

# GIVE ME LIBERTY, OR GIVE ME DEATH

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Would any adult industry participant be willing to die for the privilege of continued involvement in the adult industry? Doubtful, but that's exactly the penalty that faces accused Iranian distributors and producers of websites in which pornographic works appear.<sup>1</sup> Although the Bill imposing the death penalty must still be approved by Iran's Guardian Counsel, it appears sure to pass, since it was overwhelmingly approved, 148 to 5, in Iran's Parliament.

Paying the ultimate price for participating in ones occupation of choice seems somewhat barbarian in our "civilized" society, but some of those involved in the United States' adult industry have come close. Reports have surfaced over the years of parents loosing custody of their children as a result of their appearing in, or producing adult films.<sup>2</sup> Our firm has assisted some of these individuals in educating the court as to the constitutionally-protected nature of their commercial erotic activity, but the prejudice remains. Participants in the "porn" industry continue to be vilified by angry ex-spouses, conservative politicians, and power-hungry lawmakers.

We are now entering a new phase of obscenity prosecution where real individuals will pay a hefty price to defend the rights of others to engage in free expression. Karen Fletcher,<sup>3</sup> Ray Guhn,<sup>4</sup> Max Hardcore,<sup>5</sup> JP Distributors,<sup>6</sup> and MoviesByMail.com<sup>7</sup> are all facing state or federal obscenity charges as a result of their involvement in some form of commercial erotica. While they do not face the death penalty, any defendant dragged through an obscenity prosecution faces potential personal and financial ruin. Suddenly, your former "friends" and business acquaintances don't want to have lunch with you because you may be "under surveillance." They express concern about being dragged into court as a witness. Your family starts to wonder whether your protestations of innocence can really be believed. "He must have

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<sup>1</sup> L. Haines, "Iran Approves Death Penalty for Pornographers," *TheRegister.co.uk* (June 13, 2007), which can be viewed at: [http://www.theregister.co.uk/2007/06/13/iranian\\_bill/](http://www.theregister.co.uk/2007/06/13/iranian_bill/).

<sup>2</sup> E.g., *Anderson v. Anderson*, 736 So.2d 49, 53 (Fla. 5<sup>th</sup> DCA 1999)(reversing child custody determination based, in part, on live-in boyfriend's operation of pornographic website business).

<sup>3</sup> C. Deitch, "Dirty Words," *Pittsburgh City Paper* (May 10, 2007), which can be viewed at: <http://www.pittsburghcitypaper.ws/gyrobase/Content?oid=oid%3A30196>

<sup>4</sup> M. Kernes, "ews Analysis: It's People vs. Freeman, Florida Style," *AVN.com*, which can be viewed at: [http://avn.com/index.php?Primary\\_Navigation=Articles&Action=View\\_Article&Content\\_ID=270764](http://avn.com/index.php?Primary_Navigation=Articles&Action=View_Article&Content_ID=270764).

<sup>5</sup> S. Javors, "Max Hardcore Indicted on Obscenity Charges," *XBiz.com* (May 31, 2007), which can be viewed at: [http://www.xbiz.com/news\\_piece.php?id=23329](http://www.xbiz.com/news_piece.php?id=23329).

<sup>6</sup> M. Kernes, "Attorney Says Justice Dept. Sold Same 'Obscene' Material As His Client," *AVN.com* (March 16, 2007), which can be viewed at: [http://avn.com/index.php?Primary\\_Navigation=Articles&Action=View\\_Article&Content\\_ID=285692](http://avn.com/index.php?Primary_Navigation=Articles&Action=View_Article&Content_ID=285692).

<sup>7</sup> S. Javors, "Feds Charge MoviesByMail.com Owners With Selling Obscene Materials," (June 14, 2007), which can be viewed at: [http://www.xbiz.com/news\\_piece.php?id=23606](http://www.xbiz.com/news_piece.php?id=23606).

done something, or they wouldn't be prosecuting him," goes the popular refrain. Your income stream is usually halted – whether from a decision to avoid further involvement in the adult industry out of legal concern – or as a result of governmental seizure and forfeiture orders. It becomes hard to pay your employees when your payroll account is frozen. Same goes for your defense counsel. The government knows that the best way to win these cases is to make sure that the defendants are forced to turn to the public defender, instead of a competent First Amendment attorney. Sometimes that can be accomplished by impoverishing the defendant prior to a finding of guilt. Sometimes, that little ploy backfires, and certain lawyers will put aside their financial needs for a time, and take on those cases for a reduced fee, or even *pro bono*. Other times, the government simply picks defendants who do not have sufficient funds to afford high-end legal counsel. Case-in-point: Karen Fletcher and Max Hardcore. Fortunately, however, attorneys have stepped forward to represent both those individuals despite the apparent lack of substantial defense funds.<sup>8</sup>

One must wonder, in this age of uncertainty, how many potential defendants would choose to stand and fight, if selected for an obscenity prosecution. This undoubtedly would be an excruciatingly difficult decision, given the personal risks to liberty and finances in the event of a negative outcome. The adult industry has been blessed with a number of freedom fighters who have chosen the path of most resistance over the years, in order to make law for the rest of the industry to enjoy at their leisure. Legends like Larry Flynt, Phil Harvey, Joe Redner, Al Goldstein, and others, give hope to an industry in the crosshairs of the government. Some targets will certainly plead guilty to avoid a fight,<sup>9</sup> and even give up information on friends and associates, to reduce personal penalty. Perhaps that is human nature. But as obscenity prosecutions are on the increase, each and every business man and woman in the industry needs to reflect on what he or she will do if caught in the crossfire. The time will come in the not too distant future where the industry will desperately need its next freedom fighter. The courts have yet to rule on some of the key legal issues affecting modern freedom of speech – particularly in the online space. While it is often tempting to avoid conflict with those who can do you harm, a time for valor is upon us, and anyone reading this article may be put in a position of establishing constitutional precedent for decades to come. This is not an industry for the faint of heart, or those looking to make a quick buck with no risk. The risks were evident from the start.

Some of our world's citizens create adult videos under the threat of death. While defendants in this country do not face death (yet) if convicted, the same cannot be said for cherished constitutional rights, which hang by a thread pending the outcome of current obscenity prosecutions. Who will be next to demand liberty and freedom at all costs?

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<sup>8</sup> Karen Fletcher is being represented on a *pro bono* basis by the author's law firm, Weston, Garrou, DeWitt & Walters – specifically by John H. Weston, Jerry Mooney, Derek B. Brett, and Lawrence G. Walters, along with Warner Mariani of Pittsburgh, PA. Max Hardcore is being represented at reduced rates by Jeffrey Douglas and Jamie Benjamin, two respected FALA members and obscenity defenders.

<sup>9</sup> The industry saw an unfortunate guilty please recently in the case involving the Pheromoans retail store owners, who pled guilty to obscenity violations in connection with the sale of classic adult videos like *Deep Throat* and *Devil in Miss Jones*. A. Winter, "Va. Sex Shop Owners Plead Guilty to Obscenity Charges," *XBiz.com* (June 18, 2007), which can be viewed at: [http://www.xbiz.com/news\\_piece.php?id=23639](http://www.xbiz.com/news_piece.php?id=23639).

*involved in all aspects of the adult industry. The firm handles First Amendment cases nationwide, and has been involved in much of the significant Free Speech litigation before the United States Supreme Court over the last 40 years. All statements made in the above article are matters of opinion only, and should not be considered legal advice. Please consult your own attorney on specific legal matters. You can reach Lawrence Walters at [Larry@LawrenceWalters.com](mailto:Larry@LawrenceWalters.com), [www.FirstAmendment.com](http://www.FirstAmendment.com) or AOL Screen Name: "Webattorney."*