

# **WOW's 18 USC 2257 STATEMENT**

## **I. Issues**

**Since the United States of America in 2022 has a complex culture, society and government, with competing values and subjective opinions, the existence of the WOW site on the Internet gives rise to legal issues stated below.**

- 1. What legal rules govern publishing risqué adult oriented content on the Internet?**
- 2. Can the owner of an Internet site post to the Internet adult content with legal impunity from civil or criminal prosecution?**
- 3. What is legally considered to be “obscene material”?**
- 4. What is legally considered to be a “lascivious” image?**
- 5. What is legally considered to be “sexually explicit conduct”?**
- 6. Legally, how are “community standards” on the Internet defined?**
- 7. Should the least tolerant, most narrow minded, most puritanical community in the USA be allowed to determine what are “the community standards” for the entire USA—all fifty states and approximately 340 million Americans?**
- 8. What is “child pornography”?**
- 9. Is [www.wowthewonderofwomen.com](http://www.wowthewonderofwomen.com) [the WOW site] legally protected by the First Amendment to the US Constitution?**
- 10. Are WOW's images “obscene”, “lascivious”, and/or “sexually explicit”?**
- 11. How does 18 USC 2256 and 18 USC 2257 impact the WOW site?**
- 12. Is 18 USC 2257 relevant to the WOW site so that someone affiliated with that site has to comply with 2257's record keeping requirements?**
- 13. Is 18 USC 2257 constitutional?**

To determine correct legal answers to these legal issues, one must consider the material facts, apply controlling law to those facts, do an analysis, and render a conclusion.

## II. Material Facts

As of February 2022, there are about 3,500 pictures of adult human females on the WOW website [[www.wowthewonderofwomen.com](http://www.wowthewonderofwomen.com)]. Each statement below is an accurate factual summary of what these 3,500 pictures show and do not show.

1. No picture shows a female with a male, and no combined male-female pictures will be posted; thus, there cannot be any depiction of “actual explicit or simulated sexual conduct” or “sexual activity” between a female and a male on the WOW site;
2. There are no videos or moving film on the WOW site showing action or conduct between a human female and a human male, and none will be displayed or offered for viewing or purchase;
3. No picture on the WOW site depicts any explicit sexual conduct between a female and a male, two or more females, or two or more males, let alone sexual conduct in a patently offensive way;
4. There are no pictures that show actual or simulated sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
5. There are no pictures that show bestiality, masturbation, sadism, sadistic or masochistic abuse;
6. There are no pictures that show lascivious exhibition of the anus, genitals or pubic area of any person;
7. There are no pictures of a minor or an adult engaged in sexually explicit conduct;
8. A nude model’s genitals or pubic area are not the focal point of 99.99% of the images;
9. In the small percentage of WOW images that involve a close up of a female’s pubic area, her legs are closed, there is no close up of genitalia, and there is a prop involved in the picture and an accompanying caption that asks a serious thought provoking

- question that conveys a message protected by the First Amendment;
10. All pictures on the site are one dimensional still images with no action and no conduct depicted;
  11. A model posing nude for an artistic still picture is nowhere close to being a performer depicted in a video or a movie showing a performer manifesting sexually explicit conduct;
  12. There is no picture showing any anatomical part of a human male's body, let alone a picture showing any anatomical part of a human male's body depicted with any part of, or close to or inside, a human female's body;
  13. No picture shows a female masturbating;
  14. No picture shows a female inserting anything into anything or anyone inserting anything into a female's body, or close to doing so;
  15. No picture shows a female squirting;
  16. No picture shows a female doing anything with an animal or a minor;
  17. There are no pictures of a model "stripping";
  18. No picture shows a female obviously under the age of 18 years. [NOTE: All models depicted in the pictures have signed a model release declaring their age to be above 18 years of age.];
  19. No picture shows a model with inappropriate attire for the model's age;
  20. Every picture is intended to be pure "art", namely, an artistic capture of the adult human female's beautiful curves, with an emphasis on good lighting that illuminates and shadows that define;
  21. The dominant theme of the WOW site is "art"—tasteful, well done, artistic photos of adult age women in various states of dress and undress, not "sex", not "porn", not "obscenity";
  22. Many of the WOW pictures are tight crop facial portraits;
  23. Many of the WOW pictures show women fully dressed;
  24. The WOW site emphasizes art [composition, creativity, lighting, shadows, selective focus, props, beauty, facial portraits, and locations];

25. The WOW site extols women, the opposite of exploiting them by over sexualizing them;
26. No picture is intended to elicit a sexual response;
27. No picture shows any “spread legs”, “pinky”, genitalia vagina lips, etc. . . . and never will;
28. The models are about 95% true professional fine art models; about 5% are amateurs; all are of legal age; most are in their mid-20’s to late 20’s; several are in their early to mid-30’s; the youngest is 19 years old;
29. All women depicted in the WOW pictures are models, not performers; none are porn stars, prostitutes, whores, call girls, escorts, or cam girls. Many are college graduates and successful self employed independent contractors;
30. Merely being totally nude is not being “sexual”, “lewd”, “obscene”, or “pornographic”;
31. There is, on the WOW website, a lot of educational text op-eds calculated to extol women and guard against over-sexualizing them. [See what is under “About” on the Homepage’s navigational bar;
32. The WOW site does not, in any way facilitate meetings for sexually oriented activities;
33. There is no way the WOW site has any chance of presenting any unsafe risk or unsafe impact on any one viewing it or buying any of its products;
34. The WOW site has an “Age Restriction” pop up notice and warning at the beginning of the site which makes it clear that the content is intended for adults only, there is no porn on the site, and if the person is not at least the age of majority for their jurisdiction they are not authorized to enter the site.
35. The WOW site offers for sale two 100% legal products: one dimensional prints of dressed, topless and nude consenting adult women, all tasteful, all artistic, 100% free of obscenity or pornography, and a subscription plan to see the pictures without having to buy prints;
36. The WOW site is not an outlet for the showing or selling of adult or child pornography, and it is not a front for prostitution, call girl services or cam girl services;

37. The WOW site, per federal and state law, and the prints and subscription plans offered for sale, are 100% legal;

### III. Applicable Rules

The major applicable legal rules are stated below.

**A. First Amendment to the U.S. Constitution:**

“Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble . . . .”

**B. Article VI. Section 2 of the U.S. Constitution:**

“The Constitution, and the Laws of the United States which shall be made in pursuance thereof; . . . shall be the supreme Law of the Land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.”

**C. 18 USC 2256:**

18 USC 2256 states [complete quote]:

“For the purposes of this chapter, the term—

(1) “**minor**” means any person under the age of eighteen years;

(2)

(A) Except as provided in subparagraph (B), “**sexually explicit conduct**” means actual or simulated—

(i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite **sex**;

(ii) bestiality;

(iii) masturbation;

(iv) sadistic or masochistic abuse; or

- (v) lascivious exhibition of the anus, genitals, or pubic area of any person;
- (B) For purposes of subsection 8(B) of this section, “**sexually explicit conduct**” means—
- (i) graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite **sex**, or lascivious simulated sexual intercourse where the genitals, breast, or pubic area of any person is exhibited;
  - (ii) graphic or lascivious simulated;
  - (I) bestiality;
  - (II) masturbation; or
  - (III) sadistic or masochistic abuse; or
  - (iii) graphic or simulated lascivious exhibition of the anus, genitals, or pubic area of any person;
- (3) “**producing**” means **producing**, directing, manufacturing, issuing, publishing, or advertising;
- (4) “**organization**” means a person other than an individual;
- (5) “**visual depiction**” includes undeveloped film and videotape, data stored on **computer** disk or by electronic means which is capable of conversion into a visual image, and data which is capable of conversion into a visual image that has been transmitted by any means, whether or not stored in a permanent format;
- (6) “**computer**” has the meaning given that term in **section 1030 of this title**;
- (7) “**custody or control**” includes temporary supervision over or responsibility for a **minor** whether legally or illegally obtained;
- (8) “**child pornography**” means any **visual depiction**, including any photograph, film, video, picture, or **computer** or **computer-generated** image or picture, whether made or produced by electronic, mechanical, or other means, of **sexually explicit conduct**, where—
- (A) the production of such **visual depiction** involves the use of a **minor** engaging in **sexually explicit conduct**;
  - (B) such **visual depiction** is a digital image, **computer** image, or **computer-generated** image that is, or is **indistinguishable** from, that of a **minor** engaging in **sexually explicit conduct**; or
  - (C) such **visual depiction** has been created, adapted, or modified to appear that an **identifiable minor** is engaging in **sexually explicit conduct**.

(9) “**identifiable minor**” —

(A) means a person —

(i)

(I) who was a **minor** at the time the **visual depiction** was created, adapted, or modified; or

(II) whose image as a **minor** was used in creating, adapting, or modifying the **visual depiction**; and

(ii) who is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

(B) shall not be construed to require proof of the actual identity of the **identifiable minor**.

(10) “**graphic**”, when used with respect to a depiction of **sexually explicit conduct**, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the **sexually explicit conduct** is being depicted; and

(11) the term “**indistinguishable**” used with respect to a depiction, means virtually **indistinguishable**, in that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual **minor** engaged in **sexually explicit conduct**. This definition does not apply to depictions that are drawings, cartoons, sculptures, or paintings depicting **minors** or adults.

D. 18 USC 2257:

18 U.S. 2257 states [complete quote]:

Whoever produces any book, magazine, periodical, film, videotape, digital image, digitally- or computer-manipulated image of an actual human being, picture, or other matter which— contains one or more **visual depictions** made after November 1, 1990 of **actual sexually explicit conduct**; and is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce;

shall create and maintain individually identifiable records pertaining to every performer portrayed in such a **visual depiction**.

Any person to whom subsection (a) applies shall, with respect to every performer portrayed in a **visual depiction of actual sexually explicit conduct**—

ascertain, by examination of an identification document containing such information, the performer's name and date of birth, and require the performer to provide such other indicia of his or her identity as may be prescribed by regulations; ascertain any name, other than the performer's present and correct name, ever used by the performer including maiden name, alias, nickname, stage, or professional name; and record in the records required by subsection (a) the information required by paragraphs (1) and (2) of this subsection and such other identifying information as may be prescribed by regulation.

Any person to whom subsection (a) applies shall maintain the records required by this section at his business premises, or at such other place as the Attorney General may by regulation prescribe and shall make such records available to the Attorney General for inspection at all reasonable times.

(d)

No information or evidence obtained from records required to be created or maintained by this section shall, except as provided in this section, directly or indirectly, be used as evidence against any person with respect to any violation of law.

Paragraph (1) of this subsection shall not preclude the use of such information or evidence in a prosecution or other action for a violation of this chapter or chapter 71, or for a violation of any applicable provision of law with respect to the furnishing of false information.

(e)

(1) Any person to whom subsection (a) applies shall cause to be affixed to every **copy** of any matter described in paragraph (1) of subsection (a) of this section, in such manner and in such form as the Attorney General shall by regulations prescribe, a statement describing where the



records required by this section with respect to all **performers** depicted in that **copy** of the matter may be located. In this paragraph, the term “**copy**” includes every page of a **website** on which matter described in subsection

(a) appears.

(2) If the person to whom subsection (a) of this section applies is an **organization** the statement required by this subsection shall include the name, title, and business address of the individual employed by such **organization** responsible for maintaining the records required by this section.

It shall be unlawful—

for any person to whom subsection (a) applies to fail to create or maintain the records as required by subsections (a) and (c) or by any regulation promulgated under this section;

for any person to whom subsection (a) applies knowingly to make any false entry in or knowingly to fail to make an appropriate entry in, any record required by subsection (b) of this section or any regulation promulgated under this section; for any person to whom subsection (a) applies knowingly to fail to comply with the provisions of subsection (e) or any regulation promulgated pursuant to that subsection; for any person knowingly to sell or otherwise transfer, or offer for sale or transfer, any book, magazine, periodical, film, video, or other matter, produce in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce or which is intended for shipment in interstate or foreign commerce, which—

contains one or more **visual depictions** made after the effective date of this subsection of **actual sexually explicit conduct**; and is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce; which does not have affixed thereto, in a manner prescribed as set forth in subsection (e)(1), a statement describing where the records required by this section may be located, but such person shall have no duty to determine the accuracy of the contents of the statement or the records required to be kept; and

(5) for any person to whom subsection (a) applies to refuse to permit the Attorney General or his or her designee to conduct an inspection under subsection (c).

The Attorney General shall issue appropriate regulations to carry out this section.

In this section—the term “**actual sexually explicit conduct** means actual but not simulated conduct as defined in clauses (i) through (v) of section 2256(2)(A) of this title; the term “**produces**”—means—actually filming, videotaping, photographing, creating a picture, digital image, or digitally- or computer-manipulated image of an actual human being; digitizing an image, of a **visual depiction of sexually explicit conduct**; or, assembling, manufacturing, publishing, duplicating, reproducing, or reissuing a book, magazine, periodical, film, videotape, digital image, or picture, or other matter intended for commercial distribution, that contains a **visual depiction of sexually explicit conduct**; or inserting on a computer site or service a digital image of, or otherwise managing the sexually explicit content, of a **computer site or service that contains a visual depiction of, sexually explicit conduct**; and (B) does not include activities that are limited to—photo or film processing, including digitization of previously existing **visual depictions**, as part of a commercial enterprise, with no other commercial interest in the **sexually explicit material**, printing, and video duplication; distribution; any activity, other than those activities identified in subparagraph (A), that does not involve the hiring, contracting for, managing, or otherwise arranging for the participation of the depicted **performers**; the provision of a telecommunications service, or of an **Internet access service** or **Internet** information location tool (as those terms are defined in section 231 of the **Communications Act of 1934 (47 U.S.C. 231)**); or the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a

communication, without selection or alteration of the content of the communication, except that deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of the **Communications Act of 1934 (47 U.S.C. 230(c))** shall not constitute such selection or alteration of the content of the communication; and the term “**performer**” includes any person portrayed in a **visual depiction** engaging in, or assisting another person to engage in, sexually explicit conduct.

Whoever violates this section shall be imprisoned for not more than 5 years, and fined in accordance with the provisions of this title, or both. Whoever violates this section after having been convicted of a violation punishable under this section shall be imprisoned for any period of years not more than 10 years but not less than 2 years, and fined in accordance with the provisions of this title, or both.

## V. Analysis

### A. The WOW Internet Site is Protected by the First Amendment to the U.S. Constitution.

The First Amendment protects a U.S. citizen’s right to communicate legal adult content on the Internet to the public.

The First Amendment is part of the U.S. Constitution.

The U.S. Constitution is not just a constitution; it *is* a law and *not an ordinary law*. Per Article VI, Section 2, the U.S. Constitution expressly declares that it—and only those laws made pursuant to it [which means with fidelity to it]—are the *supreme* law of the land.

*Supreme* means highest and final binding legal authority, second to none.

The First Amendment, where relevant, states, “Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble . . . .”

***Shall*** is a mandatory command binding on government. It is not an option, nor a mere aspiration or goal. It is a command of the highest order that the government must obey, with no wiggle room to escape the scope of the unequivocal command.

***Abridge*** means: the curtailment [restriction of] a right.

***Not*** is an unequivocal negative.

Consequently, “shall not abridge” means the First Amendment bars Congress [and all governmental authority in the U.S.] from passing or enforcing any law that curtails a U.S. citizen from engaging in ***expressive*** speech [such as fine art nude modeling and/or photography of a fine art nude model], or the rights of a model and a photographer to assemble so they can peacefully create fine art nude model pictures, or the right of the copyright holder(s) of such pictures to publish such pictures in print and/or electronic media.

Congress has actual legal authority to pass laws, but, it is axiomatic that no law can violate the U.S. Constitution because that Constitution is the expressly self declared supreme law of the land, it is logically and factually impossible for two or more laws that conflict with the US Constitution to be “supreme”, and, any law that conflicts with anything in the U.S. Constitution is automatically null and void, creates no new duties and no new rights.

However, there are laws that purport to prohibit distribution of obscene material and child pornography. In addition, federal laws 18 USC 2256 and 2257, when construed together, imposes record-keeping requirements on a broadly defined category of producers of sexually explicit material.

These laws and their requirements are being challenged in court.

Arguably, all, or major parts of 2256 and 2257 are too broad in scope and violate that part of the First Amendment which prohibits any law that abridges free speech or freedom of the press.

## **B. 18 US 2256 By Its Terms is Not Applicable to WOW**

18 USC 2246(A) states: “. . . “**sexually explicit conduct**” means actual or simulated—(i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite **sex**; (ii) bestiality; (iii) masturbation; (iv) sadistic or masochistic abuse; or

(v) lascivious exhibition of the anus, genitals, or pubic area of any person.

It is objectively verifiable that none of WOW's pictures show any thing that come within the scope of how 18 USC 2256 defines "sexually explicit conduct".

18 USC 2246(B) states: ". . . "For purposes of subsection 8(B) of this section, "**sexually explicit conduct**" means—

- (i) graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite **sex**, or lascivious simulated sexual intercourse where the genitals, breast, or pubic area of any person is exhibited;
- (ii) graphic or lascivious simulated;
  - (I) bestiality;
  - (II) masturbation; or
  - (III) sadistic or masochistic abuse; or
- (iii) graphic or simulated lascivious exhibition of the anus, genitals, or pubic area of any person;
- (3) "**producing**" means **producing**, directing, manufacturing, issuing, publishing, or advertising;
- (4) "**organization**" means a person other than an individual;
- (5) "**visual depiction**" includes undeveloped film and videotape, data stored on **computer** disk or by electronic means which is capable of conversion into a visual image, and data which is capable of conversion into a visual image that has been transmitted by any means, whether or not stored in a permanent format;
- (6) "**computer**" has the meaning given that term in **section 1030 of this title**;
- (7) "**custody or control**" includes temporary supervision over or responsibility for a **minor** whether legally or illegally obtained;
- (8) "**child pornography**" means any **visual depiction**, including any photograph, film, video, picture, or **computer** or **computer-generated** image or picture, whether made or produced by electronic, mechanical, or other means, of **sexually explicit conduct**, where—
  - (A) the production of such **visual depiction** involves the use of a **minor** engaging in **sexually explicit conduct**;

(B) such **visual depiction** is a digital image, **computer** image, or **computer-generated** image that is, or is **indistinguishable** from, that of a **minor** engaging in **sexually explicit conduct**; or

(C) such **visual depiction** has been created, adapted, or modified to appear that an **identifiable minor** is engaging in **sexually explicit conduct**.

(9) “**identifiable minor**” —

(A) means a person —

(i)

(I) who was a **minor** at the time the **visual depiction** was created, adapted, or modified; or

(II) whose image as a **minor** was used in creating, adapting, or modifying the **visual depiction**; and

(ii) who is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

(B) shall not be construed to require proof of the actual identity of the **identifiable minor**.

(10) “**graphic**”, when used with respect to a depiction of **sexually explicit conduct**, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the **sexually explicit conduct** is being depicted; and

(11) the term “**indistinguishable**” used with respect to a depiction, means virtually **indistinguishable**, in that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual **minor** engaged in **sexually explicit conduct**.

This definition does not apply to depictions that are drawings, cartoons, sculptures, or paintings depicting **minors** or adults.

It is objectively verifiable that none of WOW’s pictures show any thing that come within the scope of how 18 USC 2256(B) defines “**sexually explicit conduct**”.

When you adhere to how 18 USC 2256(A) and (B) define “**sexually explicit conduct**”, when you confine yourself to the logical consequences of those definitions, and then apply those definitions to what is shown in WOW’s pictures, it becomes obvious to any

reasonably intelligent, logical and rational person that 18 USC 2257 does *not* apply to the WOW Internet site, as explained further, herein.

There are two key, controlling parts of 18 USC 2257 that expressly makes it 100% irrelevant to the WOW website. These two parts are: (1) “a visual depiction of actual sexually implicit conduct” and (2) “the term 'performer' includes any person portrayed in a **visual depiction** engaging in, or assisting another person to engage in, sexually explicit conduct.”

### C. Established Definitions Make 18 USC 2257 Irrelevant

18 USC 2257, by its expressed actual text, A) does not use the word “model”; B) does not require a producer of digital depictions of a nude adult female “model” who is *not* depicted in “actual sexually implicit conduct” or who does not “assist another person to engage in sexually explicit conduct” to be subject to any record keeping requirements regarding the model(s).

The WOW Website has many still one dimensional pictures of adult age female *models*, dressed, and in various states of undress, including topless and totally nude, but, a model posing nude for tasteful non-pornographic art, with no male in the still picture, not doing anything sexual, let alone with a male, is not a “performer” engaged in or assisting another person to engage in, sexually explicit conduct.

It is indisputable that: 1) *nude*, *obscene*, and *sexually* are materially distinct; 2) it is axiomatic that one can be nude without being obscene, sexual or depicted doing “sexually explicit conduct” as defined by the law; 3) a *model* is not a *performer*; 4) words have established legitimate definitions; 5) definitions have consequences, and definitions distinguish; 6) educated, learned, intelligent, reasonably constituted, rational and logical adults use English words consistent with fidelity to their established definitions to distinguish and to be consistent regarding what is distinguished when one uses words to communicate; and 7) it is

axiomatic that Webster's Collegiate Dictionary is universally accepted among learned educated people as being "authoritative" as to the legitimate definitions of English words.

Webster's Collegiate Dictionary's definitions of relevant words is probative, if not controlling. Below is a list of words relevant to how 18 USC 2257 should be construed [interpreted and implied].

<i>abridging</i>	Curtailing a right
<i>actual</i>	1) existing in fact; 2) real—existing in reality, as contrasted with what is suspected, implied, intended, expected or believed; 3) current; existing now
<i>conduct</i>	1) the manner in which a person behaves, especially their action or movements while doing an activity; 2) a series of sequential individual behaviors and activity during a time period
<i>crude</i>	1) offensively coarse or rude, especially in relation to sexual matters; 2) primitive; 3) unrefined; 4) in a raw state; 5) not yet processed, polished or developed and improved
<i>explicit</i>	1) showing and revealing everything; 2) leaving nothing hidden, covered, or implied; 3) unequivocal; 4) clearly revealed and expressed
<i>exploitation</i>	1) the action or fact of treating someone unfairly to gain an unfair advantage for oneself; 2) selfish utilization
<i>genitalia</i>	reproductive organs [Note: Since breasts are not part of a woman's reproductive organs tight



crop close ups of a woman's bare breasts are 100% legal and never "obscene".]

<i>intercourse</i>	1) intimate, ultimate, sexual relations; 2) copulation; joining together; sexual intercourse
<i>lascivious</i>	1) inclined to lust; 2) wanton or lewd; 3) inciting to lust
<i>lewd</i>	Crude and offensive in a sexual way
<i>lust</i>	1) a very strong passionate sexual desire for sex with someone; 2) a strong desire for something
<i>model</i>	a person who poses still for the creation of static art, e.g., one dimensional digital image, print image or painting or a three dimensional sculpture.
<i>nude</i>	1) naked or unclothed, as a person; 2) bare; 3) of a photograph, painting, or statue, etc., representing the nude human figure; 4) an unclothed human being
<i>obscene</i>	1) offensive to morality or decency; 2) abominable; 3) disgusting; 4) repulsive; 5) lewd.
<i>offensive</i>	1) causing offense or displeasure; highly annoying; disagreeable; irritating; 2) repugnant to the moral sense or good taste or the like
<i>overt</i>	1) open; plain; manifest; not hidden; 2) open to view; 3) not concealed
<i>patently</i>	1) clearly; 2) without a doubt

<i>performer</i>	1) one who entertains by performing, quickly, a sequence of acts; 2) normally live or as depicted in film, movies or videos
<i>pornography</i>	<i>obscene explicit depictions of human sexual activity or conduct</i>
<i>pubic</i>	1) relating to the pubes or pubis; 2) the bones forming the two sides of the pelvis
<i>prurient</i>	Having or encouraging an excessive interest in sexual matters
<i>sexual</i>	1) of or pertaining to sex; 2) sexual relations occurring between the sexes.
<i>sexually</i>	1) sexual character; 2) possession of the structural and functional traits of sex; 3) recognition of or emphasis upon sexual matters; 4) involvement with sexual activity; 5) an organism's preparation for engaging in sexual activity.
<i>service</i>	1) an act of helpful activity; 2) supplying a service other than a product or goods.
<i>shall</i>	1) a mandatory command; 2) not a mere option or aspiration; 3) the imposition of a serious duty or obligation
<i>supreme</i>	1) the highest and final binding legal authority, second to none; 2) no higher authority

Significantly, there is not a single WOW picture showing any model engaged in actual or simulated explicit sexual conduct or assisting anyone to engage in such conduct, as defined by 18 USC 2256/2257.

It is beyond dispute that one can be totally nude and still not be depicted engaged in actual or simulated explicit sexual conduct.

It is also beyond dispute that there is a huge material qualitative difference between a nude female model alone in a still picture not engaged in sexual conduct and a nude female performer in a video or movie depicted having explicit sexual intercourse or sexual activity with a male in the same video or movie with the female performer.

It is also beyond dispute that no WOW picture is *crude*, as defined by Webster.

While it is true that many WOW pictures show an adult female totally nude, and, in that sense, they are *explicit*, merely showing *explicit* nudity does *not* bring the pictures or the WOW site within the scope of 18 USC 2256/2257 because that law's scope, and its elements, is applicable only to performers engaged in *explicit sexual conduct*, which is far beyond and includes a lot more components than merely being nude in a still one dimensional picture.

Words, and their legitimate established definitions, have consequences. *Definitions distinguish*. Definitions, when properly understood and adhered to with fidelity to their true definitions, distinguish X from Y; *model* from performer; *posing still* for a still digital picture from *performing conduct in a video or film*; *art* from *obscene* or pornographic; and *sexually explicit conduct* from being merely *nude*.

#### D. Legally, No WOW Picture is “Obscene Material”?

United States courts use “the Miller test” for determining whether speech or expression is "obscene," and therefore not protected by the First Amendment.

It is axiomatic that if any form of expressive communication is protected by the First Amendment, it is legal and cannot be legally banned.

The US Supreme Court held in [Miller v. California, 413 U.S. 15](#) (1973) that material is obscene if *each* of the following factors is satisfied:

- Whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest;
- Whether the work depicts/describes, in a patently offensive way, sexual conduct specifically defined by applicable law;
- Whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Significantly, all three prongs must be satisfied before anything can be declared legally obscene.

Most pornography depicting sexual acts or genitalia would not be considered obscene but community standards can vary widely (compare Salt Lake City, Utah, with many Mormons, with Las Vegas, Nevada, with many who relish being in “Sin City”).

*Prurient* means having or encouraging an excessive interest in sexual matters.

The WOW site’s images do not have and do not encourage an excessive interest in sexual matters; therefore, that test for “obscenity” fails.

The WOW site does not depict topless or nude women in a patently offensive way; therefore, that test for “obscenity” fails.

The WOW site, taken as a whole, manifests obvious sustained extensive artistic value because the pictures are tastefully done art; therefore, that test for “obscenity” fails.

**C. Legally, No WOW Picture is a “Lascivious” Image**

*Lascivious* means: a person, manner, gesture, or feeling revealing an overt act of offensive sexual desire.

United States v. Wiegand, 812 F.2d 1239, 1244 (9th Cir. 1987) set forth a six factor test to determine if something is lascivious:

1. Whether the genitals or pubic area are the focal point of the image;
2. Whether the setting of the image is sexually suggestive (i.e., a location generally associated with sexual activity, such as a bed);
3. Whether the subject is depicted in an unnatural pose or inappropriate attire considering her age;
4. Whether the subject is fully or partially clothed, or nude;
5. Whether the image suggests sexual coyness or willingness to engage in sexual activity; and
6. Whether the image is intended or designed to elicit a sexual response in the viewer.

Significantly, each prong of this six part test for “lascivious” is extraordinarily subjective and not objectively quantifiable. Consequently, this test requires a case-by-case analysis, and, unfortunately, it is devoid of any bright clear line rules [e.g., the Second Amendment’s guarantee that the right of the people to keep and bear arms, shall not be infringed.”]

This 6-prong test is often called “the Dost test”, named after United States v. Dost, 636 F. Supp. 828, 832 (S.D. Cal. 1986).

Many courts apply this so-called Dost test to determine if a given image is considered to be "lascivious" under the law.

Per “the Doth test”, total nudity, by itself, is not enough for a finding that an image is lascivious, but clothing does not mean a photo is in the clear! For example, United States v. Villard, 885 F.2d 117, 124 (3d Cir. 1989) said that, “a photograph of a naked girl might not be lascivious (depending on the balance of the remaining Dost factors), but a photograph of a girl in a highly sexual pose dressed in hose, garters, and a bra would certainly be found to be lascivious.”

Really?

Per this “Doth test”, the setting in a picture is critical, but it must be taken in context. For example, "while the setting of a bed, by itself, is some evidence of lasciviousness, it alone is not enough to support a finding of lasciviousness." *Id.* One should consider not just the bed, but how the person is posed on the bed (i.e. sleeping vs. posing seductively).

Question: Do you associate bed with sleep, rest, sex or a combination of same?

Question: Did the judiciary create for itself a legal quicksand trap when it invented “the Doth test”?

Context is also important in determining "whether the image is intended or designed to elicit a sexual response in the viewer." For example, in jury instructions approved by the Ninth Circuit, the Court asked the jurors to consider *the caption of the photograph!* United States v. Arvin, 900 F.2d 1385 (9th Cir. 1990).

Really?

So now a caption [words that accompany a picture] can make a non-lascivious picture lascivious? Inexplicable!

Significantly, if “the Doth test” —all of it or any of its 6 prongs—was a federal statute it would be considered by many with excellent legal training to violate the First Amendment because the entire Doth test, as a whole, and its prongs, abridges Free Speech and the right of

**Model and Photographer to come together to create their version of protected expressive “art” via photography.**

**A compelling argument can be made against the judiciary for concocting the Doth test, for legislating from the bench in the guise of deciding a legal controversy.**

**The controlling test should be the First Amendment, not the Doth test.**

**D. Legally, No WOW Picture Depicts “Sexually Explicit Conduct”**

**18 USC 2256(A) and (B) define *sexually explicit conduct* with extreme specificity. Categorically, no WOW picture comes anywhere near close to coming within those definitions. There is no actual or simulated sexual intercourse and no genital on genital of any kind.**

**E. In the Age of the Internet the “Community Standards” Test for “Obscenity” is Obsolete, Archaic and Should be Abandoned**

**The USA is a large nation, geographically and population wise, with extreme diversity in cultures, values, and belief systems. The least tolerant, most narrow minded, most puritanical community in the USA should not be allowed to determine what are “the community standards” for the entire USA—all fifty states and approximately 340 million Americans.**

**All 340 million Americans have First Amendment rights and the least tolerant has no actual legal authority to abridge the First Amendment rights of all Americans, regardless of their standards.**

**The “community standards” test, in the Internet age, is also plagued with this practical problem: Which “community’s” standards apply: The one from where the source originated or the millions where the images are received? Which standard applies when hundreds of thousands if not more conflict?**

If puritanical Louie Lunchbucket or Susie Seamstress do not want to watch or see anything they deem to be lascivious or obscene, instead of them demanding the entire nation be limited to Disneyland entertainment they have a better remedy: Don't turn on, don't enter, don't look; switch to watch something suitable for their tastes, their values.

Under current law, the legal question of whether speech is obscene is determined partly by reference to local community standards. Federal venue rules permit an obscenity prosecution to be brought where the speech originated or where it was received. Internet speech, however, is received in every community of our nation. As a result, "the 'community standards' criterion as applied to a nationwide audience will be judged by the standards of the community most likely to be offended by the message." [Reno v. ACLU, 521 U.S. 844](#) (1997). To do that, however, violates the First Amendment right of every one else to *receive* adult content or mature audience content that they want to receive and have a legal right to receive.

## V. Conclusions

1. There is absolutely, categorically, no "child pornography" on the WOW site. This is because "child pornography" is any visual depiction, where "(A) the producing of such visual depiction involves the use of a minor [under 18] engaging in sexually explicit conduct; and (B) such visual depiction is of such conduct." [18 U.S.C. § 2252](#) But, no one depicted in a WOW picture is under 18 years of age and no one is shown in any sexually explicit conduct.
2. The entire WOW site [[www.wowthewonderofwomen.com](http://www.wowthewonderofwomen.com)] is, for the reasons stated, legally protected by the First Amendment to the US Constitution because none of its images are "obscene", "lascivious", "sexually explicit", and all models depicted are consenting legal adults 18 years or older.
3. 18 USC 2257 is not applicable to the WOW site because no picture on the WOW site comes within the scope of 18 USC 2257's



**expressed actual text, definitions of key words, terms and phrases, and/or record keeping requirements or 18 USC 2256's definitions.**

- 4. The females depicted in WOW's pictures are all of the age of majority; they are models—not performers; and, while many are depicted topless or nude, none are depicted with a male and none are depicted engaged in actual or simulated sexually explicit conduct or assisting anyone engaged in such conduct. Those stark, stubborn facts are objectively verifiable and provable by just looking at the pictures and applying 18 USC 2256/2257's actual text, and their requirements to what the pictures show.**
- 5. No WOW picture brings the WOW website within the scope of 18 USC 2256/2257.**
- 6. WOW is nowhere near close to being any kind of a porn site or a triple "XXX" rated Website, let alone a "X" rated site.**
- 7. WOW deals with true artistic photographic art of the female adult nude, not porn.**
- 8. Since WOW's owner is not a producer of sexually explicit conduct WOW's owner has no law-imposed duty to obtain proof of age for every model photographed and retain those records.**
- 9. Nevertheless, WOW's owner, and every WOW Affiliated Photographer, before photographing any model depicted on the WOW site, took reasonable steps to confirm the model's true age as being within the age of majority when photographed, every female model depicted in WOW pictures signed a model release, and WOW's owner has a signed model release for each model where the model, in her own handwriting, declared their true legal name, their stage name, their DOB [date of birth], and their age, which placed them within the age of majority.**
- 10. A compelling case can be made that 18 USC 2257 is unconstitutional [but that is beyond what is necessary for this "18 USC 2257 Statement".**