

Wednesday, November 7, 2007

Sixth Circuit strikes down the Â§ 2257 anti-child pornography recordkeeping requirements.

First Amendment and the rest of the Bill of Rights.Â (From the public domain.)Â Praised be the three-judge panel of the United States Court of Appeals for the Sixth Circuit, which recently struck down the 18 U.S.C. Â§ 2257 recordkeeping requirements (to prove that sexually explicit images are of adults only) as unconstitutionally overbroad in violation of the First Amendment, seeing that Â§ 2257 even covers material depicting people who clearly are not minors (e.g. material clearly depicting people who are in their thirties and older). Â The case is *Connection Distributing Co., et al. v. Peter Keisler*, ___ F.3d __ (6th Cir., Oct. 23, 2007). *Connection Distributing*Â not only strikes down 18 U.S.C. Â§ 2257, but also rules that Â§ 2257 cannot be saved by judicial severing of any of its language, nor by judicial limitations on the reach of the statute. The case also gives a useful overview of critical aspects of First Amendment law governing adult entertainment, including the well-grounded fact that non-obscene (obscenity is to be determined by a jury in an obscenity lawsuit) sexually explicit photographs and moving images (e.g., films, videos, and online moving images) constitute speech protected by the First Amendment. Â In any event, it remains important to show judges in adult entertainment litigationÂ that non-obscene sexually explicit material (including the written word, visual images, and live performances) are First Amendment-protected. Such a concept may appear to be counterintuitive to a judge handling such a case for the first time. It is better that judges see that such courts as the Sixth Circuit in *Connection Distributing*Â confirm as much, rather than merely relying on the say-so of lawyers representing providers of adult entertainment. Jon Katz.Â ADDENDUM- Thanks to a fellow listserv member for bringing *Connection Distributing*Â to my attention.

Posted by Jon Katz in Criminal Defense at 01:00