

ADULT INDUSTRY UPDATE™

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By: Lawrence G. Walters

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BRUCE TAYLOR REHIRED BY DOJ

Bruce Taylor, a Department of Justice (“DOJ”) Special Attorney from 1989 to 1994, was recently rehiired as part of a renewed effort by the government to prosecute obscenity cases against the adult industry. Taylor was an attorney for the DOJ during the heyday of its Regan-Bush Sr. anti-porn effort, which reinforces the current commitment to escalate its war against adult erotica. As DOJ spokesman Bryan Sierra stated, “Bruce has vast experience, both at the federal and state level, prosecuting those kinds of cases. It is all part of our overall effort to kick-start obscenity prosecutions after a long absence.”¹ The DOJ has also assigned an elite FBI team to focus exclusively on the DOJ’s newly invigorated assault on adult erotica. Additionally, President Bush is seeking an increased budget to fight adult entertainment companies using obscenity laws, as evidenced by his fiscal 2005 budget proposal released in February.² Given the groundswell of support from Congress for the concept of obscenity prosecutions, this effort should receive all the funding requested by Bush and Ashcroft. Now that the training sessions have been completed, the funds set aside, a leader picked and the gumshoes in place, all signs point to a significant effort coming down the pipe against the adult industry. The time for legal evaluation and compliance is now. ‘Nuff said.

¹ Richard Schmitt, *Yes Plans to Escalate Porn Fight*, Los Angeles Times, (Feb. 14, 2004) at <http://www.latimes.com/la/na/porn14feb14.1.7713213.story>.

² *Id.*

SUPREME COURT REVISITS COPA

On March 2, 2004, the United States Supreme Court heard oral arguments in *Ashcroft v. ACLU*, which was the government's third attempt to have the Child Online Protection Act ("COPA") declared constitutional. The Court must decide whether COPA protects children from adult online content without stifling adults' free speech rights. The Third Circuit Court of Appeal struck down COPA because it allowed the Internet to be judged by "contemporary community standards" which is difficult to enforce due to the Internet's breadth, and the Philadelphia-based federal appeals court struck down COPA on broader free speech grounds. The ACLU argued that "COPA's bludgeon suppresses an enormous amount of speech protected for adults and is unnecessary and ill-tailored to address the government's interest in protecting children from sexually explicit images."³ COPA, which has been on hold pending the Court's decision, may impose \$50,000 fines and six-months of jail time for first-time offenders, with increased fines for repeat COPA offenders. The Court is expected to render a decision within this term, which closes this summer.

The pending decision in that case reinforces the need for some form of age verification protecting the free areas of adult websites, or free sites themselves. Various options are available, and the author's firm allows its clients to use the method described on www.BirthDateVerifier.com. Regardless of the method chosen, age verification is becoming a critical issue both in terms of compliance with COPA (if upheld) and to prevent the government from accusing webmasters of providing erotica to children during the expected wave of

³ AP, Supreme Court weighs porn, free speech, CNN.com, (Mar. 2, 2004), at <http://www.cnn.com/2004/LAW/03/02/scotus.online.porn.ap/index.html>.

obscenity prosecutions on the horizon. Despite the possibility that COPA may be struck down, compliance is universally recommended by Industry attorneys.

OBSCENITY PROSECUTIONS

In one of the first federal obscenity cases in almost a decade, Garry Ragsdale was sentenced to serve 33 months and his wife, Tamara, was sentenced to serve 30 months for conspiracy to mail obscene material, transporting obscene material, and aiding and abetting.⁴ The material at issue included videos entitled “Brutally Raped.” The two are currently out on bail, pending appeal. Others are also facing federal obscenity charges, including Jon Coil, Rob Black, and Extreme Video.

A federal grand jury indicted Harold Foote Hoffman II on March 10, 2004, for transporting allegedly obscene videos depicting bestiality via Federal Express to an address in Alabama. If convicted, the indictment orders Hoffman to forfeit all money and property gained from transporting the material. United States Attorney Kasey Warner said, “Our strategy is to focus on cases involving the online distribution of obscenity for commercial gain and obscenity involving children.”⁵ This is the first time that this author has seen an indictment where a private commercial courier, Federal Express, as opposed to the United States Mail, was used in a case involving the transportation of obscene materials, although such prosecutions have been statutorily authorized for decades.

In Canada, Steve Sweet, the head of Sweet Entertainment Group, is currently being tried for allegedly making and distributing obscene material. The materials at issue include videos depicting urination, bondage, and sadomasochism. Sweet will offer evidence regarding

⁴ Scott Ross, Ragsdales Sentenced to Federal Prison, AVN, (Mar. 8, 2004), at http://www.avn.com/index.php?Primary_Navigation=Articles&Action=View_Article&Content_ID=76443.

⁵ Chris Wetterich, Nitro Man Indicted on Obscene-Video Charges, The Charleston Gazette, (Mar. 11, 2004) at <http://wvgazette.com/section/News/Today/2004031027>.

consensual acts displayed in the videos, the popularity of bondage, the unlikelihood of harm from the videos, and the widespread nature of bondage sites on the Internet. This case will raise issues regarding “contemporary Canadian community standards.”⁶ This case is also important as a glimpse into what the future may hold for webmasters indicted for obscenity offenses here in the United States. This trial may last as long as six weeks. Until then, Sweet Entertainment is continuing to provide adult entertainment via its site, www.sweetentertainment.com.

FEDERAL CRACKDOWN ON INDECENCY

Culminating with the now infamous Janet Jackson exposure, the federal government has decided that it has had enough of Americans deciding what they want to watch and listen to and is set to come down with new regulations aimed at accomplishing just that goal. Never mind the fact that the event at the Super Bowl has been the most-searched in the history of the Internet, receiving more than three times the number of hits than the 2000 election received on the day after voting and five times as many searches as the day the Space Shuttle Columbia exploded.⁷ Parent groups and the moral majority are pushing Congress and the Federal Communications Commission (“FCC”) to come down on broadcasters over indecency law violations and the revocation of licenses.⁸ The House of Representatives overwhelmingly voted, 391 to 22, to increase penalties to \$500,000 for the holders of broadcast licenses and performers who violate federal standards at times when children may be listening, between 6 a.m. and 10 p.m., and also supported the revocation of licenses of repeat offenders. The Senate version of the bill proposes to increase fines to \$275,000, with a maximum fine of \$3 million for a 24-hour period for

⁶ Angus Fitzpatrick, *Steve Sweet Goes to Trial*, Xbiz, Feb. 18, 2004, at http://xbiz.com/articles/print.php?article_idp=1108.

⁷ A. Schatz, *The Lycos 50 Daily Report*, Lycos (Feb. 4, 2004) at <http://50.lycos.com/020404.asp>.

⁸ J. Pelofsky, *House Panel Pushed TV, Radio to Clean Up Shows*, Reuters (Jan. 28, 2004) at www.reuters.com/prnterfrinedlypopup.jhtml?type=domesticNews&storyID=4231052.

corporations and a maximum fine of \$500,000 for a 24-hour period for individuals.⁹ The passage of the House bill, H.R. 3717, which encompasses only content broadcast over public airwaves and not cable or satellite programs, bars the transmission of obscene, indecent, and profane material. The measure was strongly supported by the White House, which said in a statement, “This legislation will make broadcast television and radio more suitable for family viewing.”¹⁰ This measure may make television safer for children, but what about those adults who use their brains and want the right to choose what they watch or listen to? Howard Stern fans across the country did not have a choice when their favorite disk-jockey was pulled from Clear Channel Communications’ programming recently over allegedly “indecent conduct” aired during the broadcast. A campaign designed to oppose this new decency push by the FCC is circulating, and can be found here: [StopFCC.Com - The campaign for free speech](#). Free speech is an essential liberty provided to Americans, yet it is one that we must fight the most to preserve, as evidenced here.

HILTON CO-OWNER OF SEX TAPE?

A February court hearing suggested that Paris Hilton not only debuted in her first adult film with ex-boyfriend, Rick Solomon, but she also directed and shot the film. In response to a \$10 million copyright infringement lawsuit filed by Solomon, Seattle-based Marvad Corp., which is owned by Solomon's ex-roommate, argued that Hilton played a big role in the production and shooting of the film, she is the co-owner of the film's copyright, and that Solomon's failure to acknowledge her on the copyright registration renders the registration

⁹ Scott Ross, Broadcast Decency Enforcement Act of 2004 Passed in Landslide Vote, AVN, (Mar. 11, 2004), at http://www.avn.com/index.php?Primary_Navigation=Articles&Action=View_Article&Content_ID=76895.

¹⁰ C. Hulse, *House Votes 391-22, To Raise Broadcasters’ Fines For Indecency*, New York Times (March 12, 2004) at www.nytimes.com/2004/03/12/politics/12INDE.html.

invalid. Solomon's attorney stated, "When an actor appears in a motion picture and may help direct scenes...that doesn't change ownership."¹¹ The Court has yet to decide this issue.

SPAM

In an unusual joint effort, some of the United States' largest Internet Service Providers are teaming up to file lawsuits against hundreds of people who have been accused of violating the CAN-SPAM Act for sending millions of unwanted emails known as "spam." Much like what the Recording Industry Association of America did to combat song swapping, Microsoft, America Online, Earthlink and Yahoo! targeted mostly "John Doe" defendants in the suit and plan on working together for future lawsuits.¹²

Since its commencement in January of this year, the Act has yet to meaningfully reduce the amount of spam being sent to users' inboxes. According to Brightmail, a spam filtering company, the volume of spam has grown continuously since the Act took effect, with spam taking up as much as 60 percent of emails in January up from the 58 percent in December.¹³ Consequently, the Federal Trade Commission ("FTC") has decided to post a Web forum at www.regulations.gov to gather public thoughts and input about the "war on spam." The FTC is soliciting comments on modifications of the Act, its application and whether the public feels like more regulations are necessary. The FTC also seeks public input on what other questionable

¹¹ Cory Kincaid, Hilton Called the Shots, Xbiz, Feb. 24, 2004, at http://xbiz.com/articles/index.php?article_idp=1136.

¹² C. Cobbs, *Microsoft, AOL Earthlink and Yahoo! Sued At Least 165 Suspected Spammers*, Orlando Sentinel (March 11, 2004) at www.orlandosentinel.com

¹³ C. Farrar, "Fraction" Of Spam Complies With CAN-SPAM: Report, AVN.com (Feb. 11, 2004), at http://www.avn.com/index.php?Primary_Navigation=Articles&Action=Print_Article&Con.

online practices should be added to listings of “aggravated violations,” like e-mail harvesting and dictionary attacks.¹⁴

SEX NEWS

Acacia has done it again. Disney Enterprises, Inc., which owns ESPN, Disney, and ABC News, entered into a license agreement with Acacia Technologies Group for the Digital Media Transmission technology. Acacia has licensed more than 116 companies for its technology in all industries, including online music, adult entertainment, movies, and news industries.¹⁵ Resolution of the Acacia digital media transfer technology issue is still pending in the courts. However, until the courts resolve the validity of the claims, Acacia will continue compelling users to license its technology.

In other news, Playboy Enterprises, Inc., entered into a multimedia venture with France-based men’s lifestyle publisher 1633SA to start an adult Web site featuring young men called Playboy.fr, which will be launched in March of this year. The venture also includes a deal for Playboy to supply content to cellular phones, which would allow users to download such things as wallpaper images and streaming video. Playboy currently operates many other international Web sites in Germany, Taiwan, Brazil and the Netherlands.¹⁶

Also, Harvard’s Committee on College Life approved a plan to distribute and publish its first edition of an adult-oriented student run magazine, which will be called the “H Bomb.” This magazine will be an official Harvard publication and distributed during its May commencement ceremonies. Although the magazine was approved by Harvard, it will not necessarily be funded

¹⁴ C. Farrar, *FTC Seeking Comment on Spam Reg, Definitions*, AVN.com (March 11, 2004), http://www.avn.com/index.php?Primary_Navigation=Articles&Action=Print_Article&Content_ID=76889.

¹⁵ Brandon Shalton, *Disney Gets Goofy*, Fightthepatent.com, Feb. 26, 2004, at <http://www.fightthepatent.com/v2/Disney.html>.

¹⁶ Cory Kincaid, *Playboy Unveils Wireless Plan*, Xbiz, (Feb. 20, 2004), at http://xbiz.com/articles/print.php?article_idp=1116.

by the college. The magazine will feature articles concerning sexual issues as well as naked pictures of Harvard undergraduates, with the stipulation that no naked pictures may be taken inside Harvard buildings. Now that is what you call a Harvard education.

ARRESTED FOR WHAT?

Elizabeth Book, 42, of Ormond Beach, Florida, planned a nationally publicized political protest for “decriminalizing the female breast” for the last day of Bike Week in Daytona Beach. She filed a federal lawsuit seeking an emergency restraining order against the City of Daytona to allow the protest to occur without arrests or harassment, but the federal court denied the request because it did not have enough time to hear from the City. The protest went on as planned, but Book was arrested during the protest when she bore her breasts, which violates Daytona’s public nudity ordinance that states a “full and opaque covering” of the nipple and areola is required, along with half of the outside surface of the breast below the areola.¹⁷ She will take her ordinance violation case to court, with the assistance of the author as defense counsel. Book faces a fine of \$253 and the possibility of one year in jail.¹⁸ Book will fight for her First Amendment right to protest and said, “Do you think for one minute I would pay them? Never!”¹⁹

Also, a driver in New York was arrested for breaking New York state law prohibiting watching television while driving, as well as another law barring the display of sexually explicit material in a public place.²⁰ The driver was arrested after cruising by police playing a DVD entitled “Chocolate Foam,” which was visible from his passenger-side sun visor and on screens

¹⁷ Mike Schneider, *Women Sue to March Topless During Daytona Beach Protest*, Orlando Sentinel, Mar. 5, 2004, at http://www.sun-sentinel.com/news/local/florida/sfl-0305topless_0.6372207.story?coll=sfla-news-florida.

¹⁸ Henry Frederick, *Experts Disagree About Topless Protest’s Effect*, Daytona Beach Journal, Mar. 10, 2004, at <http://www.news-journalonline.com/newsjournalonline/news/headlines/03newshead03031004.htm>

¹⁹ *Id.*

²⁰ CNN, *XXX-DVDs A New Hazard For Drivers*, CNN.com (March 10, 2004) at <http://www.cnn.com/2004/US/03/10/drive.by.porn.ap/index.html>.

located in the car's headrests. Depending on a motorists' location, he or she could face fines and even jail time for the display of X-rated images. Regarding the penalties involved, supporters of the state law believe, "Those restrictions would apply if the content is located in a vehicle. You have effectively moved beyond the privacy of your own home," stated Jeff Matsuura, Director of the Law and Technology Program at the University of Dayton.²¹

Lawrence G. Walters, Esquire is a partner with the law firm of Weston, Garrou & DeWitt, with offices in Orlando, Los Angeles and San Diego. Mr. Walters represents clients involved in all aspects of adult media. 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, www.FirstAmendment.com or AOL Screen Name: "Webattorney."

²¹ *Id.*