

## Jay Howell & Associates

A PROFESSIONAL ASSOCIATION  
Attorneys at Law

644 Cesery Boulevard, Suite 300  
Jacksonville, Florida 32211  
(904) 680-1234 • Fax (904) 680-1238

[www.jayhowell.com](http://www.jayhowell.com)

### PORNOGRAPHY AND THE INTERNET

*by Jay C. Howell*

The advent of high computer technology in the home has presented our society with new issues concerning the responsibility for the transmission of otherwise illegal messages, photographs and videos on the internet. Who is legally responsible for disturbing information that is available on the internet? The Florida Supreme Court issued an opinion which may resolve some of the fundamental issues of responsibility for internet communications.

A civil case was filed here in Florida against American On Line (AOL), a well-known internet service provider (ISP), and Richard Lee Russell, an individual. The civil case was brought by a mother on behalf of her minor son. The complaint alleged that Russell lured the minor child, then 11 years old, and two other minor males to engage in sexual activity with each other and with Russell. The complaint alleged that Russell photographed and videotaped these acts and used AOL's "chat rooms" to market and sell the videotapes over the internet.

The boy's mother claimed that, though she complained to AOL, AOL took no action to suspend or terminate Russell's AOL service. There was no allegation in the case that Russell actually transmitted images of the child over the internet.

The trial court granted AOL's motion to dismiss the lawsuit. AOL argued that the tort claims made under Florida law against AOL were barred by a federal statute, The Communications Decency Act. The federal law prohibits lawsuits that treat an internet service provider as the publisher or speaker of messages simply transmitted over its services by subscribers.

Normally, anyone who publishes or restates illegal, offensive, or objectionable information may be responsible under traditional state law. However, the new federal statute attempts to differentiate between

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the individual who placed the information on the internet and the service provider that was responsible for making the information available over the internet.

The Florida Supreme Court agreed with the trial judge that the federal statute did preempt Florida law. The Supreme Court found that the federal law provides certain specific protections from civil liability for internet service providers in legal actions that might result in the restriction of access to even objectionable material. If the claim brought under Florida law attempted to impose responsibility on AOL for the transmission of objectionable material, this was prohibited by the more powerful federal statute.

The language of the federal law has a section providing protection for “Good Samaritan” blocking and screening of offensive material, and clearly states that no provider or user of an internet computer service shall be treated as the publisher or speaker of information provided by another entity. Since AOL only provided the internet service, it cannot be held liable for the offensive content of the “chat room” communications.

This case is typical of what we may see in the future, a direct conflict between comprehensive federal laws designed to deal with the new issues presented by an expanding internet and traditional state law principles of responsibility and accountability. The case is *Doe v. America On Line*, 718 So.2d 385 (Fla. 4<sup>th</sup> DCA 2001).