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ESSAY

UNTANGLING CHILD PORNOGRAPHY FROM THE ADULT ENTERTAINMENT INDUSTRY: AN INSIDE LOOK AT THE INDUSTRY'S EFFORTS TO PROTECT MINORS

ROBERT D. RICHARDS[Ⓢ] & CLAY CALVERT[∞]

I. INTRODUCTION

*"Child pornography has become a global crisis."*¹

That was the sobering message Ernie Allen, head of the National Center for Missing & Exploited Children (NCMEC),² delivered to

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1. *Deleting Commercial Pornography Sites from the Internet: The U.S. Financial Industry's Efforts to Combat This Problem: Hearing Before the Subcomm. on Oversight and Investigations of the H. Comm. on Energy and Commerce*, 109th Cong. 29 (2006) [hereinafter *Deleting Commercial Pornography*] (statement of Ernie Allen, President and Chief Executive Officer, National Center for Missing & Exploited Children), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_house_hearings&docid=f:31467.pdf.

2. Nat'l Ctr. for Missing & Exploited Children, National Mandate and Mission,

members of the United States Congress in September 2006.³ This mass-scale, international predicament presents an unsettling reality about a reviled form of speech that falls outside the scope of First Amendment⁴ protection and is illegal to produce, distribute and possess in the United States.⁵ Allen underscored the calamity by recounting a veritable parade of horrors uncovered by his

http://www.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en_US&PageId=1866 (last visited Jan. 21, 2008) (describing its mission “to help prevent child abduction and sexual exploitation; help find missing children; and assist victims of child abduction and sexual exploitation, their families, and the professionals who serve them,” and noting that it was established, under congressional mandates, “in 1984 as a private, nonprofit 501(c)(3) organization to provide services nationwide for families and professionals in the prevention of abducted, endangered, and sexually exploited children”).

3. *Deleting Commercial Pornography*, *supra* note 1, at 1.

4. The First Amendment to the United States Constitution provides, in relevant part, that “[c]ongress shall make no law . . . abridging the freedom of speech, or of the press.” U.S. CONST. amend. I. The Free Speech and Free Press Clauses have been incorporated through the Fourteenth Amendment Due Process Clause to apply to state and local government entities and officials. *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

5. *See* 18 U.S.C. §§ 2251-55 (2006) (setting forth the relevant federal criminal statutes targeting sexual exploitation of minors and child pornography).

In 1982, the United States Supreme Court held that the production and distribution of child pornography was not protected by the First Amendment guarantee of free speech. *New York v. Ferber*, 458 U.S. 747, 763-765 (1982) (holding that “classifying child pornography as a category of material outside the protection of the First Amendment is not incompatible with our earlier decisions,” and observing that child pornography, “like obscenity, is unprotected by the First Amendment”).

The Supreme Court later paved the way for child pornography possession convictions in *Osborne v. Ohio*, 495 U.S. 103 (1990). In *Osborne*, the high court upheld a state’s ability to convict on the basis of private possession of child pornography:

Given the importance of the State’s interest in protecting the victims of child pornography, we cannot fault Ohio for attempting to stamp out this vice at all levels in the distribution chain. According to the State, since the time of our decision in *Ferber*, much of the child pornography market has been driven underground; as a result, it is now difficult, if not impossible, to solve the child pornography problem by only attacking production and distribution.

Id. at 110.

organization.⁶ In particular, the data compiled by the NCMEC revealed that “19% of identified offenders had images of children younger than 3 years old; 39% had images of children younger than 6 years old; and 83% had images of children younger than 12 years old.”⁷

Allen also raised another critical point that partly explains the difficulty law enforcement has today in addressing this insidious problem: child pornography is big business, with revenue estimates now topping \$3 billion annually from the Internet alone.⁸ Moreover, “[e]xperts say the multibillion-dollar child pornography industry is only getting bigger.”⁹ Allen told lawmakers that, in a recent case, “investigators identified 70,000 individual customers paying \$29.95 per month and using their credit cards to access graphic images of small children being sexually assaulted.”¹⁰ In July 2007, NCMEC’s CyberTipline¹¹ “received its 500,000th report of suspected child pornography and other child exploitation crimes.”¹²

6. NCMEC is “a not-for-profit corporation, mandated by Congress and working in partnership with the U.S. Department of Justice as the national resource center and clearinghouse on missing and exploited children.” *Deleting Commercial Pornography*, *supra* note 1, at 28 (statement of Ernie Allen).

7. *Id.* at 29.

8. Wade Luders, *Child Pornography Web Sites: Techniques Used to Evade Law Enforcement*, FBI L. ENFORCEMENT BULL. (FBI, D.C.), July 2007, at 17, 17; Stacia Glenn, *Child Porn Thriving on Web*, SAN BERNARDINO COUNTY SUN (Cal.), Nov. 5, 2006 (reporting that “[c]hild pornography is now a multibillion-dollar commercial enterprise”).

9. Taryn Brodwater, *Tracking Child Porn*, SPOKESMAN REV. (Spokane, Wash.), Apr. 9, 2007, at A1 (“Computer-related crimes as a whole are increasing, but those involving child victims are top priority . . .”).

10. *Deleting Commercial Pornography*, *supra* note 1, at 29 (statement of Ernie Allen).

11. The CyberTipline is a Congressionally mandated “reporting mechanism for cases of child sexual exploitation including child pornography, online enticement of children for sex acts, molestation of children outside the family, sex tourism of children, child victims of prostitution, and unsolicited obscene material sent to a child.” Nat’l Ctr. for Missing & Exploited Children, What is the CyberTipline?, http://www.cybertipline.com/missingkids/servlet/PageServlet?LanguageCountry=en_US&PageId=2446 (last visited Jan. 28, 2008).

12. Press Release, Nat’l Ctr. for Missing & Exploited Children, National CyberTipline Tops 500,000 Reports (July 10, 2007), *available at* <http://www.ncmec.org/missingkids/servlet/NewsEventServlet?LanguageCountry=en>

In his exchange with the House Subcommittee on Oversight and Investigations, Allen queried, “[w]ho is behind this trade in our children?”¹³ Answering himself, he pointed to “documented cases in which the enterprise was found to be operated by an organized crime network.”¹⁴ The networks are sophisticated, such as one where “[t]he site was managed in Belarus, the credit card payments were processed by a company in Florida, the money was deposited in a bank in Latvia, and the majority of the almost 300,000 credit card transactions on the site were from Americans.”¹⁵

Unquestionably, the global nature of the child pornography business poses special enforcement difficulties. The Federal Bureau of Investigation (FBI) concedes that “[b]ecause law enforcement agencies often are reluctant to make a covert purchase of a membership or access to a child pornography Web site apparently in another country, much illegal child pornography located in the United States evades investigation.”¹⁶

The news was not any better when Allen returned to Congress in July 2007. He stressed that, despite his organization’s cooperative efforts with the FBI, Immigration and Customs Enforcement (ICE),¹⁷ and the Postal Inspection Service,¹⁸ “the use of the Internet to victimize children continues to present challenges that require constant reassessment of our tools and methods.”¹⁹ Allen described those challenges this way:

_US&PageId=3290.

13. *Deleting Commercial Pornography*, *supra* note 1, at 29.

14. *Id.*

15. *Id.*

16. Luders, *supra* note 8, at 19.

17. U.S. Immigration and Customs Enforcement, About Us, <http://www.ice.gov/about/index.htm> (last visited Jan. 28, 2008) (describing ICE as “the largest investigative branch of the Department of Homeland Security (DHS)”).

18. U.S. Postal Inspection Service, Mission Statement, <http://postalinspectors.uspis.gov/aboutus/mission.aspx> (last visited Jan. 28, 2008) (noting its mission “to protect the U.S. Postal Service, secure the nation’s mail system and ensure public trust in the mail”).

19. *Protecting Children on the Internet: Hearing Before the S. Comm. on Commerce, Science, and Transportation*, 110th Cong. (2007) (statement of Ernie Allen, President & Chief Executive Officer, Nat’l Ctr. for Missing & Exploited Children), *available at* http://commerce.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=1885&Witness_ID=6684.

As technology evolves, so does the creativity of the predator. New innovations such as webcams and social networking sites are increasing the vulnerability of our children when they use the Internet. New technology to access the Internet is used by those who profit from the predominantly online market in child pornography and seek to evade detection by law enforcement.²⁰

The FBI shares this frustration, acknowledging that “child pornography websites often are so complex that efforts to identify the administrators become tedious and time consuming. Frequently, by the time investigators have taken the appropriate legal steps to track administrators, the suspect sites have moved from one place to another on the Internet.”²¹

Despite difficulties in ferreting out creators and consumers of child pornography, the federal government has launched several ambitious projects. For instance, the FBI’s Innocent Images National Initiative²² focuses, among other things, on the producers of child pornography.²³ In 2006, the U.S. Department of Justice created Project Safe Childhood, partnering with U.S. Attorneys, the Internet Crimes Against Children (ICAC) task force, and federal, state and local law enforcement agencies, “to investigate and prosecute crimes against children facilitated through the Internet or other electronic media and communications devices.”²⁴

These initiatives are producing some success stories. The FBI reported that the Innocent Images National Initiative resulted in 5840 convictions and pretrial diversions from 1996 through 2006.²⁵ Moreover, in August 2007, U.S. Attorney Catherine L. Hanaway announced that her St. Louis, Missouri, office reached a record

20. *Id.*

21. Luders, *supra* note 8, at 17.

22. The Innocent Images National Initiative is “an intelligence driven, proactive, multi-agency investigative operation to combat the proliferation of child pornography/child sexual exploitation (CP/CSE) facilitated by an online computer.” FBI, Innocent Images National Initiative, <http://www.fbi.gov/publications/innocent.htm> (last visited Jan. 11, 2008).

23. *Id.*

24. Press Release, DOJ, Fact Sheet: Department of Justice Project Safe Childhood Initiative (Feb. 15, 2006), *available at* http://www.usdoj.gov/opa/pr/2006/February/06_opa_081.html.

25. FBI, *supra* note 22.

number of child pornography indictments—twenty-seven—a figure which was “well ahead of last year—and last year was a record.”²⁶

Some people arrested for child pornography are child predators. For example, Lyle Robert Paton, a Minneapolis man who told the judge, after being convicted for producing child pornography, that “he created the illicit images with ‘mutual delight,’ meaning his victims enjoyed what he did.”²⁷ Disturbingly, many child pornography consumers’ professions place them in positions of trust for minors, such as a former Connecticut teacher who possessed “more than 1000 compact discs, each containing 3000 to 4000 images of child pornography”²⁸—three to four million total images. Similarly, a Maryland gymnastics teacher was sentenced in August 2007 to seventy-eight months in prison in “one of the most significant child pornography cases ever prosecuted in Maryland due to the sheer volume of child pornography possessed by the defendant.”²⁹ As the *Pittsburgh Post-Gazette* recently reported, people wrapped up in child pornography come from all walks of life: “[a] real estate developer. An unemployed man with a drinking problem. A sports radio announcer. A radiologist. [All these people do] [n]ot [have] much in common, except this: They have all been charged in recent months with either possessing child pornography or attempting to solicit a child online.”³⁰

26. *Record Number of Child Pornography Indictments by U.S. Attorney’s Office*, U.S. FED. NEWS, Aug. 9, 2007.

27. Shannon Prather, *Minnesota/Feds Targeting Child Pornography*, ST. PAUL PIONEER PRESS (Minn.), Sept. 4, 2007 (“Federal prosecutors in Minnesota are on track to more than triple the number of people indicted for possessing, distributing or producing child pornography this year.”).

28. *Former Connecticut Teacher Who Possessed Millions of Images of Child Pornography Pleads Guilty*, PR NEWSWIRE, Mar. 26, 2007. U.S. Attorney Kevin J. O’Connor called the accused “one of the most prolific collectors of child pornography that we’ve seen in Connecticut.” *Id.*

29. *Maryland Gymnastics Teacher with Massive Child Pornography Collection Sentenced to 6 ½ Years for Receiving Child Porn*, PR NEWSWIRE, Aug. 9, 2007 (noting that the defendant “admitted that he had been looking at child pornography for approximately 20 years, initially collecting child pornography through the mail” before moving on to use the Internet and WebTV).

30. Paula Reed Ward, *Experts Say Child Porn Finds Varied Audience*, PITTSBURGH POST-GAZETTE, Aug. 6, 2007, at A-1 (questioning “why, then, do people who often have good jobs, loving families, money and community standing put themselves at such risk?”).

Besides the massive caseload, government officials must be concerned with increasingly aggressive content, as “[c]hild pornography on the Internet is becoming more brutal and graphic, and the number of images depicting violent abuse has risen fourfold since 2003,”³¹ according to the British-based Internet Watch Foundation.³² The Child Exploitation and Obscenity Section (CEOS),³³ a special unit of the U.S. Department of Justice, works with “the 93 United States Attorney offices around the country and investigative agencies to vigorously combat this growing problem.”³⁴ As CEOS describes the problem, “[t]he technological ease, lack of expense, and anonymity in obtaining and distributing child pornography has resulted in an explosion in the availability, accessibility, and volume of child pornography.”³⁵

The magnitude of the problem requires law enforcement to not only redouble its own efforts, but also seek help from private organizations devoted to eradicating child pornography. One such group, the Association of Sites Advocating Child Protection (ASACP), founded in 1996, proclaims dedication “to eliminating child pornography from the Internet.”³⁶ ASACP works in tandem with

31. Yuxing Zheng, *Internet Watchdog Warns Online Child Pornography Increasingly Brutal*, ASSOC. PRESS, Apr. 16, 2007 (reporting that “[a]bout 80 percent of the children in the abusive images are female, and 91 percent appear to be children under the age of 12”).

32. The Internet Watch Foundation works “in partnership with internet service providers, telecommunication companies, mobile operators, software providers, the police, Government and the public to minimize the availability of online illegal content, particularly child sexual abuse images.” Internet Watch Foundation, *Mission & Vision*, <http://www.iwf.org.uk/public/page.114.htm> (last visited Jan. 10, 2008).

33. CEOS states that its mission is “to protect the welfare of America’s children and communities by enforcing federal criminal statutes relating to the exploitation of children and obscenity.” Child Exploitation and Obscenity Section, DOJ, <http://www.usdoj.gov/criminal/ceos/index.html> (last visited Jan. 29, 2008).

34. Child Exploitation and Obscenity Section, DOJ, *Child Pornography*, <http://www.usdoj.gov/criminal/ceos/childporn.html> (last visited Jan. 29, 2008).

35. *Id.*

36. Ass’n of Sites Advocating Child Prot., *About ASACP*, <http://www.asACP.org/page.php?content=aboutus> [hereinafter ASACP website] (last visited Jan. 10, 2008) (“ASACP battles child pornography through its CP reporting hotline, and by organizing the efforts of the online adult industry to combat the heinous crime of child sexual abuse.”).

likeminded organizations, such as the Financial Coalition Against Child Pornography (FCACP),³⁷ and is a member of the Congressional Internet Caucus Advisory Committee, “a diverse group of public interest, non profit and industry groups working to educate the Congress and the public about important Internet-related policy issues.”³⁸ ASACP has a second prong to its mission: “work[ing] to help parents prevent children from viewing age-inappropriate material online.”³⁹

What sets ASACP apart from the other organizations with similar missions is its sponsorship. The funding for the organization comes primarily from companies in the adult entertainment industry,⁴⁰

37. This organization, “which includes leading banks, credit card companies, third party payment companies and Internet services companies, is dedicated to fighting child pornography over the Internet. The goal of the Financial Coalition Against Child Pornography is to eradicate commercial child pornography by 2008.” Press Release, Nat’l Ctr. for Missing & Exploited Children, The Financial Coalition Against Child Pornography Adds Four Financial Services Leaders to Its Roster (Nov. 1, 2006), available at http://www.missingkids.com/missingkids/servlet/NewsEventServlet?LanguageCountry=en_US&PageId=2851 [hereinafter Press Release, FCACP]. The founding members of the FCACP intend to:

[E]stablish a global clearinghouse on child pornography and the financial industry; draft a protocol or statement of principles for adoption and implementation by every nation; establish a proactive system to enable the financial industry to deal more effectively with illegal uses of its systems to disseminate child pornography; create a system for reporting suspected child pornography; develop a process for performing test transactions to identify parties involved in child pornography; ensure that current processes in place to identify money laundering and report unusual circumstances are used to identify illegal child pornography; and implement monitoring and due diligence checks.

Int’l Centre for Missing & Exploited Children, Financial Coalition Against Child Pornography, http://www.icmec.org/missingkids/servlet/PageServlet?LanguageCountry=en_X1&PageId=3064 (last visited Jan. 14, 2008).

38. Advisory Committee to the Congressional Internet Caucus, <http://www.netcaucus.org> (last visited Jan. 14, 2008). According to the Advisory Committee’s website, the Committee “shares the goals of the Congressional Internet Caucus—a bi-partisan group of over 170 members of the House and Senate working to educate their colleagues about the promise and potential of the Internet.” *Id.*

39. ASACP website, *supra* note 36.

40. Ass’n of Sites Advocating Child Prot., Sponsors, <http://www.asacp.org/page.php?content=sponsors> [hereinafter ASACP Sponsors] (last visited Jan. 12, 2008). The webpage displays the logos of platinum, title and corporate sponsors, and provides that ASACP’s “[s]ponsors’ generous financial

including powerful players like Hustler,⁴¹ Playboy,⁴² and Wicked Pictures.⁴³ In a highly ironic twist, while adult entertainment industry-funded ASACP is aiding law enforcement to stamp out child pornography, the FBI is simultaneously conducting age-verification and record-keeping inspections, pursuant to 18 U.S.C. § 2257,⁴⁴ of adult movie companies to ensure they are not using underage performers, which would be tantamount to creating child pornography.⁴⁵

In June 2007, the ASACP, in cooperation with the adult entertainment industry, launched a new website labeling system.⁴⁶ As described in the organization's press release:

support enables ASACP to meet the increasing demand for [ASACP's] services, to maintain [ASACP's] commitment to the struggle against child sexual abuse, and to meet the needs and expectations of [ASACP's] members and supporters." *Id.*

41. *Id.*; Hustler, <http://hustler.com/mansion1/home.php?s=9&p=1&w=423310&t=0&c=0&cs=0> (last visited Feb. 15, 2008).

42. ASACP Sponsors, *supra* note 40; Playboy, <http://www.playboy.com> (last visited Feb. 15, 2008).

43. ASACP Sponsors, *supra* note 40; Wicked Pictures, <http://tour2.wickedpictures.com/?nats=ODI1NToxMDox,0,0,0,0> (last visited Feb. 15, 2008).

44. 18 U.S.C. § 2257 (2006) (providing, in relevant part, that producers of "sexually explicit conduct" made after November 1, 1990, must "create and maintain individually identifiable records pertaining to every performer portrayed in such a visual depiction," including, among other things, "the performer's name and date of birth"). In October 2007, a federal appellate court held that 18 U.S.C. § 2257 "is overbroad and therefore violates the First Amendment . . ." *Connection Distrib. Co. v. Keisler*, 505 F.3d 545, 548 (6th Cir. 2007). This decision, however, came from the U.S. Court of Appeals for the Sixth Circuit and thus has no impact on the FBI inspections taking place under the statute in southern California, which falls within the U.S. Court of Appeals for the Ninth Circuit.

45. See Claire Hoffman, *Porn Studios Raided to Ensure Adult-Only Casts*, L.A. TIMES, Jan. 12, 2007, at C1 (describing the inspections and noting that "[a]bout a dozen porn production facilities in pornography hot spots such as Van Nuys and Chatsworth have been taken by surprise in the last three months by a barrage of federal agents at their doors"); see generally Robert D. Richards & Clay Calvert, *The Legacy of Lords: The New Federal Crackdown on the Adult Entertainment Industry's Age-Verification and Record-Keeping Requirements*, 14 UCLA ENT. L. REV. 155 (2007) (providing the views and comments of several leading players in southern California's adult entertainment industry about the federal government's recently ramped-up enforcement of the age-verification and record-keeping requirements mandated under 18 U.S.C. § 2257 (2008)).

46. Press Release, Ass'n of Sites Advocating Child Prot., Internet Safety Month Brings Together ASACP & Adult Industry to Launch "RTA" Label (June 25,

For the first time ever, an unprecedented combination of companies from the adult entertainment industry, internet filtering software companies, and free speech advocates have been assembled by the Association of Sites Advocating Child Protection (ASACP) to create the RTA (“Restricted to Adults”) website label. With recent reports emphasizing parental concerns in regards to the content that children view online, RTA underscores the online adult industry’s commitment to child protection and self-regulation by helping parents prevent children from viewing and accessing web-based age-inappropriate content online.⁴⁷

Adult entertainment industry attorney Paul Cambria⁴⁸ explained the industry’s support of the labeling effort during his testimony before the Senate Committee on Commerce, Science and Transportation in January 2006. He told lawmakers that “the adult entertainment industry is a staunch supporter of efforts by the Association of Sites Advocating Child Protection (ASACP), and also supports voluntary labeling and content-rating, and the use of parental filters such as Netnanny.”⁴⁹

In announcing the labeling effort, Joan Irvine, executive director of the ASACP, explained that “[e]ffective use of parental filtering technology can block a great deal of age-inappropriate material and our goal is to work with parents to insure our children’s safety.”⁵⁰ In fact, the ASACP website provides several links to resources that are designed for parents to help them protect their children.⁵¹

2007), available at <http://www.asacp.org/page.php?content=news&item=462> [hereinafter Press Release, ASACP].

47. *Id.*

48. See generally Clay Calvert & Robert D. Richards, *Adult Entertainment and the First Amendment: A Dialogue and Analysis with the Industry’s Leading Litigator & Appellate Advocate*, 6 VAND. J. ENT. L. & PRAC. 147 (2004) (profiling Cambria and including his comments and remarks on a number of topics, including freedom of expression, obscenity and adult entertainment).

49. *Protecting Children on the Internet: Hearing Before the S. Comm. on Commerce, Science, and Transportation*, 109th Cong. 51 (2006), available at http://commerce.senate.gov/public/_files/30054.PDF [hereinafter *Protecting Children on the Internet 2006*] (statement of Paul J. Cambria, Jr., General Counsel, Adult Freedom Foundation).

50. Press Release, ASACP, *supra* note 46.

51. Ass’n of Sites Advocating Child Prot., Links for Parents, http://www.asacp.org/page.php?content=parental_guidelines (last visited Jan. 12,

ASACP is a key player in the fight against child pornography and a leader in preventing minors from viewing inappropriate content. In September 2007, the organization reached the 250,000 mark in terms of processing reports of child pornography.⁵² As part of its work, “ASACP investigates these ‘raw’ reports to determine the hosting, billing, IP address, ownership, and linkage of suspected CP sites.”⁵³ If the organization uncovers suspected child pornography, “[r]ed flag reports are then automatically forwarded to domestic and international agencies and groups such as the National Center for Missing & Exploited Children.”⁵⁴

This article provides unique, in-depth insight into the burgeoning problem of child pornography and the efforts of the U.S. adult entertainment industry—a group many might consider an unlikely, if not suspect, partner of law enforcement—to keep children safe. Part II of the Article briefly describes the methodology for conducting the interviews, including details about their dates, times and locations, as well as the recording and transcription processes.⁵⁵ Part III then centers on an exclusive, in-person interview with Joan Irvine, Executive Director of the ASACP, conducted in July 2007 at the organization’s Los Angeles offices.⁵⁶ Irvine candidly discusses the difficulty the adult industry faces both in stopping politicians from linking mainstream adult entertainment to child pornography and in changing public perception about this conflation. She also addresses the organization’s work in tandem with law enforcement and other child-protective services to uncover instances of child pornography on the Internet. Additionally, Irvine describes the newly launched “Restricted to Adults” label and the industry’s response to it. She remarks on how constantly evolving technology creates new challenges in protecting minors from gaining access to sexually explicit images.

2008) (providing links to such organizations as Take Parental Control, Stay Safe, Parental Control Toolbar, and governmental agencies).

52. Press Release, Ass’n of Sites Advocating Child Prot., ASACP Hotline Has Processed Quarter of Million Reports (Sept. 11, 2007), *available at* <http://www.asacp.org/page.php?content=news&item=483>.

53. *Id.*

54. *Id.*

55. *See infra* note 63 and accompanying text.

56. *See infra* notes 64–135 and accompanying text.

Next, in Part IV, several adult industry insiders comment on the work of Joan Irvine and the ASACP, and the effectiveness of the adult industry's response to the problem of child pornography.⁵⁷ In particular, attorneys Gregory Piccionelli⁵⁸ and Clyde DeWitt⁵⁹ provide their thoughts on child pornography and the service provided by ASACP. Then, Paul Fishbein, president of *AVN*,⁶⁰ the adult industry's leading trade publication, and Tom Hymes, publisher of *XBiz*,⁶¹ *AVN*'s main competitor, weigh in on Irvine's organization. The Article concludes in Part V, with an analysis of the comments of Irvine and the other industry leaders.⁶²

II. METHODOLOGY

The interviews between the authors of this article and the individuals whose comments are set forth below took place, in person, during summer 2007 at various locations throughout the greater Los Angeles area.⁶³ All interviews were recorded with Marantz broadcast-quality recording equipment on audiotape using a tabletop microphone. The tapes were later transcribed by the authors at their summer residence in Los Angeles, California, and then reviewed for accuracy. The authors made some minor changes in syntax in a few places but did not alter the substantive content or material meaning of

57. See *infra* note 136 and accompanying text.

58. "Mr. Piccionelli represents and has counseled many of the world's largest adult entertainment companies." Law Offices of Gregory Piccionelli, Esq., Biography, <http://www.gregpiccionelli.com/index.html> (last visited Jan. 30, 2008).

59. ClydeDeWitt.com, Welcome, <http://clydedewitt.com/> (last visited Jan. 30, 2008) (describing DeWitt as "the Will Rogers of the adult industry").

60. Adult Video News, <http://www.avn.com> (last visited Oct. 9, 2007) (describing itself as "The Industry Standard").

61. XBiz, <http://www.xbiz.com> (last visited Oct. 9, 2007) (touting itself as "The Industry Source").

62. See *infra* notes 137–142 and accompanying text.

63. In chronological order, starting with the name of the first person interviewed, the interviews occurred as follows: (1) Gregory A. Piccionelli, June 25, 2007, at his law office in Century Park East in Los Angeles, Cal.; (2) Clyde DeWitt, June 29, 2007, at his home in the Westchester area of Los Angeles, Cal.; (3) Joan Irvine, July 2, 2007, at ASACP offices on Wilshire Boulevard in Los Angeles, Cal.; (4) Tom Hymes, at XBiz offices on Wilshire Boulevard in Los Angeles, Cal.; (5) Paul Fishbein, at AVN offices on Eton Avenue in Chatsworth, Cal.

any of the interview subjects. Some responses were then reordered and reorganized, and other portions of the interviews were omitted as extraneous, redundant, or beyond the scope of the purpose of this article. The authors retain possession of the original audio recordings and printed transcripts of the interviews.

For purposes of full disclosure and the preservation of objectivity, it should be emphasized that the individuals interviewed for this article did *not* have an advance opportunity to review or preview any of the questions they would be asked, thus allowing for greater spontaneity of responses. Furthermore, the interview subjects did *not* at any time review either the raw transcript or any drafts of this article before its publication.

III. JOAN IRVINE AND THE WORK OF THE ASACP: A CANDID DIALOGUE

In this part, Joan Irvine begins by addressing the key question of whether or not child pornography is produced by the adult movie industry. She then moves on to the work of the ASACP and its efforts both to help government agencies rid the Internet of child pornography and to prevent children from accessing sexually explicit content online. Ultimately, she concludes her remarks with observations about the large number of women in key leadership posts at nonprofit organizations affiliated with the adult entertainment industry today in Southern California—a fact probably surprising to some outsiders who may expect this to be a male-dominated industry. The authors' questions and comments are indicated by the notation "QUESTION" while the remarks, views, and opinions of Joan Irvine are indicated by the notation "IRVINE." With this in mind, this part now moves to the dialogue with Joan Irvine.

QUESTION: Is there a problem with underage performers in the adult movie business today in Southern California?

IRVINE: No, I do not see one and, in fact, there really hasn't been one. The adult industry is by adults and for adults. We don't see it, people aren't doing it and it is not worth it.

The one big reason for the section 2257 regulations⁶⁴ was Traci Lords.⁶⁵ She used what were seemingly government-issued IDs.⁶⁶

64. See *supra* notes 44-45 and accompanying text (describing 18 U.S.C. § 2257

When you are being presented with what look like government-issued IDs, you go with them.

QUESTION: Why do politicians always seem to link the adult entertainment industry with child pornography and conflate the two?⁶⁷

IRVINE: They didn't get the distinction between them. I also really do believe that the current administration is generally anti-adult entertainment.⁶⁸

and the record-keeping inspections conducted by the FBI in Southern California to ensure compliance by adult entertainment companies with this federal law).

65. This is a reference to former adult movie star Traci Lords, who "was sixteen when she appeared in *Those Young Girls*, a film produced by Ronald Kantor and Rupert McNee." Jörn Axel Holl, Comment, *Judges, Congress, and the Sixteen-Year-Old Porn Star: Questions on the Proper Role of the First Amendment*, 75 IOWA L. REV. 1355, 1357 (1990). Lords was arrested "in May 1986 for making as many as 77 adult videos before turning 18." FREDERICK S. LANE III, OBSCENE PROFITS: THE ENTREPRENEURS OF PORNOGRAPHY IN THE CYBER AGE 126 (2000). In her 2003 autobiography, *Traci Lords: Underneath It All*, the actress writes about her initial underage performances in adult movies, asserting that she'd "finally found a place to put my energies—I was vengeful, even savage, in sex scenes, fully unleashing my wrath. At the ripe old age of sixteen, I was nothing short of a sexual terrorist." TRACI ELIZABETH LORDS, TRACI LORDS: UNDERNEATH IT ALL 88 (2003). See generally Richards & Calvert, *The Legacy of Lords*, supra note 45, at 156 (describing the discovery in 1986 that Traci Lords was an underage performer in adult movies and noting that "the Lords scandal cost the industry millions of dollars").

66. The individuals involved in the production of the sexually explicit adult movie *Those Young Girls*, in which Lords appeared when she was sixteen years old, claimed "that Lords and those responsible for her employment used California photographic identification, other official documents, release forms and statements of her agent and others to misrepresent her age." *United States v. U.S. Dist. Court*, 858 F.2d 534, 540 (9th Cir. 1988).

67. Adult movie producer Paul F. Little, who is known as Max Hardcore in the adult entertainment industry, stated it in a 2006 interview with the authors of this article, that law enforcement officials and politicians "keep obfuscating the distinction between adult pornography and child pornography. The reality is that no mainstream pornographer has anything whatsoever to do with child pornography. Of course, we know this, but the public doesn't know this." Robert D. Richards & Clay Calvert, *Obscenity Prosecutions and the Bush Administration: The Inside Perspective of The Adult Entertainment Industry & Defense Attorney Louis Sirkin*, 14 VILL. SPORTS & ENT. L.J. 233, 277 (2007).

68. Evidence for this assertion is found in the increased number of federal obscenity prosecutions brought by the administration of President George W. Bush against adult movie companies and/or their distributors following a period in which, as some have contended, "the Clinton Administration in general, and Attorney

General Janet Reno in particular, made it a policy to limit obscenity prosecutions in order to focus the Department of Justice's resources on other threats that they judged to be more pressing or dangerous." Arnold H. Loewy, *Obscenity: An Outdated Concept for the Twenty-First Century*, 10 NEXUS 21, 22 n.7 (2005). For instance, in June 2007, the proprietors of Movies By Mail, a Cleveland, Ohio-based company, were indicted for operating an obscenity distribution business after they mailed three allegedly obscene movies to Salt Lake City, Utah, "as part of an FBI undercover investigation." Press Release, DOJ, Federal Grand Jury in Salt Lake City Charges Cleveland Men with Obscenity Violations (June 28, 2007), available at http://www.usdoj.gov/opa/pr/2007/June/07_crm_471.html. The previous month, Altadena, California-based adult movie producer Paul F. Little, better known as Max Hardcore in the adult entertainment industry, was indicted in Tampa, Florida, on obscenity charges, including "five counts of transporting obscene matter by use of an interactive computer service and five counts of mailing obscene matter." Press Release, DOJ, Producer Paul Little Indicted on Obscenity Charges (May 31, 2007), available at http://www.usdoj.gov/opa/pr/2007/May/07_crm_393.html. The official press release trumpeting the indictment graphically describes Little as "a nationally-known director, producer and star of films featuring acts such as anal penetration, urination, insertion of an entire hand into a vagina or anus, vomiting, and severe violence towards the female performers participating in the acts." *Id.* Approximately one year prior to the indictment of Little, the Justice Department unveiled an obscenity indictment against Chatsworth, California-based adult movie company JM Productions and its owner, as well as an Arizona distributor of its movies. Press Release, DOJ, Federal Grand Jury Charges Arizona and California Companies and Their Owners with Obscenity Violations (June 1, 2006), available at http://www.usdoj.gov/opa/pr/2006/June/06_crm_343.html. The press release announcing the indictment provides, in relevant part, that:

Five Star Video, LLC, of Tempe, Arizona, and Phoenix residents Christopher Warren Ankeney and Kenneth James Graham were charged with four counts of using an interactive computer service to sell and distribute DVDs containing obscene matter—identified as "Gag Factor 18," "Filthy Things 6," "Gag Factor 15" and "American Bukkake 13"—and three counts of using an interstate common carrier to transport obscene DVDs. In addition, Five Star was charged in a separate count with using the mails to deliver a DVD containing obscene matter. Jeff Norton Productions of Chatsworth, California, also known as JM Productions, and Mike Leonard Norton, who resides in Woodland Hills, California, were charged with six counts of using an interstate common carrier to transport DVDs that are obscene.

Id.

In October 2007, a jury declared the movie "Gag Factor 18" obscene and thus, in turn, "found that Five Star Video and Five Star Video Outlet [were] guilty of interstate transportation of obscene materials and the interstate transportation of obscene material by common carrier, after shipping the JM Productions title 'Gag Factor 18' to an FBI agent in Virginia." Q. Boyer, *Jury Finds 'Gag Factor 18' Obscene in Five Star Case*, XBIZ, Oct. 25, 2007, available at

There are almost no data that could ever even show that the adult industry was involved with underage children in movies and, thus, child pornography. With our hotline, for the first time, we actually have empirical data that show no involvement. Before, the industry didn't have that data, so the government could say, "Go show us the data."

QUESTION: What can the ASACP do to help the adult entertainment industry change the public perception among some people that adult movies and child pornography are somehow linked?

IRVINE: First, having both the child pornography reporting hotline and the analytical data prove they are not linked. Second, we are part of the Financial Coalition Against Child Pornography⁶⁹ (FCACP) that is hosted by the International Centre for Missing & Exploited Children⁷⁰ (ICMEC); all of the credit card companies, billing companies and banks are involved in that.⁷¹ We are part of that, we go

<http://www.xbiz.com/news/legal/85673>. Earlier that same month, charges were dismissed against JM Productions, the company that produced the DVDs at issue. Q. Boyer, *U.S. Dismisses All Obscenity Charges Against JM Productions*, XBIZ, Oct. 16, 2007, available at <http://www.xbiz.com/news/legal/85242>. More prominently, than any of the three obscenity cases described above is the ongoing prosecution in Pittsburgh, Pennsylvania, of southern California-based adult movie producer Extreme Associates, Inc., and its proprietors, Robert Zicari and Janet Romano. See *United States v. Extreme Assocs., No. 03-0203, Inc.*, 2007 U.S. Dist. LEXIS 55431, at *2 (W.D. Pa. July 31, 2007) (describing the case and denying the defendants' second motion to dismiss the indictment). The case has been described by the *New York Times* as "a major test of the Bush administration's campaign against pornography." Eric Lichtblau, *Justice Dept. Fights Ruling on Obscenity*, N.Y. TIMES, Feb. 17, 2007, at A25.

69. See *supra* note 37 (providing background information on this organization).

70. This Alexandria, Virginia-based organization, which was "founded in 1998 and launched by the U.S.-based National Center for Missing & Exploited Children, works to identify and coordinate a global network of organizations fighting child-sexual exploitation and abduction." Int'l Centre for Missing & Exploited Children, <http://www.icmec.org> (last visited Jan. 28, 2008).

71. In particular, a November 2006 press release issued by the NCMEC noted that the members of the FCACP "represent 88% of the U.S. payments industry, measured by volume (dollars running through the system)." Press Release, FCACP, *supra* note 37.

Four financial organizations—Chase Paymentech Solutions, Global Payments Inc., HSBC - North America and Washington Mutual—became members of the coalition in November 2006. *Id.* Other members "include: America Online, American Express Company, Authorize.Net, Bank of America, Capital One, Chase,

to the meetings and we are part of the analytical committee, so we provide them with our data. Our data are the same as the FBI data, which is the same as the National Center for Missing & Exploited Children⁷² (NCMEC) data. We are all seeing the same data.

At one of the last meetings that I went to, Dan Larkin, an FBI forensic specialist,⁷³ said “We know the industry is not involved in this and that it is organized crime that is involved in child pornography, mainly out of the Eastern European bloc countries.” This is coming from an FBI agent.

QUESTION: How prevalent is child pornography on the Internet today?

IRVINE: We get 8000 reports a month of suspect child pornography. About fifty percent are duplicates because somebody has sent out a spam.

We only work with child pornography Websites, because they are only what we can look at legally. If somebody sends us a JPEG or a picture, we cannot download it because we’d be possessing it. It is illegal to download it.⁷⁴

Of the 8000 reports a month, about 150 to 200 of them are what we call new, unique sites that have child pornography on them. That’s about what we see, taking out the duplicates, the peer-to-peer and the chats.

Citigroup, Discover Financial Services LLC, e-gold, First Data Corporation, First National Bank of Omaha, Google, MasterCard, Microsoft, North American Bancard, Nova Information Systems, PayPal, First PREMIER Bank/PREMIER Bankcard, Standard Chartered Bank, Visa, Wells Fargo, and Yahoo! Inc.” *Id.*

72. *See supra* note 2 (describing the mission of this organization).

73. Larkin’s official title is:

[U]nit chief of the Internet Crime Complaint Center (IC3), a joint initiative between the FBI and the National White Collar Crime Center. The IC3 is a reporting and referral system for Internet crime complaints from people in the United States and around the world. Previously, he worked as a supervisory special agent in white collar crime investigations for 10 years, supervising and coordinating initiatives on corruption and fraud with a variety of federal, state and local agencies.

U.S. Dep’t of State, Fighting Online Crime, http://usinfo.state.gov/usinfo/USINFO/Products/Webchats/larkin_25_apr_2006.html#bio (last visited Jan. 13, 2008).

74. *See supra* note 5 and accompanying text (describing how it is illegal to create, distribute and possess child pornography in the United States).

Most of the sites originate overseas, but they are hosted in various places. We found that, until just recently, they were hosted at three major free-hosting sites—Yahoo and two out of Spain—and about sixty percent of the child pornography sites were located on these three hosts.

Organized crime, which is doing this, is very smart technologically. They know how long to keep a site up: They send out a spam, get a certain amount of return and then get it down there before anybody can discover them.

As soon as we find out that Yahoo is included on one of these reports, we send it to them and they have that site shut down just like that, unless it is something that the FBI or some other law enforcement agency has asked them to keep up.

QUESTION: Do you find that the same players, individuals or companies, after they get closed down, resurface with another URL?

IRVINE: Absolutely. Totally. It is pretty much some of the same people. There is one group that has been out there for years called Pedoland, and there are all of these variations of Pedoland.⁷⁵ People have copied Pedoland. About six months ago, Pedoland set up an affiliate program.

The problem is that it is on the Internet and, thus, it is worldwide. They move around; they get shut down here and then they are over there or they put it on a new URL or site.

QUESTION: What precipitated the founding of ASACP back in 1996?

IRVINE: Alec Helmy,⁷⁶ the president of XBIZ,⁷⁷ started ASACP.⁷⁸ It was really twofold. First, he was totally upset that there was so

75. See generally Robert Grove & Blaise Zerega, *The Lolita Problem: Child Pornography is Booming. Thanks to the Internet—and the Unwitting Support of Corporate America*, OTTAWA CITIZEN, Jan. 20, 2002, at C7 (describing Pedoland as “a site displaying images of boys and girls as young as four years old engaged in sexual acts with adults. In addition to its ‘Dads and Daughters’ and ‘Men and Boys’ series, the site promises its members ‘more than 5,000 new photos and movies never seen before’”).

76. A press release from the ASACP provides that:

Alec Helmy, President of Helmy Enterprises, established Adult Sites Against Child Pornography (ASACP) in 1996 because he saw that the media labeled the adult site industry as the cause for child pornography. Helmy wanted to provide a channel for the industry to report suspect child pornography as a testimony to its vigilance against it.

much child pornography out there and that the industry was, once again, being blamed for it. Second, he wanted to have a place where Webmasters could report it and not feel that they were going to be investigated for reporting it, because we don't keep IP addresses.

When he started it in 1996, they were getting a couple of reports a day. Then it started to increase. It was August 1, 2002 when I started here, and I think we were up to forty reports a day. They realized the next step for ASACP was full-time focus and management.

QUESTION: Is the increase in the number of reports, from forty a day to 8000 a month, due to more vigilance on the part of ASACP and making the organization better known or is it due to an increase in the actual amount of child pornography?

IRVINE: I would say both. Part of it is our vigilance—people recognizing and learning about us. For instance, if you go to Google and type in “Report Child Porn,” we are up at the top of the list, usually in the top three to five links.⁷⁹

But everybody has reported an increase. The NCMEC has seen the same type of increase.

QUESTION: Do you characterize the ASACP as more of an ancillary to law enforcement or are you more of an interest group that is pushing a particular agenda, namely protecting children?

IRVINE: We kind of walk the line between the two. We are providing a service that nobody else could provide, especially eleven

Press Release, Ass'n of Sites Advocating Child Prot, Helmy Recognized by the Los Angeles Division of the FBI (Apr. 1, 2003), *available at* <http://www.asacp.org/press/press0403a.html>.

77. XBIZ, which publishes periodicals including *XBIZ Video* and *XBIZ World*, is “the adult entertainment industry’s number one visited portal for business news and information” and “offers the adult industry a broad range of informational and collaboration resources designed to help both new and experienced adult business operators succeed.” XBIZ, About XBIZ, <http://www.xbiz.com/about> (last visited Jan. 21, 2008).

78. In February 2008, ASACP “presented XBIZ President Alec Helmy with its first ever ‘Visionary Award’ in appreciation of his dedication to protecting children and his vision to unite others in the same mission by creating the Association of Sites Advocating Child Protection.” Press Release, Ass'n of Sites Advocating Child Prot., ASACP Honors Founder and Supporters at XBIZ Awards (Feb. 12, 2008), *available at* <http://www.asacp.org/page.php?content=news&item=537>.

79. When one of the authors of this article, Clay Calvert, followed these instructions and attempted this search on October 27, 2007, the ASACP Website was in fact the first link provided by Google.

years ago when NCMEC was just being established. There weren't the same number of hotlines around the world eleven years ago. It was a way that we could get the information passed on quickly and, maybe, quicker than when it comes to NCMEC.

We've just changed our name. When I took over, it was called Adult Sites Against Child Pornography. One of the things I quickly recognized was that we needed to expand our mission because the term "against child pornography" really did make us sound ancillary to law enforcement; that was a very narrow mission and there was so much more that we could do.

QUESTION: Can you please describe your relationship with law enforcement? How does the reporting work?

IRVINE: Once we investigate, we send the hosting company or the billing company whatever information we can find. We pass that report on to the NCMEC because it is the official clearinghouse in the United States. If a report somehow relates to Spain because of the host, we will send it to the hotline over in Spain because they already are dealing with law enforcement. And we send it to the FBI.

QUESTION: How difficult was it to gain the cooperation of law enforcement, given the ASACP's connection to the adult industry? Has the name change helped at all?

IRVINE: Let me answer the second question first. Yes, the name change has helped. Second, we're still working to gain the respect of some of the law enforcement agencies. Some of them will not work with us directly.

When we attended the meetings⁸⁰ of Virtual Global Taskforce,⁸¹ which is an international law enforcement agency,⁸² one of the religious-right organizations condemned it for allowing an

80. See generally *The Second International Virtual Global Taskforce Conference*, VIRTUAL GLOBAL TASKFORCE NEWSLETTER (Virtual Global Taskforce, U.K.), Summer 2007, at 4 (describing the February 2007 meeting of the Virtual Global Taskforce in Washington, D.C.).

81. Virtual Global Taskforce, <http://www.virtualglobaltaskforce.com> (last visited Feb. 12, 2008).

82. On its Website, this organization describes itself as being "made up of law enforcement agencies from around the world working together to fight child abuse online. The aim of the VGT is to build an effective, international partnership of law enforcement agencies that helps to protect children from online child abuse." Virtual Global Taskforce, *What We Do*, http://www.virtualglobaltaskforce.com/what_we_do.asp (last visited Jan. 14, 2008).

organization that is funded by the adult entertainment industry to attend this. Jim Gamble, one of the chairs for the task force and the director for the child exploitation group over in the U.K.,⁸³ actually had to defend, in the press, ASACP attending. On an individual basis and, especially, on an international basis, however, people are very open to talking with us.

Occasionally, it gets frustrating because we know the job we are doing. We really are the good guys, we are transparent and we work with all of these groups.

We also are part of the Congressional Internet Caucus Advisory Committee in D.C.⁸⁴ We try to find the groups where we can fit in and where our expertise can help, so that people can see how transparent we really are.

QUESTION: How much do you work to lobby Congress or the legislature on behalf of child protection issues? Do you look at that as part of your role?

IRVINE: We're just starting to get involved in advocacy work. It was always one of our goals to get to Washington, D.C., but we needed to have two things happen.

First, we needed to have our infrastructure totally in place. When I first came on board, there was very limited data-basing and our technology needed a lot of work. You don't go to Washington, D.C. until you have the "t"s crossed and the "i"s dotted. It took us a couple of years to get all of the data ready.

Second, it takes money to go Washington, D.C. When I started, everything was funded by XBIZ and Alec Helmy, so I had to go out to raise the money for ASACP so we could develop the technology and eventually go to D.C.

My first trip to D.C. was a year ago in June to attend the Financial Coalition Against Child Pornography meeting. I had some meetings while I was there. And it was January of 2006, right after the Senate Committee hearing with Paul Cambria,⁸⁵ that we sent a letter to every

83. Gamble is both chief executive of the United Kingdom's Child Exploitation and Online Protection Centre and the National Crime Squad Deputy Director. Press Release, Virtual Global Taskforce, Governments and Industry Join Forces to Tackle Online Abuse (Nov. 15, 2005), *available at* <http://www.virtualglobaltaskforce.com/news/CEOP.html>.

84. *See supra* note 38 (describing this committee).

85. *See supra* notes 48-49 and accompanying text (providing background on

member of that committee, letting them know who ASACP was, what we do and that we were working on a labeling project. We hadn't even been there at that time, but we were starting to establish ourselves. I can't blame them in Congress for not knowing about us then because we hadn't been there to tell them about us.

QUESTION: How supportive is the industry of the ASACP?

IRVINE: They've been very supportive. As in any other sponsorship program, it just takes a while. This industry, just as with any other industry, also needed to see that ASACP was doing what it said it was going to do and that it was going to survive. Even with ASACP having been around since 1996, many people weren't aware of it because it was a hotline that was just being done.

So, it took a while before we had the infrastructure and the numbers so that people now know who ASACP is. It is much easier now when we have time to go looking for sponsorships.

QUESTION: Do you have to devote a certain amount of your time to that?

IRVINE: In order to be funded, yes. For about six months, I was it because there was not enough money for both myself and a compliance director. As soon as I raised the money, they hired back the man that had been doing our compliance work and we started adding people. But the first two years, I was pretty much doing everything as far as the sales, marketing and the trade shows.

QUESTION: How big is the staff now?

IRVINE: We have three full-time people, and a three-quarter-time bookkeeper/office manager/events planner.

QUESTION: How many sponsors do you have now?

IRVINE: We have about seventy-two sponsors, and then we have members too. Sponsors are the ones with their logos all over everything we do. A platinum sponsor is \$25,000; a title sponsor is \$10,000; and a corporate sponsor is \$5000.⁸⁶ About ninety-five percent of our budget comes from our sponsors.

But we want to make sure that everybody can participate, so we also have memberships, including three different levels: an executive membership, which is \$2400; a crusader, which is \$1200; and a

both Cambria and the hearing to which Irvine here refers).

86. See *supra* note 40 and accompanying text (providing information on sponsors).

guardian, which is \$300.⁸⁷ Members don't get their logos used, but we have a membership page where you can see our members. We have ninety members.

In addition to members, we have fifty-five supporters. For some people just starting off, the \$300 was simply too much, so we put a supporter at \$50. That way everybody can participate. If you can't afford \$50, then you shouldn't be going in to this business.

QUESTION: How does the membership and verification process work?

IRVINE: They apply for membership. We look at their site; we want to make sure that the site looks good. We do make judgment calls; we are not the Free Speech Coalition.⁸⁸ We do not want somebody with certain images; if somebody has a site with a girl with pigtails and a lollipop, we might not take them.

QUESTION: This industry is sometimes thought of as one made up of a lot of cowboys and individuals. Is the ASACP, however, one of those organizations where everybody in the industry unites and comes together?

IRVINE: I would say pretty much.

QUESTION: If I were online and I found something that I thought was child pornography and I wanted to inform the ASACP, where would I go and what would happen from there?

IRVINE: You would go to "Google" and type in, "Report Child Porn." You're then going to get some options, and we're listed in the top two or three. You might click on us and then go to our report-a-website page; there you can read about us and know we are

87. Ass'n of Sites Advocating Child Prot., How to Become an ASACP Approved Member, <http://www.asacp.org/Applications/v1> (last visited Jan. 14, 2008) (listing the benefits and annual fees for the three levels of membership in the ASACP).

88. The Free Speech Coalition is a southern California-based trade association for the adult entertainment industry, with its stated mission being to "lead, protect and support the growth and well-being of the adult entertainment community." Free Speech Coal., Mission Statement, <http://www.freespeechcoalition.com/FSCview.asp?coid=87#mission> (last visited Jan. 14, 2008). It was the lead plaintiff in the U.S. Supreme Court case of *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002), in which the high court struck down, as overbroad, parts of the Child Pornography Prevention Act of 1996 which prohibited the possession and distribution of sexually explicit images that appear to depict minors but were produced without using any real children. *Id.* at 258.

legitimate.⁸⁹ You can give us the site and a little bit more information about it. If it is an e-mail you received, then we have instructions on how to get the URL out of that email. We have FAQs [Frequently Asked Questions] to try to educate users.⁹⁰ We also try to tell them what not to send us, like peer-to-peer or a graphic. There's not much we can do about that.

Our compliance director goes in once or twice a day to review the reports. He'll see the types of open leads that we have and decide what he needs to check out. An open lead, for instance, might give the name of the Website. What the compliance officer will do is click on the Website and quickly make a determination.

It's not the difference between a fifteen-year-old girl and an eighteen-year-old girl. In the last four years, it has gotten younger and more brutal. Everybody is seeing that.

As soon as the compliance officer sees that it is child porn, then he can leave it open because it takes more investigation. Alternatively, he could delete it if it is just junk; some people have put in junk just to try to clog up the database.

At this point, it goes into a file for our investigator. She doesn't have to look at images. She finds out the hosting company, the domain, the ISP and the billing company, as well as any other additional information that we call red flags. We can also make a notation of what credit cards are mentioned on the site—whether they are real or not. Even from a branding perspective, MasterCard does not want its name on this.

Once the investigator does that, then she sends it on to the National Center for Missing and Exploited Children. In addition, if something mentions Yahoo, a copy of our report automatically goes to them. If we have different relationships with people, it goes to them automatically.

89. Ass'n of Sites Advocating Child Prot., Report a Website, <http://www.asacp.org/page.php?content=report> (last visited Jan. 11, 2008) (providing instructions and a number of different boxes and options that people reporting suspected child pornography to the ASACP should complete).

90. Ass'n of Sites Advocating Child Prot., Frequently Asked Questions, <http://www.asacp.org/page.php?content=faq> (last visited Jan. 11, 2008) (providing answers to a list of ten questions such as "What content isn't child pornography?" and "Can't you just shut down these sites yourselves?").

QUESTION: And you end up with about 150 per month that you believe are child pornography, is that correct?

IRVINE: Correct—about 150 that we believe are suspect child pornography.

QUESTION: And the National Center for Missing and Exploited Children is the clearinghouse for all of this?

IRVINE: Yes, and they have an FBI agent right there.

QUESTION: Are child-modeling sites⁹¹ a growing problem that you deal with here?

IRVINE: Well, first of all, although they are legal, they could not become ASACP members because they have models under age eighteen. Compared to five years ago, we've started seeing them push the envelope. In the past, there wouldn't have been a modeling site that we would have reported because it was legal and they had clothes on. Now, we actually have reported some because they are focusing on the genitalia—the pubic area. Some of them have really crossed that line.

91. Such websites increasingly are the focus of criminal investigations. For instance, in November 2006, government officials announced that “[a] federal investigation into a Florida child modeling Web site that offered images of underage girls in sexually suggestive poses has led to charges against three men, including a Tuscaloosa County [Alabama] photographer.” Val Walton, *Child Modeling Web Site Probe Leads to Charges Against 3 Men*, BIRMINGHAM NEWS, Nov. 29, 2006, at 4. In connection with that case, in March 2007, Jeff Pierson, 44, of Brookwood, Alabama, pleaded guilty “to charges of conspiracy and mailing, transporting or shipping child pornography.” Press Release, DOJ, Alabama Photographer Pleads Guilty to Child Pornography Charges (Mar. 7, 2007), available at <http://birmingham.fbi.gov/dojpressrel/pressrel07/bh030707.htm>. As the Justice Department’s press release announcing Pierson’s guilty plea described it:

Pierson promoted himself as a child modeling photographer. When parents would leave their child with Pierson for a photography session, he would dress the children in adult lingerie, and in sexually explicit poses, photograph them, and subsequently sell those images to a “child modeling” website in Florida for Internet posting. Many of the parents were unaware of the images being taken of their children, and some had signed over temporary legal custody of their child to Pierson during the modeling session.

Id.; see generally Clay Calvert, *The Perplexing Problem of Child Modeling Web Sites: Quasi-Child Pornography and Calls for New Legislation*, 40 CAL. W. L. REV. 231 (2004) (analyzing the legal issues surrounding these sites and describing efforts to regulate them).

QUESTION: Is that because, with the opinion in *United States v. Knox*,⁹² you don't need to have nudity to constitute a lascivious exhibition,⁹³ if it's a closely cropped shot focusing on the genital area?

IRVINE: Yes.

QUESTION: It seems when it comes to children, there are really two issues that the adult entertainment industry must be concerned with. On the one hand, it's stopping the exploitation of minors in the production of child pornography and, on the other hand, it's the preventing minors' exposure of adult content on the Web. Is that accurate?

IRVINE: Yes.

QUESTION: Which one of those two presents a bigger problem?

IRVINE: Child pornography doesn't exist in the industry, but the perception exists. Child porn is a big one, but we've gotten it to a point where we have a handle on it and we're working with the right people. They know and recognize us for being able to handle it.

A few years ago, however, I saw that, since the data were showing that the industry wasn't involved in child pornography, there was a shift in Congress and in public awareness to say, "Oh, but now the kids are viewing this adult material." That seems to be the shift and if that's going to be a concern, then how do we address that? Filtering is the only real way to address unknowing viewing of adult material.

QUESTION: Was the name change designed to reflect that shift?

IRVINE: Yes. It's now "advocating child protection."

QUESTION: Can you briefly describe the Restricted to Adults [RTA] label and how it works?

IRVINE: We already had been working on this before Senator [Ted] Stevens said, "label it or we will" at the hearing in January 2006.⁹⁴ We already had been talking to some mainstream companies

92. *United States v. Knox*, 32 F.3d 733, 746 (3d Cir. 1994).

93. The Third Circuit stated in *Knox* that "we will not read a nudity requirement into a statute that has none" when interpreting 18 U.S.C. § 2256(2)(E), *id.* at 749, which defines "sexually explicit conduct" involving a minor to include a "lascivious exhibition of the genitals or pubic area," *id.* at 746 (quoting 18 U.S.C. § 2256(2)(E) (2006)).

94. Stevens, a Republican, is a United States Senator from Alaska who, at the time of the hearing referred to by Irvine, was chairman of the Senate Committee on Commerce, Science and Transportation. *Protecting Children on the Internet 2006*, *supra* note 49, at II. During the hearing, although not directly stating "label it or we will," Stevens engaged in the following dialogue and exchange with adult industry

that said they wanted to have an adult rating because they—as did the adult industry in general, like any industry—wanted to be able to self-regulate. No industry wants to have the government regulate it. I had been at ICRA—the Internet Content Rating Association; they’re now FOSI, Family Online Safety Institute⁹⁵—and it was Google, Yahoo and Microsoft, AT&T and Verizon, and no one wants the government to come and regulate them. They want to be able to take care of it themselves. In order to do that, when you’re talking about child protection, ASACP is really the only player in the industry where that is truly the mission. I am not allowed to go beyond child protection. That is our mission.

attorney Paul Cambria:

The CHAIRMAN [STEVENS]. Well, thank you very much Mr. Cambria. The balance of the programming industry has the burden of doing the rating. Why don’t you just rate them yourselves?

MR. CAMBRIA. I think that what we’ve lacked is a structure. We’ve lacked a dialogue with authorities, with either Congress or with law enforcement—

The CHAIRMAN [STEVENS]. No, no, no, not Congress. I’m talking about, when you offer a program, it ought to be rated as adult-only and marked so that it cannot be misunderstood.

MR. CAMBRIA. And I don’t think that any adult producer would disagree with that.

The CHAIRMAN [STEVENS]. But you don’t do it now.

MR. CAMBRIA. I agree that what we need is organization, and we need a belief that it will be meshed with, for example, filtering—

The CHAIRMAN [STEVENS]. Well, in my advice—

MR. CAMBRIA.—so that it means something.

The CHAIRMAN [STEVENS].—you need to tell your clients, they’d better do it soon, because—

MR. CAMBRIA. I—

The CHAIRMAN [STEVENS].—we’ll mandate it if you don’t.

MR. CAMBRIA. I take that advice seriously, and I appreciate it.

Id. at 52 (statement of Paul J. Cambria, Jr., General Counsel, Adult Freedom Foundation).

95. The website states that the ICRA, formerly the Internet Content Rating Association, “is part of the Family Online Safety Institute, an international, non-profit organization of internet leaders working to develop a safer internet.” Family Online Safety Inst., About ICRA, <http://www.fosi.org/icra> (last visited Jan. 14, 2008). Since 1994, ICRA “has long believed that self-regulation leads to the best balance between the free flow of digital content and protecting children from potentially harmful material.” *Id.*

We are the most likely organization to take this on. Although the Free Speech Coalition is supportive and has been working with us throughout, we were the one. We said, “Okay, if we’re going to be self-regulating, then we have to get the industry to buy into it.” Even as an industry-funded association, we can’t just take something on and say, “Here it is.” That was part of the problem with Dot Triple X.⁹⁶ It was someone from the outside trying to dictate. We had lots of meetings with the industry’s lawyers. We had an online, town-hall meeting. We appeared on some panels where we talked about the labeling. We had several meetings.

The industry said, “Yes. This is something that we can support.” Then, it came down to the logistics. We had to come up with a name that we could copyright or trademark—something unique and different.

QUESTION: When you mentioned the meetings, were they with companies in the adult industry?

IRVINE: Yes, and with their attorneys. We wanted to make sure that what we were doing, we were doing correctly. It was a lot more complicated than I ever thought it was going to be. Once I got a buy-in from people, then we had to spend time coming up with the name.

We were not going to judge whether something is sexually explicit; that’s a matter of definition and we didn’t want to make any judgment calls. Someone approached us to come up with a label of X, XX or XXX, and we said no.

So we came up with Restricted to Adults—a very neutral term—that said the people who are putting RTA on their sites are saying, “This is restricted to adults. We do not want children here.” There is

96. This is a reference to the issue of whether or not there should be a new, top-level domain for sexually explicit websites that would end in “.xxx” (instead of the typical “.com” for commercial websites). In March 2007, the Internet Corporation for Assigned Names and Numbers, which coordinates the assignment of Internet identifiers including domain names and addresses, “rejected a proposal by ICM Registry Inc. for an ‘.xxx’ domain for Web addresses. If the proposal had passed, it would have let providers of adult entertainment sites voluntarily register with the new domain, making it easier for families to avoid age-inappropriate materials.” Stephen Balkam, Editorial, *Porn and Political Pressure on the Net*, STAR-LEDGER (N.J.), Apr. 23, 2007, at 15; see generally Free Speech Coal., .XXX TLD, <http://www.freespeechcoalition.com/FSCView.asp?action=preview&coid=138> (last visited Jan. 15, 2008) (providing background information on the issue as well as the viewpoint and perspective of the Free Speech Coalition).

no judgment call at all by the ASACP. Each company makes the judgment call for itself.

It's been about an eighteen-month process. We actually introduced it last November to the industry with press releases. We wanted to make sure the characters in the code were unique. If you put just RTA in the code, it could pick up a lot of other things. It's a unique string of characters that you would not find in any other form. That's the same type of format that, in the future, Microsoft's Parental Vista control will recognize.

The legal title is Restricted to Adults—RTA. The graphic has to be associated with the name. Companies using the label simply have to copy and paste the meta data tag into the header section of every page on their sites that include content that is inappropriate for minors.

QUESTION: How many companies have adopted the label?

IRVINE: I can't really tell you at this point because we use spidering technology that hasn't been modified to correctly give us the numbers that we need. However, we can say who some of the main players are. Because there was an article in *USA Today* on June 6th that mentioned PornoTube⁹⁷ gets ten to fifteen million hits per day,⁹⁸ we figured that was a great place to get started, and they could use the Alexa.com database.⁹⁹ Between PornoTube and Adult Friend

97. PornoTube, <http://www.pornotube.com> (last visited Jan. 14, 2008). The home page for this website, which requires users to provide their date of birth before they may continue on to the actual content, includes the RTA logo in the lower left corner. *Id.* The home page also states prominently, in all capitalized letters:

WARNING!! THIS SITE CONTAINS ADULT MATERIALS OR MATERIALS THAT MAY BE CONSIDERED OFFENSIVE IN SOME COMMUNITIES. YOU MAY NOT ENTER THIS SITE IF YOU ARE EASILY SHOCKED OR OFFENDED OR IF THE STANDARDS OF YOUR COMMUNITY DO NOT ALLOW FOR THE VIEWING OF ADULT EROTIC MATERIALS! . . . TO ENTER THIS WEBSITE YOU MUST BE AN ADULT, OVER THE AGE OF EIGHTEEN (18) YEARS, OR IF THE LEGAL AGE OF MAJORITY IS GREATER THAN EIGHTEEN (18) YOU MUST BE OVER THE AGE OF MAJORITY IN THE JURISDICTION IN WHICH YOU RESIDE.

Id.

98. Jon Swartz, *Purveyors of Porn Scramble to Keep Up with Internet*, *USA TODAY*, June 6, 2007, at 4B ("PornoTube, started nearly a year ago, generates 10 million to 15 million hits a day—making it one of the 200 most-popular sites on the Web, according to Alexa, which tracks Internet traffic.").

99. Alexa, which calls itself "The Web Information Company," grew out of a vision of Web navigation that is intelligent and constantly improving with the participation of its users. Along the way Alexa has

Finder,¹⁰⁰ they have confirmed that they get twenty million unique hits a month. Each one of their pages contains the RTA label.

QUESTION: If I had a filtering device on my computer, it would keep it out. Is that right?

IRVINE: That's correct. Twenty million unique people see this label per month. Of course, it's not about how many people see the RTA label. It's about how many people will block it out.

QUESTION: Can you give us some examples of leading companies that have adopted the label?

IRVINE: Hustler is using it. AVN, XBIZ, ATKingdom, National Net, ARS, Hot Movies and Nasty Dollars are all using it, and the list goes on and on. Some companies have decided not to use it because they already were using ICRA, and ICRA is widespread.¹⁰¹

In reality, adult sites are already labeled to be found. The sites usually say, "Sexually Explicit" or "Adult."¹⁰² They're already labeled.

QUESTION: Is RTA, then, just another layer of protection?

IRVINE: It's another level of protection. Part of it is that, as an industry, you have to demonstrate that you are doing something.

QUESTION: Do you think this will stave off further government regulation when it comes to adult websites?

developed an installed based of millions of toolbars, one of the largest Web crawls and an infrastructure to process and serve massive amounts of data. For users of Alexa's Toolbar and web site this has resulted in products that have revolutionized Web navigation and intelligence. For developers this has resulted in a set of tools unprecedented in scope allowing whole new services to be created on the Alexa data and platform.

Alexa, About Alexa Internet, <http://www.alexa.com/site/company> (last visited Jan. 15, 2008).

100. Adult Friend Finder, <http://adultfriendfinder.com> (last visited Feb. 15, 2008) (describing itself as "The World's Largest Sex & Swinger Personals Community").

101. See *supra* note 95 and accompanying text (providing details about ICRA).

102. For instance, when a person types in <http://www.hustler.com>, he or she is automatically directed to a warning page labeled "SEXUAL CONTENT WARNING" that describes the content on the site, warns users that they must be "at least 18 years of age" and includes both the ICRA and RTA labels. Hustler, *supra* note 41. This warning page also states that "[w]e support RTA and ICRA. Our websites are properly labeled to help protect minors from accessing content that may be inappropriate for their viewing." *Id.*

IRVINE: If the government tries to put through a mandatory labeling bill, it's really not going to be effective because it would apply only in the United States. Because we are supported by the industry on a worldwide basis, some companies from around the world are using our label. We have Private Media, out of Spain, using it. I was just in Australia and Eros Association, the trade association over there, was supporting it. We have the telecommunication trade association in the United Kingdom. The scope of the RTA label is international. No government is able to say, "We've made this decision and everyone around the world must abide by it." The U.S. government tries to do that with 2257, but it doesn't work.

If the government tries to put through a mandatory labeling bill, it's going to be contested on First Amendment grounds. The RTA label, in contrast, is voluntary, and we have some of the larger companies in the industry utilizing it and encouraging their affiliates and peers to use it.

QUESTION: How receptive have lawmakers been to this labeling effort?

IRVINE: I have been back to Washington, D.C. twice. I called on staffers first to tell them what we are doing and, second, to tell them what we have done. We contacted every senator on the Commerce Committee with a letter and our brochure. I have talked with key Democratic and Republican staffers on the Commerce Committee.

QUESTION: How do you go about educating the public about the RTA label?

IRVINE: The first real push to get it out to the public was the press conference at Erotica L.A. One thing we've discovered is that I can go to Washington, D.C. and talk with Senate staffers or House staffers, but that one-to-one communication only gets you so far. The press conference thus was important.

We are going to take the video from the press conference and develop an audio-visual piece on RTA that we can send out to the media again.¹⁰³ We have to get it into the media's hands. That's the way that people are used to getting information.

103. The video, which was completed in September 2007, is described in an ASACP press release announcing its release as "demonstrating the adult industry's commitment to self-regulation through adoption of the RTA ('Restricted to Adults') website label." Press Release, Ass'n of Sites Advocating Child Prot., ASACP Creates Video to Demonstrate Adult Industry's Work to Protect Children (Sept. 24,

We also are going to put it out on YouTube, and we're going to be sending a copy of that video, along with another e-mail, to everyone involved in Washington—every Senator, not just Senator Stevens.¹⁰⁴ We use e-mail because we can afford it. We can't afford these big campaigns.

We'll be letting California politicians know about it. Before the press conference, we let the Governor's office,¹⁰⁵ the Los Angeles Mayor's office¹⁰⁶ and anyone else whose district we are in know about it. We want to be able to work with these people, and part of working with them is keeping them informed.

QUESTION: Can you please talk a little bit about parental responsibility as part of the equation here for protecting children?

IRVINE: Parents have a responsibility. There actually are three groups who have responsibilities. First, this is about sites being labeled RTA or however they want to be labeled for filtering. Second, it is about filtering companies recognizing those labels. And then it is about parents using those labels. We've done the first part—we have the RTA label out there. We're working with a number of the larger parental filtering software companies. Now, it is on the parents.

We can get the information out to the parents, but there is still a stigma of it coming from an association that is funded by the adult entertainment industry. Vista's parental control really educates the parents about what to do. Microsoft is going to be doing a big campaign on this, and AOL already has done a major campaign. Any place you go that has anything to do with the Internet, there is always information about what parents can do. There is so much education out there. Playboy put out a "Take Parental Control" Website about a year ago.¹⁰⁷ There was Internet Safety Month in June.¹⁰⁸

2007), available at <http://www.asacp.org/page.php?content=news&item=486>.

104. See *supra* note 94 and accompanying text.

105. The Governor of California, at the time of both the RTA press conference and the authors' interview with Joan Irvine, was Republican Arnold Schwarzenegger. Office of the Governor, About Arnold, <http://gov.ca.gov/about/arnold> (last visited Jan. 15, 2008).

106. The mayor of Los Angeles, at the time of both the RTA press conference and the authors' interview with Joan Irvine, was Democrat Antonio Villaraigosa. City of Los Angeles, Office of the Mayor, Mayor's Biography, <http://www.lacity.org/mayor/bio1.htm> (last visited Jan. 15, 2008).

107. Take Parental Control, <http://www.takeparentalcontrol.org> (last visited

I don't know how much more you can be educating parents. What else can you be doing to educate them? There is so much information out there.

I know parents are confused by a lot of this technology, but part of their responsibility as parents is to, at least, do whatever they can to prevent their children from unknowingly viewing age-inappropriate material. That's a parent's responsibility.

Last week, at the press conference, I mentioned a Kaiser Family Foundation¹⁰⁹ study that found that only forty-one percent of parents were using some kind of parental control filter on their computer.¹¹⁰ I'm just thinking, "How can you even have a computer in your home then?" What kind of a parent would even admit to that? I bet the number is even a little bit lower because I'm sure some parents said, "Oh, of course we are using this."

QUESTION: Are you concerned, given that both Congress¹¹¹ and the Federal Communications Commission now are interested in regulating television violence¹¹² and that the video game industry is under attack from a number of states for violent games,¹¹³ that there is

Jan. 14, 2008).

108. S. Res. 205, 110th Cong. (2007) (designating June 2007 as "National Internet Safety Month").

109. Henry J. Kaiser Family Foundation, <http://www.kff.org> (last visited Feb. 17, 2008).

110. Press Release, Kaiser Family Found., Parents Say They're Getting Control of Their Children's Exposure to Sex and Violence in the Media—Even Online (June 19, 2007), available at <http://www.kff.org/entmedia/entmedia061907nr.cfm>. The release provides a summary of the results of a "survey of 1008 parents of children ages 2–17, along with a series of six focus groups held with parents across the country." *Id.*

111. See Timothy McNulty, *TV Violence Debate Gets Hearing in Senate Today*, PITTSBURGH POST-GAZETTE, June 26, 2007, at C1 (describing a hearing before the U.S. Senate Commerce Committee on television violence, and reporting that "U.S. Sen. Jay Rockefeller, D – W. Va., has long called for new government holds on violent themes, not only on broadcast TV but cable").

112. See Press Release, FCC, FCC Adopts Report On Violent Television Programming and its Impact on Children (Apr. 25, 2007), available at http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-272652A1.pdf ("[R]esearch indicates exposure to violence in the media can increase aggressive behavior in children, at least in the short term. Given this finding, the FCC recommends that action should be taken to address violent programming.").

113. See, e.g., *Entm't Merchants Ass'n v. Henry*, No. CIV-06-675-C, 2007

a culture out there of “let’s regulate sex and violence” that could lead to more regulation of the adult entertainment industry, no matter how hard you try?

IRVINE: That is always a concern, especially now that we have an administration that has, as a lot of its constituents, members of the religious right. I really do feel that there is an over-reaction to what is happening out there.

Now did I think the Janet Jackson incident at the Super Bowl was appropriate?¹¹⁴ Absolutely not. Did I think the whole halftime show was appropriate for that venue? Absolutely not. However, there has to be a way for parents to make that decision. Content must be labeled and then parents get to make that choice.

It is very scary when it starts to be regulated by the government, but that way the parents can say, “I didn’t have to do that. Whew!”

QUESTION: Is this one of those issues, though, that even were a Democrat to become President of the United States in 2008, that there will still be pressure on the adult entertainment industry?

IRVINE: Absolutely. It really doesn’t matter what the party is. It is easy to attack the industry, rather than having to defend your policies in a place like Iraq where lots of young people are being killed or maimed and it is not going well.

If you really examine the times the industry has been attacked heavily, there usually is a political motivation. The war in Iraq is not going well, and that’s the main one now.

QUESTION: So is it an easy sell to the American public?

U.S. Dist. LEXIS 69139, at *1-2 (W.D. Okla. Sept. 17, 2007) (enjoining permanently an Oklahoma statute that provided “criminal penalties for any person who knowingly displays, sells, furnishes, distributes, or otherwise disseminates to minors any material considered ‘harmful to minors’”). *See generally* Clay Calvert & Robert D. Richards, *Violence and Video Games 2006: Legislation and Litigation*, 8 TEX. REV. ENT. & SPORTS L. 49 (2007) (describing the recent and, ultimately, unconstitutional efforts of several states to restrict minors’ access to violent video games).

114. This is a reference to the 2004 Super Bowl halftime show in which Janet Jackson’s breast was very briefly exposed to a national television audience watching on CBS at the conclusion of a musical performance with Justin Timberlake. Rita K. Farrell, *CBS Appeals Its Punishment For Super Bowl Incident*, N.Y. TIMES, Sept. 12, 2007, at C9 (describing the incident and the ongoing legal battle between CBS and the FCC over whether it was indecent and merited the \$550,000 aggregate fine meted out to CBS affiliates by the FCC).

IRVINE: Absolutely. And it is ironic, given the mainstreaming of adult content. You now have things on E! Channel and Showtime. You also have Stormy Daniels¹¹⁵ and Jenna Jameson¹¹⁶ doing mainstream movies.

QUESTION: How do you get labeling on YouTube? The industry can police itself, but the problems are always going to be out there, aren't they?

IRVINE: This is something that came up at the Off-Deck Mobile Content conference.¹¹⁷ The adult industry is doing everything it can to police itself. We have the hotline, labels and 2257.

But now kids are taking pictures of kids on their mobile phones and sending them around. It's called cyber-bullying, and it's becoming a major problem. In some cases, they'll put someone's face on another person's body and then send it around. Or the kids will get drunk, take pictures and put them out there—not even thinking of the fact that the photograph is going to be out there forever. Plus, they're actually creating and distributing their own child pornography and could be arrested, convicted and labeled a sex felon for the rest of their lives.

There are very limited controls on the peer-to-peer networks. Those companies are wrestling with the same thing that other industries are grappling with—people putting up images of themselves with no regulation.

115. Adult movie star Stormy Daniels, who is “better known for her work in ‘Busty Beauties 2’ and ‘On Golden Blonde,’” appeared in the mainstream comedy movie *The 40-Year-Old Virgin* and the television drama *Dirt*. Brent Hopkins, *The Adult-Movie Business Has Come a Long Way From Stag Films and ‘Deep Throat,’* L.A. DAILY NEWS, June 3, 2007, at N1.

116. Jameson, who recently retired from performing in adult movies, often is associated with the mainstreaming of sexually explicit content in American culture. See Richard Roeper, *Life of a Porn Star More Like a Horror Flick*, CHI. SUN TIMES, Aug. 28, 2007, at 11 (discussing Jameson's life, mentioning that she authored a book that spent “six weeks on the New York Times best-seller list,” and noting how Jameson had “appearances on Howard Stern's show (and in his movie), hosting duties on E!, a non-porn movie role for Comedy Central, video-game voice work, and guest roles on network shows and in horror films”); see also Amy Argetsinger & Roxanne Roberts, *For Fred Thompson, That Elvis Edge*, WASH. POST, Sept. 21, 2007, at C1 (describing Jameson as a “[f]ormer porn star-gone-mainstream”).

117. The conference was held in early 2007 in Beverly Hills.

QUESTION: What is the most common way that child pornography is transmitted—e-mail, peer-to-peer?

IRVINE: It's a combination. E-mail, peer-to-peer, chat rooms—pretty much any way they can get information out to people, even via mobile phones now.

QUESTION: Is there anything that you can point to in order to demonstrate that ASACP has been successful in its mission?

IRVINE: Being part of the analytical group of the Financial Coalition Against Child Pornography shows that what we're doing is being recognized. We did try to work with peer-to-peer groups and got put on the honor roll for the American Society of Association Executives.¹¹⁸ Then, Paul Koretz gave us a letter of recognition.¹¹⁹ We're also about to hit a milestone on the number of reports we have received, as we approach 250,000. As of June 30, 2007, we have received over 233,743 raw reports [of child pornography] since August 14, 2004, which is when we started keeping everything in a database.

QUESTION: What's the best part of this job? What do you really like about it?

IRVINE: What I really like about it is the use of technology to protect children. I come from a technical background. One of the reasons I came to work here is that I was at a point in my life when I wanted to use my technical and business expertise to help a cause-based association. What's a better cause than child protection?

118. Ass'n of Sites Advocating Child Prot., Awards and Partners, <http://www.asacp.org/page.php?content=awards> (last visited Feb. 18, 2008); American Society of Ass'n Executives, <http://www.asacenter.org> (last visited Feb. 18, 2008).

119. See Press Release, Ass'n of Sites Advocating Child Prot., Protecting Children from Viewing Adult Material (Dec. 5, 2005), available at <http://www.asacp.org/page.php?content=news&item=278> (providing, in relevant part, that Koretz presented the "ASACP with a Certificate of Recognition for being named to the Associations Advance America Honor Roll"); see also Press Release, Ass'n of Sites Advocating Child Prot., Brandon Shalton Receives ASACP Service Recognition Award (Nov. 18, 2005), available at <http://www.asacp.org/page.php?content=news&item=269> (noting that the ASACP "received a Certificate of Recognition from California Assembly Member, Paul Koretz"). Koretz, a Democrat, was a member of the California Assembly, serving District 42 from 2000 through 2006, when he completed the maximum of three two-year terms allowed in California. Total Capitol, Paul Koretz, http://www.totalcapitol.com/?people_id=42 (last visited Jan. 9, 2008).

We have attorneys that work *pro bono* for us. When we put together a group to investigate an idea like the RTA, we had six of the top industry lawyers on conference calls a number of times to help us go through and evaluate how we can do this. It really has been an industry effort, and that's what's most exciting to me—being able to galvanize the industry around a very positive message, child protection.

At the press conference, we had both Paul Fishbein¹²⁰ from AVN and Alec Helmy from XBIZ. Theresa Flynt¹²¹ was going to sit in the audience, but when someone cancelled out, she came right up there. Greg Piccionelli,¹²² Stormy Daniels,¹²³ and Diane Duke¹²⁴ from the Free Speech Coalition were there. Everybody is here to help support us. When we looked at how to get this out to the industry, we put together a task force. We had about a half-dozen people help us with the design of the site and the ad. We haven't had to work in vacuum.

Now, we're able to go out and mainstream it. We are able to go to the government and say, "Here's what the industry has done and what we plan to do. We want to work with you. What can we be doing?"

When we're starting to work with people and they're recognizing our effort, it's really rewarding.

120. See ANV, Faces of AVN Media Network, http://www.avnmedia.network.com/index.php?content=faces_paul (last visited Jan. 21, 2008), for background information on Paul Fishbein.

121. See generally NAKED AMBITION: WOMEN WHO ARE CHANGING PORNOGRAPHY 344-45 (Carly Milne ed., 2005) (providing a brief biography of Theresa Flynt, daughter of *Hustler* magazine publisher Larry Flynt, and executive vice president of retail operations for Hustler Entertainment, Inc.).

122. See *supra* note 58 and accompanying text.

123. See generally Clay Calvert & Robert D. Richards, *Porn in Their Words: Female Leaders in the Adult Entertainment Industry Address Free Speech, Censorship, Feminism, Culture and the Mainstreaming of Adult Content*, 9 VAND. J. ENT. & TECH. L. 255, 263-64 (2006) (profiling adult movie actress Stormy Daniels and, later in the same article, providing her comments and remarks on a number of topics including freedom of expression, feminism, and censorship).

124. Duke is executive director of the Free Speech Coalition, a trade association for the adult entertainment industry. Press Release, Free Speech Coal., Free Speech Coalition Welcomes New Executive Director (Nov. 1, 2006), available at <http://www.freespeechcoalition.com/FSCView.asp?coid=947>. Duke "holds a Masters in Business Administration from the University of Oregon" and came to the Free Speech Coalition after serving "as Senior Vice-President of Planned Parenthood Health Services of Southwestern Oregon." *Id.*

QUESTION: What would you like to do next? Is it to be more active with the government?

IRVINE: Yes, that's exactly what we're working toward. You'll see us in Washington. I'll probably be there more often as I start to have data we can show them. It's about having companies, such as Google and Yahoo, recognize the label. They're good business people and they say, "We need to see a certain amount of traction before we add this to our safe search." We're going to be able to go back—less than six months later—and say, "We have those numbers."

We also will continue to rally the industry. It's no different from any other industry—we have to make phone calls and keep on top of people. The people I work with here are dedicated to the cause.

QUESTION: So many of the leaders in the adult industry—yourself, Diane Duke¹²⁵ at Free Speech Coalition,¹²⁶ and Sharon Mitchell¹²⁷ at AIM¹²⁸—are women. Why do you think that is the case?

IRVINE: I think you'll find that a lot of the association industry is comprised of women. I think women, a lot of the time, are more empathetic and naturally more empathetic to a cause. If you're going to be doing a job and spending the time it takes to run an association, you really want to have a passion for what you do. If you're looking to simply make a salary, the association business is not the place for you. Did my mother send me to college so that I can be part of an organization that is funded by the adult entertainment industry? I don't

125. *See id.*

126. *See generally supra* note 88.

127. Mitchell is executive director and founder of Adult Industry Medical Health Care Foundation (AIM), "[a] non-profit corporation formed to care for the physical and emotional needs of sex workers and the people who work in the adult entertainment industry through [its] HIV and STD testing and treatment, [its] counseling services and [its] support group programs." Adult Indus. Med. Health Care Found., About AIM, <http://aim-med.org/about/> (last visited Jan. 22, 2008). Mitchell, who holds a Ph.D in human sexuality, is a legendary pornstar "who has appeared in over 2000 films, and who has won every award that the adult entertainment industry offers, including the 1999 Adult Video News highest honor 'The Special Achievement Award' for her commitment to AIM and the ongoing crises in the adult business." *Id.*; Adult Indus. Med. Health Care Found., Contact AIM, <http://www.aim-med.org/contact/index.html> (last visited Jan. 21, 2008).

128. This is the acronym for the Adult Industry Medical Health Care Foundation.

think, if my parents were alive, they would go, “Yeah, that’s great.” But when you look at it more closely, it’s a perfect place to be.

QUESTION: As ASACP continues to grow and have more success stories, do you think any stigma of being attached to the adult entertainment industry might go away? ·

IRVINE: Absolutely. Once we have a chance to spend more time in Washington, people will get to know us. People like to do business with people they know. I don’t blame Washington for not knowing about us because we haven’t been there.

They have to see that I’m a nice, normal businessperson—an association executive with a business and technical background and the data to show it. Once they see that—and there will always be some politics around it—little by little they will feel more comfortable with it. The business continues to mainstream, and the reality is that people are making a lot of money off this industry. They may not be publicly promoting their relationship with the industry, but in the background, they’re happy to be making the money.

QUESTION: What insulation or buffer exists between the individual companies and your own decision making on behalf of ASACP?

IRVINE: We have an advisory council that meets three times a year. We talk about what we’re doing and gather feedback. AVN, XBIZ, Cybersocket, Traffic Dude, Epic and others are represented on the council. We also have a meeting for our sponsors every year where we talk about our goals, along with what we’ve done. We get a buy-in on our goals. Our sponsors can have input on what we’re doing; we’re not just doing things on our own. If we’re going beyond what we should be doing—mission creep—then we can pull back. No one company can say, “You have to do this.”

We have “best practices” and a code of ethics.¹²⁹ People know they have to go by the code and “best practices” if they want to be a part of us. We have companies that wanted to become sponsors or members and we didn’t have “best practices” for that particular niche of the industry, and we said, “We can’t take your money.”

129. ASACP’s website provides “industry best practices” for adult sites, search engines and directories, billing companies, TGPs, hosting companies, and adult dating sites. Ass’n of Sites Advocating Child Prot., Industry Best Practices, http://www.asacp.org/page.php?content=best_practices (last visited Jan. 7, 2008). The website also provides a link to the ASACP’s code of ethics. *Id.*

One of things I'm doing now is working with the companies that do wireless distribution. We're going to be developing "best practices" for wireless. To come up with "best practices," I go to experts in the field and ask, "What are you doing? How are you doing it? How can I get that down to six or seven items for 'best practices'?"

QUESTION: What companies are you speaking with in terms of wireless distribution?

IRVINE: We've talked to CTIA, which is the mainstream wireless association. We're going to be talking with Brickhouse Mobile; it distributes adult content through wireless in the U.K.¹³⁰ We're going to be talking to Twistbox Entertainment; it distributes through 160 carriers on an international basis.¹³¹ We'll ask them, "What do you do? What are your best practices? What can we do here, because we can't monitor mobile communications? We can monitor Websites." We have to figure out how we can put together "best practices" that make us comfortable that people are using them, even though we can't monitor them.

QUESTION: Who are the attorneys that work with you?

IRVINE: We have Larry Walters, our official *pro bono* attorney.¹³² Greg Piccionelli consults for us. On the phone call I mentioned, we

130. Brickhouse Mobile, <http://www.brickhousemobile.com> (last visited Feb. 18, 2008).

131. Twistbox Entm't, <http://twistbox.com> (last visited Feb. 18, 2008).

132. The ASACP gave its 2005 Annual Service Recognition Award to Walters "in appreciation for his service to ASACP and his dedication to the protection of children." Press Release, Ass'n of Sites Advocating Child Prot., ASACP Presented Its 2005 Service Recognition Award to Lawrence G. Walters (Jan. 6, 2005), available at <http://www.asacp.org/page.php?content=news&item=3>. On his law firm's website, Walters is described as

a partner in the national law firm of Weston, Garrou, Walters & Mooney, which maintains offices in Orlando, Los Angeles, Las Vegas and San Diego. Mr. Walters has developed an outstanding reputation for representing the interests of the online entertainment community. He has practiced law for almost two decades, concentrating in the areas of constitutional, media and Internet law. He is recognized as a national expert on legal issues pertaining to Free Speech and the Internet, and frequently contributes to television news programs on networks such as NBC, ABC, Fox News Channel, MSNBC, CNBC, and CNN.

Weston, Garrou, Walters & Mooney, Qualifications & Experience: Lawrence G. Walters, <http://www.firstamendment.com/qualifications.php3> (last visited Feb. 4, 2008).

also had Jeffrey Douglas and Reed Lee¹³³ from the Free Speech Coalition. We also had John Weston.¹³⁴ If I need some help on things, I also can call Paul Cambria. He helped me get quotes from Larry Flynt¹³⁵ for the RTA press conference.

IV. REFLECTIONS OF ADULT INDUSTRY ATTORNEYS AND INSIDERS ON CHILD PORNOGRAPHY, JOAN IRVINE AND THE WORK OF ASACP

In this part of the article, two leading adult entertainment industry attorneys, Gregory Piccionelli and Clyde DeWitt, along with *AVN* President Paul Fishbein and *XBIZ* Publisher Tom Hymes, comment on the importance of the work of Joan Irvine and ASACP, as well as the absence of child pornography from the mainstream adult movie business in southern California.

GREGORY PICCIONELLI: Joan Irvine is, in my estimation, one of the truly singular and remarkable human beings to come into the adult entertainment industry. The only person who, I would say, is her peer in this regard is Sharon Mitchell.¹³⁶ There was a gaping hole in the industry's moral consciousness. The professional industry did not exploit children and did not want anything to do with child pornography, but it knew that, at the periphery of the adult business,

133. Reed Lee, an attorney from Chicago, Illinois, was named by adult industry trade publication *XBIZ Video* as one of the "Top 50 Adult Industry News Makers of 2006." *The Top 50 Adult Industry Newsmakers of 2006*, XBIZ VIDEO, Jan. 2007, at 56, 58 (describing Lee as "a leading contributor in 2006 to several major battles fought on behalf of the adult entertainment industry").

134. Weston is a partner in the Los Angeles office of the law firm Weston, Garrou, DeWitt & Walters located at 12121 Wilshire Boulevard, Suite 900, Los Angeles, California. See State Bar of Cal., Attorney Search, http://members.calbar.ca.gov/search/member_detail.aspx?x=46146 (last visited Feb. 22, 2008). Weston recently represented a sexually-oriented business before the United States Court of Appeals for the Fifth Circuit in a case involving a zoning ordinance. See Matt Stiles, *City is Now Free to Crack Down on Sex Businesses*, HOUSTON CHRON., Aug. 21, 2007, at A1 (describing Weston as "the attorney who argued the case before the appellate panel on behalf of the businesses").

135. See generally LARRY FLYNT WITH KENNETH ROSS, AN UNSEEMLY MAN (1996) (providing an autobiographical perspective on the life of the publisher of, among many other sexually explicit magazines, *Hustler* and *Barely Legal*).

136. See generally *supra* note 127 (describing Mitchell and her work at the Adult Industry Medical Health Care Foundation).

children were being exploited—it always knew that. From the first time someone took an eight-millimeter movie of adults having sex, there's someone out there also using the same eight-millimeter movie technology to shoot child pornography.

The RTA label is the only reasonable way to move forward and to protect First Amendment rights while, at the same time, empowering parents to the maximum degree. They should step up and perform their parental responsibilities by taking the easiest steps to program their computers to filter out adult materials. In exchange for that, the adult entertainment community—at least those parts of it that comprise the responsible adult entertainment industry—is willing to enable their Web sites and their content to be filterable.

CLYDE DEWITT: I know Joan very well. I think what she's doing is terrific. Certainly she has devoted an incredible amount of energy toward it.

I think that if you ask anybody in the adult video or motion picture industry what they think about child pornography, they will say: (a) I'm against it; (b) I don't want to get near it; and (c) I don't want to be associated with it. But that's why people in the government do everything they can to associate the industry with child pornography; they garner more popular support.

I thus think the support that Joan is getting from the adult industry is not just because they want to look good. No one company is really going to get any points by donating money to ASACP. They just think it is a good idea.

PAUL FISHBEIN: I like Joan, and I think the [RTA] concept makes sense and I support it. Obviously I support ASACP. I think Joan is working hard.

Even the federal government found that there is no such thing as commercial child pornography. To a person in this industry, I cannot think of a single individual that wouldn't say, "Anybody knowingly involved in child pornography—meaning using anybody under age—should be prosecuted to the fullest extent of the law." There's nobody in this industry that I would defend if they were involved in trafficking in underage porn.

The key words are "consenting adults," whatever the definition of "adult" is—in this country, it is eighteen, but if it were twenty-one, I'd feel the same way, because I think eighteen is too young. I can't think

of a single person that I know who would ever, ever knowingly engage in something like that. It's just reprehensible.

TOM HYMES: ASACP is an important component for the adult industry to the extent that it can rally the industry around this labeling issue and present the industry as one that is doing its utmost to keep this content away from children and people who do not want to watch it.

V. CONCLUSION

The story that surfaced in September 2007 and was covered repeatedly on the cable news channels was simply horrific: a Nevada man named Darrin Tuck claimed to have found in the Nevada desert a homemade videotape graphically depicting the rape of a 3-year-old girl.¹³⁷ The tape “prompted a nationwide search for the girl and her assailant,”¹³⁸ who police alleged was Chester “Chet” Arthur Stiles.¹³⁹ In the videotape, allegedly “Stiles is shown committing a variety of sexual acts on the young girl and trying to force her to perform sexual acts on him.”¹⁴⁰

Shortly after the brutal incident was revealed, Joan Irvine’s organization swung into action. In particular, ASACP issued a press release that not only pointed out how the incident brings to light the “very dark issue” of the sexual exploitation of minors but, more importantly, offered up a list of helpful steps that people can take if they come across suspected child pornography on the Internet.¹⁴¹ The very issuance of the press release itself reflects two of Irvine’s central points in Part III of this article—the adult movie business does *not* use minors and it is, in fact, working exceedingly hard, to protect them.

137. David Kihara, *Suspect Shows at Nye Jail*, LAS VEGAS REV., Oct. 1, 2007, at 1B.

138. *Id.*

139. Ken Ritter, *Cops Hunt Fugitive Accused of Rape*, STAR-LEDGER (N.J.), Oct. 2, 2007, at 9.

140. Ken Ritter, *Lawyer: Mother Would Kill Man in Las Vegas Child Rape Video Case*, ASSOCIATED PRESS, Oct. 17, 2007.

141. Press Release, Ass’n of Sites Advocating Child Prot., ASACP Offers Important Steps to Report Child Pornography (Oct. 9, 2007), available at <http://www.asacp.org/page.php?content=news&item=496>.

As this article has illustrated, the videotape discovery in Nevada is just one of the myriad of incidents that reveal the dark undercurrent of society—the seedy side of human nature that most would rather forget. But the problem is not forgettable. It is all too real and all too prevalent.

As Joan Irvine observed during the interview, her organization alone averages 8000 calls a month to its reporting hotline—approximately 150 to 200 of which reveal new, non-duplicative child pornography sites. Most such sites originate overseas, outside the jurisdiction of U.S. child pornography laws. On a basic level, it is ironic that ASACP, as an organization formed and operated in the United States, is hamstrung by the very American legal system it seeks to enforce, as it is limited to viewing only material that appears on a Website. As she pointed out, “[i]f somebody sends us a JPEG or a picture, we cannot download it because we’d be possessing it. It is illegal to download it.”¹⁴²

ASACP is one of the original reporting services that work in tandem with law enforcement. Irvine noted that her organization passes along the information it receives to the NCMEC, this country’s official clearinghouse. Nonetheless, ASACP’s connection to the adult entertainment industry does not go unnoticed. As Irvine suggested, “it gets frustrating because we know the job we are doing. We are the good guys, we are transparent and we work with all of these groups.”¹⁴³

Despite the efforts at transparency, the organization did find that its previous name—Adult Sites Against Child Pornography—constricted not only its mission, but also its ability to be taken seriously by law enforcement. Irvine contends, “the name change has helped,” but admits, “we’re still working to gain the respect of some of the law enforcement agencies. Some of them will not work with us directly.”¹⁴⁴ Although some of those agencies may be reluctant to associate with a group directly tied to the adult industry, Irvine suggests that “[o]n an individual basis and, especially, on an international basis, however, people are very open to talking with us.”¹⁴⁵

¹⁴² See *supra* p. 527.

¹⁴³ See *supra* p. 531.

¹⁴⁴ See *supra* p. 530.

¹⁴⁵ See *supra* p. 531.

One of the biggest frustrations for Irvine and her organization arises from the perception that child pornography is part of the adult entertainment industry, the group that provides the bulk of the funding for her organization. As she insists, “[c]hild pornography doesn’t exist in the industry, but the perception exists.”¹⁴⁶ Overcoming that perception is perhaps the most formidable task of the person charged with directing this organization whose mission is to keep children protected from sexual exploitation and shielded from a sexual product.

Whatever discomfort law enforcement feels, there is no denying the importance of her organization’s work. In fact, the investigative process carried out by ASACP is complex and multi-faceted. If a site is identified as having child pornography, it is relayed to an investigator who, in turn, determines the identity of the hosting company, along with the domain, the Internet service provider and the company responsible for billing. That information is passed along to NCMEC.

ASACP’s mission is broadening. Irvine recognized that to raise ASACP to the next level, her organization needed to be a player in Washington, D.C. She has begun that process in moving the organization toward more advocacy work. To help facilitate this, she became part of the Congressional Internet Caucus Advisory Committee. Moreover, to demonstrate that the organization can readily respond to lawmakers’ concerns, ASACP launched in 2007 the “Restricted to Adults” (RTA) label that many adult sites voluntarily adopted as a way to enable filtering devices—an effective way of keeping minors away from objectionable content.

Finally, Irvine’s shepherding of ASACP is highly regarded by insiders in the adult entertainment industry, who praise her energy and dedication to the task of eradicating child pornography. Her passion for protecting children and ability to marshal resources for the organization’s mission undoubtedly will elevate ASACP’s status in the coming years.

As the organization works more frequently with the law enforcement community, the layer of suspicion or distrust that some agencies may now exhibit—caused solely by ASACP’s link to adult businesses—likely will dissipate in light of their shared goals. Ultimately, if the “global crisis” that is child pornography, as

¹⁴⁶ See *supra* p. 536.

NCMEC's Ernie Allen put it to Congress in 2006,¹⁴⁷ is ever going to be eliminated, then joint endeavors between seemingly unlikely allies are essential.

147. *Deleting Commercial Pornography*, *supra* note 1, at 1.