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## Get Walters - A Chat with First Amendment Attorney Lawrence G. Walters

>> *Rebecca Gray*



A familiar face in adult Internet industry seminars, legal panels and think tanks, endlessly energetic First Amendment attorney Lawrence G. Walters, Esquire (oh, let's just call him Larry) is a partner with the law firm of Weston, Garrou & DeWitt - Orlando office. His own Website

[www.lawrencewalters.com](http://www.lawrencewalters.com) (!!)

explains that Walters "represents clients involved in all aspects of adult media. The firm handles First Amendment cases nationwide, and has been involved in significant Free Speech litigation before the United States Supreme Court."

With any luck (and a modicum of standard business practice) this interview might be as close as you ever get to Larry, unless, of course, you meet him at Internext; anyway, "The partners in our firm have lectured on Internet law and Free Speech issues across the country, and have been involved in some of the ground-breaking cases relating to adult Websites, including the first obscenity charge filed against a Website in Polk County, Fla. We pride ourselves in providing cutting edge legal guidance to Webmasters, along with aggressive representation and political consulting when necessary."

So, A) yes, Mr. Walters Esq. keeps exceptionally busy (a minor miracle, actually, how he does all he does and yet found time for our questions, too), and B) the other "opportunities" for availing oneself of Walters' expertise, smarts and charm would lie in being represented by him. While you probably couldn't do better than Walters (should you find yourself in court), it is, of course, our strong recommendation that you do better than to find yourself in court.

### AVN Online: Why do you do this?

**Lawrence Walters:** When I first began practicing law in the late '80s, I accepted a position with a "silk stocking" law firm representing

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banks, construction companies, and insurance associations in Daytona Beach, Fla. When the State Attorney began prosecuting small local video store operators for obscenity violations, I felt compelled to provide some assistance, even though I was a young buck just out of law school. The prosecutions involved such classic titles as *Deep Throat* and *Behind the Green Door*, which had been out for 20 years. I could not believe that people were being arrested and threatened with jail time for renting adult videos to adults.

I went out on my own in the early '90s when I realized that the bankers would not sit in the lobby with the pornographers. I have since partnered with a few different lawyers until joining Weston, Garrou & DeWitt in March of 2001. By that time, I had developed a substantial adult Internet law practice and Clyde DeWitt's firm was interested in expanding into that industry. I was well aware of the firm's stellar reputation and involvement with the development of First Amendment jurisprudence in the Supreme Court, and felt that it would be a natural fit for all of us to form a new partnership. About a year and a half later, it looks like I was right.

**AVNO:** What is the key legislation facing adult Webmasters right now?

**LW:** Of critical importance is whether the COPA law will ultimately be upheld at the circuit court or Supreme Court level. The enforceability of COPA will have a direct impact on the viability of free sites, and what kind of content can be displayed in the free tour areas before the credit card block or AVS firewall. It appears that we will soon have a new virtual child pornography law that may or may not affect teen sites, but which will certainly affect any site containing underage content, including "teen modeling" sites. Teen modeling will also likely be the subject of its own legislation as a result of a bill introduced by Representative Tom Foley.

It almost goes without saying that adult Webmasters should also be extremely focused on compliance with Title 18, Section 2257, relating to records-keeping and -labeling. This is the Achilles heel of our industry, should the government decide to mount an attack against adult Webmasters. True compliance with Section 2257 is difficult, if not impossible, for many adult Webmasters; and very few sites on the Web are 100 percent compliant.

**AVNO: How can adult Webmasters best spend their time/energy/money protecting themselves from litigation?**

**LW:** Initially, too many adult Webmasters have been conducting business without legal counsel. If Webmasters followed the advice of counsel, free areas would be cleaned up, records would exist showing that all models were over the age of 18, everyone would register their own unique domain name instead of trading off of some established site, and everyone would produce and/or license their own content. The level of ignorance [regarding what's legal] in this industry tends to give it a bad name, and provides endless fodder for those seeking to exploit any legal misstep by an adult Webmaster.

Unfortunately, we're still seeing a significant number of adult Internet companies battling each other, instead of uniting for a common good. Legislation is being passed and cases are being decided in court without a peep from the adult Internet industry. While I recognize that adult Webmasters are a highly individualistic group, certain issues should unite them, given the tremendous downside of remaining divided. Other industries, such as the video

game software developers or even the gambling industry, regularly send lobbyists to Washington, as well as state legislatures, to provide input on the effect of pending legislation on their particular industry. Their trade groups regularly file Amicus briefs in legal cases that could set precedents affecting their business. Adult Webmasters do not even have a lobbying group to assert their interests in the Legislature or in the courts. That may change in the near future, as I believe the time is finally right to create a trade organization to protect the legal interests of the adult Internet industry. Someone should be able to, for example, speak for the industry when issues such as COPA or obscenity are discussed in the mainstream media.

In my opinion, participants in this industry need to create a business that they're proud of. Many adult Webmasters started out by stealing a bunch of newsgroup images, setting up a site and spamming every e-mail address they could get their hands on to secure \$20-a-month membership subscriptions. The industry was set up for criticism as a result of these shady business practices, but now that the industry is maturing, the focus should be on quality content, legal compliance and a high level of customer service.

**AVNO: Are there technological advances/constraints coming that you think might change the adult Internet industry?**

**LW:** One technological advance that may result in some unintended legal consequences is the ability to geographically block or target the recipients of online communication. In rendering several decisions in favor of protection of online communications, the courts have repeatedly recognized that the purveyors of Internet communications, particularly adult Websites, do not have the ability to geographically target or block recipients of those communications. As a result, some courts have invalidated regulations that require Webmasters to, for example, comply with community standards or tailor unsolicited e-mail to a particular state's anti-SPAM legislation. It will not be long before Webmasters will be able to identify, with greater and greater precision, the approximate location of the end user, through IP address identification or GPS satellite technology. These advances, while providing Webmasters with additional options, will produce negative consequences from two standpoints: First, they will take away the rationale used by the courts to invalidate legislation that requires geo-targeting or -blocking. Second, consumers will lose, since those who happen to be located in a particularly conservative area of the country, or areas with archaic laws, will be deprived of erotic expression, and other controversial communications.

**AVNO: What do you consider to be the biggest roadblock to the legitimacy of the adult Internet industry in the eyes of corporate and community America?**

**LW:** The unwillingness to organize and cooperate for the common good continues to be a stumbling block preventing this industry from fulfilling its greatest potential. We need a media spokesperson who can emphasize the positive aspects of the industry, such as the fact that adult Webmasters pioneer most e-commerce advances, implement innovative marketing methods, protect the First Amendment, and enhance sexual education and acceptance. This emphasis is critical for changing the current public perception of the adult Internet industry. The "religious right" is extremely organized and takes every opportunity to disseminate disinformation to

politicians and the media in an effort to destroy this industry. Those efforts should be countered on a regular basis through lobbying and positive media exposure.

**AVNO: What would be you're ABC for the beginning adult Internet industry person?**

**LW:** A) Always remain on good terms with your lawyer; B) Be careful with your content; C) Cooperate with other industry participants to achieve a common goal.

After the passage of the Patriot Act and the repeal of the Levy Guidelines formerly in place to restrict FBI surveillance of innocent civilians, we are living in an age where law enforcement can conduct investigations online without any suspicion of criminal activity. In Central Florida, where my office is located, law enforcement has established fake adult Websites to infiltrate the online escort business. Hundreds of thousands of dollars in assets have been seized by law enforcement under Florida's racketeering laws recently, prior to any conviction, for finding of probable cause. I grow increasingly concerned that adult Webmasters underestimate the legal risks involved in operating an adult Website, particularly in this pro-law enforcement era.

The final issue I would mention is the infiltration of child pornography and other underage content into the adult industry. The survival of the adult Internet industry is dependent on maintaining a clear distinction between adult erotica and illegal child pornography. Those clear lines of demarcation have become blurred lately with the arrival of a host of "teen modeling," "Lolita," and explicit child pornography sites. While some of these sites operate in a gray area of the law, any underage content must be avoided like the plague. Our detractors, such as the American Family Association and Morality in Media, try to equate child pornography with adult erotica in an attempt to lump legal and illegal materials together. This sort of confusion carries over to judges and juries, who often fail to understand the distinction between materials protected by the First Amendment, and illegal contraband. Each and every adult Webmaster should have a strong statement denouncing child pornography on their site, and reinforce the distinction between adult erotica and child pornography at every turn.

The adult Internet industry holds a vast amount of promise and potential. Let's face it, adult materials and online gambling are about the only businesses on the Internet that are turning a healthy profit. With some industry cooperation and organization, adult Webmasters can quickly move from the shadows of the somewhat marginalized into a position of leadership within the adult industry.

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