

# Legal Experts Look Closely at New 2257 Regs

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LOS ANGELES – As the real impact of the final 2257 regulations begins to sink in for many webmasters who have not yet begun to update their record-keeping procedures, several industry attorneys weighed in on a few of the more burdensome and potentially catastrophic 2257 provisions that could put undue restrictions on webmasters and the way they conduct business.

Of particular interest to Marc John Randazza of Weston, Garrou, DeWitt & Walters is the impact the final regulations will have on foreign content shoots and American content producers who hire foreign talent to work in the United States.

According to Randazza, the revised provision that addresses foreign content is poorly drafted and confusing and will render flyaway production impractical and almost impossible.

"The effect [of the new regulation] would be to generate a cottage industry for new local producers to shoot content in their own countries," Randazza told XBiz. "Foreign models will always be used in this business, but what you will end up with is more offshore producers required to comply with 2257, which creates a mess. Is the government then creating a mechanism where it will be even more difficult to obtain those records?"

According to First Amendment attorney Jeffrey Douglas, the new regulations do not appear to have been tremendously well thought out as far as providing a means of protecting children – which is the stated purpose of the rules – and to Douglas, it seems the Department of Justice could have revised the law in a far less burdensome way for the adult industry.

Douglas cited the provision that covers live streaming content as one that will put an almost impossible burden on website owners. Under the new law, all live streaming content must be recorded, preserved and documented, whereas previous 2257 law only pertained to recorded content.

Douglas' concern is that under the new law, webmasters will have to store terabytes of content every couple of months and keep it all on file with the appropriate age verification documents and performer declarations in order to comply with law.

"This significantly increases business costs and complexity, and it is both thoughtless and mindless," Douglas told XBiz. "Each individual photo has to be preserved infinitely and tracked to the day that it first appeared on the website. So if you have a revolving gallery, it is virtually impossible to comply."

On a more somber note, Douglas added, "I don't think anyone in the industry can live with the current regulations. It's a life and death struggle, and if it's not struck down, people will go out of business."

Douglas is among several industry attorneys supporting the Free Speech Coalition in its legal challenge of the new regulations.

According to Eric Bernstein of Eric M. Bernstein & Associates, the burden on secondary producers will be one of the toughest hurdles to face under the new law.

"The people [webmasters] are going to be required to keep records because they are in the chain of the system and have to rely on primary producers to provide the necessary information, which many primary producers may have or may not be desirous to turn over – either because they don't have it, or it's not in a good form, or it can't be readily obtained," Bernstein told XBiz.

Ultimately because of that burden, Bernstein said, there will be far fewer secondary producers in the industry and more webmasters will opt to become primary producers because it will be easier to obtain and control original information on talent.

On a more positive note, Bernstein added that this aspect of the new regulations will force the industry to finally act like a business and to use forms and contracts and all other aspects that are involved in conducting traditional business.

Reed Lee of J.D. Obenberger and Associates felt that in adopting the new regulations, the government has set up serious burdens on expression and has posed a serious limitation on importing and updating images online.

"The requirement to keep copies of the material is potentially very, very burdensome, especially for Internet people" Lee told XBiz. "Keeping copies for seven years of say a video transmission could be a staggering requirement."

Lee is also among a fleet of industry attorneys involved in the FSC's legal challenge against the DOJ.

"I firmly believe that the statute itself is unconstitutional, and a challenge against the whole scheme will be part of the challenge the FSC will be mounting," Lee told XBiz. "The statute is ripe for opposition, and that's what we will do."

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