur adult stars have been arrested for allegedly promoting obscene material on the Internet. Right here in Central Florida, where I practice, on March 2, 1999, the Polk County Sheriff's Office "Computer Crimes Unit" arrested two couples alleging that these individuals broke Florida's obscenity laws by providing amateur adult content to various web sites from their homes. It looks like the web site owners will ultimately be charged as well. According to the Polk County Sheriff's Office spokesperson: "these charges will become more common as computer growth continues and more people have access to the computer." Thus begins what was the inevitable battle over what is and is not obscene on the Web. Polk County has drawn a battle line in the cultural war which will be of significant importance. Our firm is honored to represent two of the defendants in the Polk County obscenity cases and we are committed to providing an aggressive First Amendment based defense. These charges come as no surprise to us since we had first predicted at the IA 2000 show in February of this year that while the federal government does not appear to be actively prosecuting obscenity cases, it will probably be some zealous state prosecutor in a place like Polk County, Florida that would begin obscenity prosecutions against Internet material. While the specific accuracy of the prediction is somewhat alarming, the concept is not unusual. Prosecutors and law enforcement see this as an opportunity to do the will of the people in this small community, and make a few headlines for themselves along the way. If a jury acquits the defendants at trial, blame the jury for sanctioning the corruption of the community's morals as the prosecutors did several years ago in connection with the acquittals of several video store operators in Tallahassee, Florida. If a Judge throws the case out on First Amendment grounds, blame the liberal Judges for not upholding our community values. It is a no lose deal for the prosecution. In the meantime, numerous web site owners, operators and performers are anxious and downright frightened. With good reason - maybe: Should a prosecutor be able to prove that an individual was involved in any organization profiting from at least two obscene photographs or videos, he could charge that person with Racketeering as has been the case in numerous other Polk County, Florida prosecutions. A conviction for Racketeering can mean thirty years in jail, a six figure fine and forfeiture of all your assets. And, by the way, you never need to have set foot in Polk County, Florida - your materials just need to be available there. Obviously, all sites on the Internet are accessible from Polk County, Florida.

Of course, obscenity is the lynchpin for any punishment. What will Polk County jurors think of the kind of adult material that can typically be found on the Web? What kind of material should be tolerated in cyberspace? How does anyone know whether their material is obscene? These inevitable questions will only likely be answered by a judge or jury in Polk County, Florida. In the meantime, it would not be surprising if other zealous prosecutors get the idea that they too want some headlines and begin instituting additional Internet obscenity charges. While it is regrettable that any charges were filed at all, these cases were probably long over due. The adult movie industry and the adult video industry were both hit with obscenity charges rather quickly after each industry begin to flourish. For the last several years, web masters have taken pretty much an "anything goes" approach to their content so long as it did not involve children, animals or actual violence. Any obscenity prosecutions will likely result in a certain amount of self censorship now by webmasters to avoid becoming the next target. The consuming public will become the victims

having less choice and there being less competition. On the other hand, a few obscenity prosecutions are not going to shut down a multi-billion dollar industry nor curb the public's demand for consumption of these materials. These prosecutions will remind us all that the censors are watching and that if you close your eyes for just a second, they may just take away some of your freedoms.