

and voyeuristic social deviancy such as paedophilia, combined with television networks' lust for ratings, is creating an ever-increasing market for whatever can be broadcast. There are legislative limits in place now (up to \$100,000 fine or 12 months' imprisonment in Western Australia) to prevent the broadcasting of PVRI's, but the demand and influence of the media moguls cannot be denied. One only has to look at the relationships between media barons and political leaders and the re-emergence of media ownership issues to confirm this point.

CONCLUSION

In summary the points I have raised regarding: the production of the PVRI; the documentary theory including the interview, gaze and editing; and cultural considerations of narrative and language,

demonstrate that the PVRI is significantly aligned with documentary style from a film theory perspective. It is also undeniably important as documentary evidence from a legal perspective. Introduce the considerable political and economic influence of the commercial media and the PVRI seems poised to join the constantly evolving reality TV documentary game. It must only be a matter of time before the media-legal relationship is reaffirmed; the "evidence" will be in front of us, on screen, prime time.

BIBLIOGRAPHY

- Barnouw, E (1993.) *Documentary: A History of the Non-Fiction Film*, New York, Oxford University Press
- Comer, J (1996), *The Art of Record*, Manchester; Manchester University Press

Nichols, B (1991), *Representing Reality*, Bloomington: Indiana University Press

The Criminal Code (WA), Reprints Act 1984 as at 21 April 1997 (Criminal Code Act)

Wilde, R (1997), *Interview: the police videotape record of interview in Western Australia*. Perth: 22 May 1997

Winston, B (1995), *Claiming the Real: The Documentary Film Revisited*, London: BF

1 Mobile units are used in certain circumstances; eg remote areas.

2 See "The World's Silliest Criminals".

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Child On Line Protection Act Halted for Now

John Corker looks at the battle over the Child On Line Protection Act in the United States.

The war has broken out again in the US between the free speech on-line groups and the government over new laws which seek to protect minors from harmful material on-line. The Child On-Line Protection Act (COPA), passed by the US Congress on October 7, and signed into law by President Clinton on October 21, 1998 was prevented from coming into operation by a temporary restraining order granted on 19 November 1998 by Judge Lowell Reed Jr. of the US District Court. This order prevents the Government from enforcing the Act and is likely to stay in place until a full hearing is held of the substantive issues raised by the plaintiffs.

The plaintiffs are diverse and include the New York Times, Sony On-Line, CBS New Media, Time, Condomania, a leading on-line seller of condoms, OBGYN.NET, a site about women's reproductive health and RIOTGRRRL, a feminist e-zine. They all argue that whilst the law purports to restrict the availability of materials to minors, the effect of the law is to restrict adults from communicating and receiving expression that is clearly protected by the First Amendment. They say that the law will put a wide range of web sites in danger of prosecution for what amounts to constitutionally protected content, such

as information about safe sex, gay and lesbian issues, medical conditions, or even poetry¹.

This is round two in a battle that started more than two and a half years ago where the same forces met in the same US District Court to battle over the now infamous section of the Communications Decency Act (CDA) which made it a felony to transmit or display any "indecent" material on the Internet that could be obtained by minors. The plaintiff's Memorandum of Law in support of their Motion for the Restraining Order states:

This is Congress' second attempt to impose criminal sanctions on the display of constitutionally protected, non-obscene materials on the Internet'... Recognizing that the Internet had become a powerful "new marketplace of ideas" and "vast democratic fora" that was "dramatically expanding" in the absence of government regulation, the Court imposed the highest level of constitutional scrutiny on content-based infringements of Internet speech.

The Supreme Court found that the CDA was too wide ranging, not specific enough and struck down that law.

The COPA has tried to get around the difficulties of the CDA case by creating a definition of harmful material which is remarkable for its specificity:

"material that is harmful to minors" means:

any communication, picture, image, graphic imagefile, article, recording, writing or other matter of any kind that is obscene or that (A) the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors is designed to pander to, the prurient interest; (B) depicts, describes, or represents, in a manner patently offensive with respect to minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post pubescent female breast; and (C) taken as a whole, lacks serious literary, artistic, political or scientific value for minors

The COPA imposes criminal and civil penalties on person who:

knowingly and with knowledge of the character of the material, in

commerce by means of the world wide web make any communications for commercial purposes that is available to the minor and that includes any material that is harmful to minors.

It is a defence to a prosecution if the defendant:

in good faith has restricted access by minors to material that is harmful to minors:

(a) by requiring the use of a credit card, debit account adult access code, or adult identification number

(b) by accepting a digital certificate that verifies age; or

(c) by any other reasonable measures that are feasible under available technology.

The plaintiffs argue that age verification systems would turn away many potential visitors to their sites and significantly commercially damage them. The editor of an e-zine called *Salon* said:

Our site occasionally has columns containing sexual content. *Salon* would have to put up a gate saying you have to register. Our circulation would plummet overnight. Anytime you stop the normal impulse of a reader to click on your site, you lose traffic.

Judge Reed has stated that issues as to whether it would be economically realistic and technologically possible to verify the

identity information of visitors are still very real issues to be determined by law.

Proponents of the law suggest that it does no more than take what already exists under State law on-line. But the plaintiffs argue the law could end up applying local standards to web sites which are by their very nature global and thus applying the lower standard of a State law to a global jurisdiction is inappropriate.

The Act was signed into law despite advice from the Justice Department that provisions of the Act may constitute an unconstitutional restriction on free speech. It was reported² that President Clinton approved the COPA proposal because it was attached to critical spending legislation. This happened similarly with the CDA which was linked to assuring passage through Congress of the US Telecommunications Act of 1996. This has interesting parallels to the way that laws in Australia which seek to restrict access to 'adult' or offensive material are passed through Parliament. For example, an amendment to the *Broadcasting Services Act 1992* moved by Senator Harradine which restricts the broadcast of "R" rated material on subscription broadcast television until both houses of Parliament have approved it was accepted by Government in order to assure passage of legislation which fixed the debacle it had got itself into with the tender processes for Pay TV satellite licences A and B³.

Debate has raged about whether the recently released Starr report would have been covered by this law. Chris Barr, editor and chief of CNET said "it's a lot more targeted than the original CDA, but it would be problematic for companies like ours to find out the age of users before giving access to things like the Starr report". Government Attorney Karen Stewart argued that the Starr report would be out side of the scope of the statute because of its political nature. However the judge allowed the Starr report to be considered in the temporary restraining order proceedings on the basis that sites felt like they could face a prosecution for posting the report.

CONCLUSION

This ongoing battle highlights the difficulty of the application of the criminal law in the content of the on-line medium and how little we still understand the implications of direct regulation in this area. It also highlights how easy it is for laws to have unintended consequences. The full hearing of the action challenging the COPA is due to be heard in December 1998.

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1 Courtney Macvinta, CNET news.com, 'CDA II critics claim temporary victory', November 19, 1998.

2 Courtney Macvinta, CNET news.com, 'Suit filed against CDA II', October 22, 1998.

3 Senate Hansard: Thursday, 13 May 1993, p.531.

Sound Unlimited: Music & Copyright in Cyberspace

Mark Bamford looks at how the music industry is moving its business on-line and the response of various copyright collection societies.

The music industry is taking its first tentative steps into cyberspace. At stake is a potentially lucrative method of exploiting music. However, significant difficulties need to be overcome, not the least of which is rights protection. This article reviews some developments in the music industry as it gears up for the move on-line.

THE MUSIC INDUSTRY GOES ON-LINE¹

Most major record companies and a host of independent labels have web sites. The

size and complexity varies. By way of example, the Epic Records Group regularly updates its artists' web sites and often incorporates electronic bulletin boards to obtain feedback from customers. George Michael's label, Aegean Records, places the Internet more centrally in its business strategy. Aegean recently jointed up with Sun Microsystems Intervid, Iterated Systems and Real Videos/Real Audio to launch a web channel which delivers real video, digital quality sound and content.

Perhaps the most common form of electronic commerce conducted on the Internet by music industry players to date is the mail order service. For the purpose of such a service the web site acts as a shop front enabling browsers to sample products (eg music from a CD) and then to order and pay for them by e-mail. The products are delivered to the customer by post.

The UK based Internet Music Shop provides a mail order service and makes monthly sales of around £25,000, growing at a rate of 25% per month.