



Free Speech Coalition
WHITE PAPER 2004

A Report on the Adult Entertainment Industry

On behalf of the Free Speech Coalition, the trade association of the adult entertainment industry, we present our Year 2004 White Paper, a report designed to provide accurate information about the nation's multi-billion dollar adult entertainment industry.

We offer this document in the hope that it will provide lawmakers and the public with a better understanding of adult entertainment and its place in our society. We hope this report will be used as an educational tool and will provide insight into an industry heavily regulated, but seriously misunderstood, by government.

Kat Sunlove, Executive Director
Jeffrey J. Douglas, Esq., Chair and General Counsel
Mark Kernes, Senior Editor, AVN, FSC Director

Free Speech Coalition
P.O. Box 10480
Canoga Park, CA 91309
818-348-9373

CONTENTS:

- I. Definitions - Pornography and Obscenity
- II. The Mainstreaming of the Adult Entertainment Industry
- III. Industry Statistics -- The United States
- IV. Industry Statistics -- California
- V. Industry Statistics - Regional
- VI. The Adult Entertainment Industry and HIV
- VII. Legislative Affairs

I. DEFINITIONS

In this paper we have used the term “adult entertainment” rather than “pornography,” although, of course, many forms of adult entertainment are referred to as pornography in the common usage. However, the word is frequently misused by those who try to equate “pornography,” a word with no legal meaning, with “obscenity,” a term which has a legal meaning as defined by the United States Supreme Court in *Miller v. California* (1973).

Obscenity is material deemed by a jury to be outside of the protection of the First Amendment, criminalized by California and most other states plus federal law. Pornography, on the other hand, unless it is determined to be obscene in the courts, is *fully protected* by the First Amendment. In fact, Webster's dictionary defines pornography as "writings, pictures, etc. intended primarily to arouse sexual desire." By this definition, much of society's poetry, music and other art forms could be described as "pornographic." Henry Miller's *Tropic of Cancer*, James Joyce's *Ulysses* and the film *Carnal Knowledge* and dozens of other literary works, museum exhibits and artworks, as well as adult entertainment products have been accused of being “obscene.” Almost all of them have been vindicated in court and restored to the marketplace.

While community standards play a significant role in determining what is legally obscene, the fact is that because one community is offended by a book or film does not render the communication illegal. Only a small percentage of commercial adult entertainment has ever been charged as being obscene; fewer still have been convicted. Moreover, titles condemned as obscene in one jurisdiction might be deemed to be perfectly acceptable in most other parts of the country.

Another problem with the word “pornography” is that our society is greatly (and rightly) concerned with the problem of materials involving sexual abuse of children, often called “child pornography.” Those who wish to portray adult entertainment as evil or illegal intentionally confuse the words “child pornography” and “pornography” as they try to influence legislation or public policy, thus making it appear that the two are one and the same.

Nothing could be further from the truth. Adult videotapes sold in general release and adult video stores include only consenting adults. Federal safeguards, notably United States Code, Title 18, Sec. 2257, the federal labeling law, are in place throughout mainstream adult entertainment to insure that careful records are kept documenting the ages of all participants. Likewise, in the exotic dance

portion of the industry, all dancers are required to be of legal age and are recognized as consenting adults based on documents that must be presented to the club by the dancers themselves.

The word “pornography” is also frequently misused by those who seek to portray adult entertainment as violent, involving exploitation, rape, misogyny and coercion of various kinds. While it is true that a small portion of adult product includes thematic portrayals of non-consensual sexuality, materials made and distributed by the professional adult entertainment industry do not contain any **actual** rape, coerced sex, sex with animals, violence, incest or child pornography. Furthermore, easily 90% of the material produced and distributed over the past 15 years portrays fully consensual acts (oral sex, anal sex, group sex, etc.). Most of the remaining 10% is classified as specialty material (i.e., foot fetish, tickling fetish, bondage, spanking, etc.) which generally does not contain explicit sex, but which still involves, and is consumed exclusively by, consenting adults.

II. THE MAINSTREAMING OF THE ADULT ENTERTAINMENT INDUSTRY

The Past:

Looking back as far as the topless craze in San Francisco and the first publication of Playboy, one can see a natural evolution in which the adult entertainment industry has both benefited, and benefited from, the general liberalizing of attitudes about sexuality in this country.

That gradual liberalizing has not been applauded by all, however. Society has polarized, with dissenting factions seeking to roll back the freedoms that others seek to enjoy. The first backlash began in the Eighties, when pro-censorship feminists and fundamentalist religious groups sought to force the genie of mature sexual openness and adult entertainment back into the bottle.

Generally, that repressive effort failed. During the Nineties, liberal attitudes gained momentum and the adult entertainment industry, riding the wave of openness, flourished.

The Present:

Now there are new threats. Local communities across the nation have become battlegrounds over freedom of expression, as adult entertainment foes try to use zoning laws and local ordinances to block exotic dance clubs and adult stores. Local patrons of the clubs and stores, however, are

plentiful, which clearly demonstrates community acceptance. Most dance clubs, for example, no longer fit the run-down, sleazy stereotype of yesteryear, but are upscale and thriving.

At the federal level, a very moralistic U.S. Attorney General, John Ashcroft, and a cadre of Justice Department assistants, have announced plans for greatly expanded obscenity prosecutions, and have begun already to prove they are serious. Catering to a small minority (with disproportionately great political value to the administration) who believe depictions of sexuality to be a mortal sin, the Ashcroft Justice Department has stated that *any* depiction of explicit sex is subject to Federal obscenity prosecution, with Draconian punishments.

We believe they have miscalculated. Society has changed since the Eighties, when federal prosecutors last sought to stamp out freedom of sexual expression. In order to meet the legal criteria for obscenity -- and therefore fall outside of First Amendment protections -- materials would have to fall outside of what the community finds acceptable; this means acceptable not just to the moralistic segments of a community, but to the community as a whole.

The simple fact is that adult entertainment has gained widespread acceptance in the mainstream community. Erotic fantasy, portrayed by adults, for adults, no longer carries the weight of shame or fear it once did. Millions upon millions of adult Americans are proving this by voting with credit cards and wallets, voting at the ballot box (increasingly) and voting on obscenity juries (as federal prosecutors may soon learn).

Moreover, there has been, in recent years, an enormous increase in the sheer numbers of Americans enjoying adult entertainment. The Internet has dramatically widened the range of adult materials available to any adult with a computer and a credit card. The result is a democratization of adult entertainment with more producers and more consumers than ever before.

It is not difficult to find concrete evidence of the mainstreaming of adult entertainment. For example, at the Adult Entertainment Expo, which is held every year concurrently with the Consumer Electronics Show in Las Vegas, attendance is extraordinary. Tens of thousands of people visit daily. It's much the same at other shows. The popularity of adult entertainment was nicely illustrated one year when the adult section was moved to separate quarters at the East Coast Video Show. "Mainstream" exhibitors complained strenuously because of the fall off of interest in their exhibitions.

The Future:

As adult entertainment becomes more accepted in this country, and the laws begin to acknowledge that, we look forward to more and more of the benefits of saner attitudes about sexuality. It could be as it is in Europe, where the distinction between “adult” and “mainstream” is not as pronounced as in the U.S.A., and where people celebrate how exciting and fun adult entertainment often is. At the Cannes Film Festival, for example, California-produced adult movies are regularly the top award winners of the Hot D’Or awards, sponsored by Hot Video magazine, Europe's premier adult video magazine. The AVN Awards, which annually honor the finest adult films and videos, are the subjects of intense international interest and acclaim.

A NOTE ON SOURCES FOR STATISTICS

The information on Video used in this report was derived from several sources, including: a survey of 5000 retailers who answered an annual national questionnaire composed and analyzed by Adult Video News (AVN), the trade publication of the adult video industry (See AVN, January 2003). Paul Kagan & Associates and the Video Software Dealers Association (VSDA), the trade association for the entire home video industry, provided certain relevant information. Additional data came from a special survey of mail order and Internet content providers and from AVN Online. Information in the dance sections of this report is based on statistics collected from targeted cities and specific clubs. Performers have also provided input.

INDUSTRY STATISTICS

INDUSTRY STATISTICS -- THE UNITED STATES

In February of 1997, US News & World Report stated that adult entertainment was estimated to be an \$8 billion economic giant. AVN and other industry professionals estimate that the figure even then was \$2-\$3 billion higher than that.

The VSDA estimates that of the 60,000 retail outlets in the United States which stock home video, stores carrying adult titles account for over 25,000 of those outlets. These retailers include such major chains as Virgin Megastores, The Warehouse, Tower Video, Palmer Video, Movies Unlimited, West Coast Video, Movie Gallery and many others. In addition, hundreds of small boutique, large mail order companies and Internet websites sell adult tapes directly to consumers.

In the United States in 2002, adult video and DVD rentals and sales accounted for 29.1% of the gross income in stores that carry both mainstream and adult products, for a volume of over \$3.95 billion. This figure includes transactions in retail outlets but does not include sales through mail order or over the Internet. AVN Online, the leading magazine devoted to adult webmasters, estimates that in 2000 there were approximately \$1.8 billion in sales of all adult Internet related material, including video on demand, video teleconferencing, photo content sites, and sales of adult videos, DVDs and novelties over the Web. In the United States, 211 million people have gone on-line at least once and 118 million Americans regularly go on-line (A C Nielsen's Homescan Net*Views Survey, May 2000). An estimated 34 million people visited adult entertainment sites in August 2003, about one in four Internet users in the U.S. (Nielsen/NetRatings, August 2003).

One percent of American websites are adult in nature (SurfWatch.com, June 2000). However, these sites account for almost 40% of all Internet traffic (SexTracker.com, May 2001) and are by far the most visited sites on the Internet.

"Traffic volume is staggering. SexTracker, a Web service that keeps an eye on some 26,000 adult sites, reports that on an average day as many as 60 million unique visitors land upon those sites. Taken together, the top five sex sites... receive just under 4 million unique visitors every day. To put that in perspective: The world's top five news sites, including such heavyweights as MSNBC.com and CNN.com, receive a total of only about 2.5 million unique visitors per day." (Yahoo! Internet Life, "Sex and the Internet - A Special Report", May 2001.)

The adult Internet industry "may even be the most profitable" segment of e-commerce. (Yahoo! Internet Life, "Sex and the Internet - A Special Report," May 2001.) In 1998, adult e-commerce accounted for \$1 billion, or 20% of the \$5 billion Americans spent on-line ("The Standard," March 1999). Forbes Magazine (April 2000) reported on-line adult e-commerce generated revenues of \$1.5 billion in 1999.

IV. INDUSTRY STATISTICS - CALIFORNIA

Benefits to California - The Exotic Dance Industry

In California's exotic dance industry, there are an estimated 7500 full-time dancers with another 5000 working part-time. These entertainers represent a broad range of women, including students, professional women and single mothers as well as exotic dance professionals. What they all have in common is that they enjoy the financial independence and the performance excitement of exotic dance.

There are over 175 exotic dance clubs in California which create over 20,000 jobs in the state, while generating almost \$1 billion in revenue. The dance industry brings in an estimated \$500,000 to local governments in tax revenue.

In the exotic dance industry, many entertainers earn 5-6 times the state's official minimum wage or more as headliners. Generally, dancers choose their own working environment and work schedules and enjoy a level of financial independence not found by women in other areas, in some cases, opening a business with their earnings. In addition, female dancers earn 3-4 times the amount of money earned by their male counterparts and considerably more than in most traditional female jobs. The adult entertainment industry is one of few industries where this is true.

Benefits to California - Video and DVD Rentals and Sales

At the present, approximately 2800 retail stores carry adult videos and DVDs for sale and/or rental in the State of California. The average store stocks over 700 different adult tapes and DVDs for rental or sale, with an average of 75 different new titles added weekly. Most stores have a near-complete turnover in adult stock every 12 weeks.

During 2002 in the United States, stores reported a total of 801 million rentals of adult tapes and DVDs, almost all of which were produced in California. Nearly 130 million of those rentals took place here in the state. If each of those rentals were for one day only, at a typical \$3 rental fee, a minimum of \$31 million sales tax dollars would have been generated for the State of California. Of

course, the actual sales tax revenues to the state are much larger, since the average rental is longer than one day and for more than \$3.00 per day.

The wholesale sales value of tapes and DVDs sold to retailers from producers and distributors in the United States in 2002 totaled \$919 million, with nearly \$130 million in wholesale sales to retailers in California.

Adult products are often the primary profit center for non-chain video stores. Adult videos carry higher rental fees, rent for longer periods, and are more likely to convert to sales. Without adult product, many of California's retailers that carry adult videos would be forced out of business, costing the state thousands of jobs.

Benefits to California - Manufacturing

The adult video business is made up of producers, manufacturers (who duplicate and distribute their own as well as other producers' product), wholesale distributors, retailers (including Internet sites) and mail order companies. In California alone, AVN has identified 175 manufacturers, providing employment for almost 5000 California residents. An additional 60 wholesale distributors and mail order outfits in California employ upwards of 1000 more workers.

These figures do not include the numerous producers and publishers of adult magazines and novelties, which are economically significant industries in their own right.

Several hundred performers employed in the adult movie industry reside in California, as do thousands of technicians, directors, editors, producers, makeup artists, art directors, designers, photographers, line producers, lighting technicians, cinematographers, artists, computer experts, camera operators, caterers, drivers, janitors, builders, Foley artists, musicians, etc. Each of these employees pays state income taxes.

Many of the technicians and artists who work in the "mainstream" entertainment industry have previously worked behind the scenes in the adult movie business, demonstrating that the adult industry provides a training ground for people wanting to work in Hollywood. Many continue to work both in mainstream and adult productions.

Benefits to California - Mail Order

Mail order provides a means for distribution of adult products with minimal intrusion into the community, and substantial privacy for the consumer. A survey of mail order providers conducted by the Free Speech Coalition in 1998 established that in that year, there was \$200 million in adult video sales, plus additional millions in sales of magazines, lingerie and novelties. The sales of these products generate tax revenue and employment in California, where most of the product manufacturers are located.

Mail order and related shipping in California generates so much revenue that following the 1999 United Parcel Service strike, the U.S. Postal Service assigned a special sales staff to encourage the adult industry to keep using the U.S.P.S.

Benefits to California - The Internet

California has the highest relative percentage of Adult Internet users. 13.62 million Californian adults use the Internet, 15.3% of the total United States adult Internet population. (ACNielsen's Homescan Net*Views Survey, May 2000).

Revenue generated by e-commerce has grown at a rapid pace. In 2000, California e-commerce revenue reached \$6 billion, representing 25% of all e-commerce revenues in the United States (Nua.net, February 2001). For California, on-line adult products would grow into a \$1.2 billion industry.

California leads the country in hosting adult websites. These are sources of high-paying, technically sophisticated jobs. Furthermore, young entrepreneurs are attracted to these businesses because of the low capital investment required for start-up. The adult website industry keeps these creative, talented people in California, and attracts similar technicians and entrepreneurs from around the world. Each website generates still more employment in the shipping industry, provides employment for models and dancers and, in addition, provides new means of distribution for photographers and graphic artists.

V. INDUSTRY STATISTICS -- WESTERN REGION

In stores in the Western Region of the United States (California, Arizona, Oregon and Washington), adult video and DVDs make up over 33.6% of the inventory of stores that carry both general release and adult video, and often accounts for as much as 60% of a store's profit.

According to survey responses and personal contact with retailers at video-oriented conventions, it is clear that video retailers who carry adult product generally depend upon that product to stay in business, particularly in light of the market dominance enjoyed by chains which do not carry adult titles.

VI. THE ADULT ENTERTAINMENT INDUSTRY AND HIV

Despite the fact that on-set practices as well as testing programs within the adult video industry delayed the advent of HIV in performer ranks for over 15 years, in early 1998, five performers tested positive for the disease. The impact of this proved to be a wake-up call, as performers and companies faced the immediate necessity of a no-nonsense, state of the art HIV testing program.

Today the adult video industry has just such a program, thanks to the Adult Industry Medical (AIM) Healthcare Foundation. Founded by Sharon Mitchell, Ph.D., AIM is in its 5th year of service to the industry (and the general public) and works cooperatively with the Los Angeles County Health Department.

In conjunction with the Los Angeles Department of Health Services, AIM has created a set of guidelines for the Adult Entertainment Industry based on both County concerns and the wisdom of industry insiders.

Every 27 days, each performer voluntarily tests for HIV by means of the best test available, the PCR-DNA test. Compliance with the testing regimen is nearly universal among performers. The artists inspect certified copies of each other's HIV tests before performances. There are also monthly tests for chlamydia, gonorrhea and syphilis.

In addition AIM guidelines call for using condoms whenever and wherever possible, monthly certified counseling as well as notification and treatment protocols if a performer were to be tested HIV positive. Routine Hepatitis and STD testing for a wide range of diseases is also recommended

and routinely provided, as well as treatment when required. AIM has over 14 local testing sites in southern California, 40 nationwide, and all staff are certified counselors by the Office of AIDS Policy and Program and the County Department of Health Services.

In spring of 2004, two HIV-infected performers were identified within the industry, a fact which resulted in a media firestorm, with some calling for increased regulation from outside the adult entertainment industry. However, as tragic as any HIV diagnosis is, the fact is that, thanks to AIM's uniform and consolidated medical record-keeping and with broad industry cooperation, AIM has been able to track down and to test any and all industry partners of those performers. In short, the AIM system, designed to quickly identify and avoid any spread of the virus, is working.

FSC - indeed, the entire adult video industry - is very proud that the AIM system worked so effectively and so promptly to halt the possible spread of this dread disease. Until this episode -- for six years -- not a single HIV-positive performer entered the adult entertainment industry in the United States. Since it appears that this recent infection came from outside the United States, where testing programs are less reliable, the industry will be analyzing current systems and making necessary adjustments in protocols to prevent this eventuality in the future.

VII. LEGISLATIVE AFFAIRS

Historically, adult entertainment has been regulated with insufficient dialogue between regulators and the industry being regulated. Until recent years, there was no recognized voice for the industry as a whole, other than an occasional lawyer representing an affected business.

The Free Speech Coalition has established a consistent lobbying voice in California, in several other states and in the nation's capitol. Furthermore, there is an ongoing training program to educate members from all sectors of the industry in the political process and on current issues. Each year new representatives experience training and lobbying in Sacramento and other state capitols under the banner of Celebrate Free Speech Lobbying Days.

On the local level, in response to pressure groups, municipalities attempt to solve "problems" by unfairly regulating adult businesses. Communities enact regulations even when no adult businesses are in place, and too often waste time and money addressing problems that don't exist. For

White Paper 2004, p. 12

example, ordinances have been passed requiring adult stores to maintain 24 hour armed security even though the businesses in question have never had a police-involved incident of violence.

The mission of the Free Speech Coalition is to provide education, lobbying and, as a last resort, litigation support. In the case of litigation support, the organization looks exclusively at matters that are likely to set precedent or that have will have an effect on the entire adult entertainment industry. For example, the U.S. Supreme Court decision in *Ashcroft vs Free Speech Coalition* (2002), overturned federal law which would have criminalized adult actors portraying underage characters in erotic scenes, both in adult entertainment and in mainstream materials.

FSC maintains a library of information, research data, briefs on new and pending legislation, and documents concerning historical legal findings and precedence. We are organizing FSC state chapters throughout the United States.

Thank you for your time in considering our positions. If you have any comments or questions, please feel free to contact our Executive Director, Kat Sunlove, at the offices of the Free Speech Coalition at (818) 348-9373.