



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC
355 NORTH 300 WEST, SALT LAKE CITY, UT 84103
(801) 521-9862 PHONE • (801) 532-2850 FAX
ACLU@ACLUUTAH.ORG • WWW.ACLUUTAH.ORG

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Utah House of Representatives
Utah State Capitol
Salt Lake City, Utah 84114

Re: House Bill 260, Amendments Related to Pornographic and Harmful Materials

We write to express our concerns with the constitutionality of House Bill 260, Amendments Related to Pornographic and Harmful Materials, First Substitute. H.B. 260 S1 is not only cumbersome on a practical level, but it also stands to block and regulate online speech in violation of the First Amendment to the United States Constitution and Article I, Section 15 of the Utah Constitution. While we do not address all the infirmities with the bill in this letter, we do address the most important.

The Internet is entitled to the same broad free speech protections given to books, magazines, and casual conversation. The Supreme Court has clearly rejected a broadcast analogy for the Internet, and this State should avoid moving toward the incorrect position that the Internet is like television, and should be rated and censored accordingly.

Although network level blocking is only permitted on an opt-in basis, this does not resolve the free speech problems with H.B. 260 S1. A system of “voluntary” censorship should not be created at the request of the government. Instead, Internet users should be given the primary responsibility for determining what speech to access. Parents can and should be responsible to determine what material their children may access.

H.B. 260 S1 encourages content providers to self-rate Internet speech, in order to avoid being listed on the Adult Content Registry. Such rating schemes are wrong for the Internet, just as they are wrong for other material entitled to broad First Amendment protections. Additionally, a number of Supreme Court cases have established that the First Amendment does not allow government to compel speakers to say something that they do not want to say, and that includes pejorative ratings. Moreover, such self-rating and third-party rating systems have the potential to chill speech.

By attempting to create a “family friendly” Internet, too much speech will be blocked and the government-coerced push for a censored Internet will result in a bland and homogenized Internet. The State’s interest in protecting children from inappropriate material does not outweigh the free speech concerns raised by H.B. 260 S1. We urge against the passage of H.B. 260 S1. If you have any questions, please feel free to call me at 801.521.9862, ext. 103.

Respectfully,

Margaret Plane
Staff Attorney