



Ensuring Consumer Access to a National Wine Market

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To Brian Williams, Lea Thompson and the Executive Producers of the NBC Evening News

This is in response to the story that aired on August 10, 2006 purportedly outlining the dangers of internet wine sales to the children of our country.

The Specialty Wine Retailers Association is comprised of many of the nation's largest and most respected retailers of wine, both on the internet and through traditional wine stores. We are exceptionally disappointed that the reporters covering the story about the Wine & Spirits Wholesalers of America's disingenuous "survey" on underage access that aired on NBC did not ask any retailers who actually sell wine for their reaction or point of view.

Had that basic journalistic step been taken, it would have been apparent that the story involves far more than a suspicious "study" conducted by a trade association dedicated to maintaining a monopoly over wine sales in the United States. The real issue has nothing to do with regulation, or with minors, it is all about wholesaler profits from restricting consumer access to only those wine products that the wholesalers sell.

The reporters would have discovered that the product "purchased" by the teenagers in the story, Absinthe, is unlawful in the United States and is NOT carried by ANY licensed US retailer of wine or spirits. In fact, the product is considered to be such a dangerous substance that the federal government considers its importation to be a crime. What that exercise really showed was that international web sites can be used for the commission of a crime, and that products can be smuggled into the United States through parcel delivery services; is that really news? That is NOT a story about wine on the internet. It could have just as well been cocaine or guns that those teenagers ordered and received. That sting was not only a "sham," it was a criminal sham and those who authorized it should be prosecuted.

The reporters, had they checked, would have discovered that US wine retailers are ALL licensed by their state of residence and must continually meet strict and on-going operating criteria vigorously enforced by the local alcoholic beverage authorities to stay in business. This includes taking every step possible to discourage teenagers from attempting to purchase alcoholic beverages, whether in the stores or on-line. Thousand of retailers across the country have set up their own in-store sting programs to catch minors trying to bypass their systems. In addition, many thousands use the commercial identification service provided by UPS and Federal Express and other delivery service providers for assuring that when making home deliveries, the products are not delivered to minors. The overwhelming majority of US retailers shipping wine through commercial delivery systems (whether around the corner or across the country) pay significant extra fees to the package delivery services (who use responsible highly paid personnel skilled in age identification techniques) to make sure that the recipients of the package are over the age of 21.

The reporters would have discovered that US retailers, where permitted to do so, will willingly pay state taxes and subject themselves to the regulations and laws of every state in which their products are sold to consumers. However, the wholesalers, led by WSWA, are using every ounce of their political muscle to deny retailers the permits necessary to access the markets. The US consumer relies on the fine wine retailer's expertise in finding the right wine, in making sure that is available and in getting it to the consumer in a convenient manner consistent with modern commerce. That is the retailer's job, and the retail tier takes great pride in doing that job better than anyone else in the world. No state-licensed retailer objects to regulation, and the wholesaler's battle cry that this is all about "unregulated market access" is pure hyperbole. That claim is a cynical ploy designed to obfuscate the real issue – protection of the wholesaler's monopoly profits by denying access to the market.

The reporters would have discovered that the real problem with teenage access to alcohol is NOT from the internet but rather from friends over 21, parent's liquor cabinets and the prevalence of false identification in the possession of today's teenagers. Even the survey, read critically rather than accepted as gospel, as USA Today and the Business and Media Center releases pointed out, actually underscored this fact by noting the "one in ten teenagers" recited as even knowing someone who used the internet to order alcohol is less than 10% of the teenage population. We question even that statistic because of the costs (including taxes and delivery) of ordering over the internet exceed by a factor of ten the costs of obtaining the types of alcohol favored by young users through traditional techniques such as going down to the local grocery store and getting a friend over 21 to unlawfully buy them a six-pack of beer (the drink of choice for the young crowd). Ask the California ABC about "shoulder taps." The agency has been aggressively enforcing the law in California against adults assisting minors in purchasing alcohol, and has been effective.

The reporters would have discovered that all the states vigorously enforce the laws against teenage alcohol purchasing by running thousands of sting programs in on-sale and off-sale licensed establishments. In California and in many other states thousands of accusations are brought against licensees every year based on sting operations and hundreds of licenses are suspended or revoked. This is real enforcement. The alcohol regulators are on top of the situation and it is their number one priority. A simple phone call to the public relations contact for the National Conference of State Liquor Law Administrators [NCSLA.org] would have proved this; but that call was apparently not made.

As Free The Grapes pointed out in its press release, the intent of the Wine & Spirits Wholesalers of America's "survey" on underage access is to deflect attention from their real motivation: economic protectionism. Over the past 30 years, the wholesale cartel has consolidated from 11,000 wholesalers to an oligopoly of two or three per state. The wholesalers, not consumers, have been deciding which wines are available. But now, the courts, Federal Trade Commission, and state legislatures are supporting consumer choice and responding with reasonable regulations and controls.

Here are the facts from Free The Grapes:

Fact: Thirty-two states now allow interstate, winery-to-consumer direct shipments, and several more are in the process of creating the legal mechanisms to do so. No state has ever repealed pro direct shipping legislation based on non-compliance, including underage access. See www.wineinstitute.org for a list of the state laws.

Fact: The Federal Trade Commission rebuked the underage access argument in its survey of alcohol regulators in 11 states that allow direct shipments, concluding that states with procedural safeguards against shipments to minors report "few or no problems." Click the following link to read a summary of the FTC's July 2003 study, "Possible Anticompetitive Barriers to E-commerce: Wine": <http://www.ftc.gov/opa/2003/07/wine.htm>

Fact: The U.S. Supreme Court's 2005 ruling in *Granholm v. Heald* dismissed the underage access red herring, and favored a level playing field and consumer choice in wine via wineries and retailers

Fact: The wine industry supports the enforcement mechanisms available to states in the event of an alleged illegal shipment. The "21st Amendment Enforcement Act" was supported by the WSWA and signed into law in October 2000, allowing state Attorneys General to access federal courts to pursue litigation for alleged violations of state law regulating alcohol shipping. No winery or retailer has EVER been prosecuted under the 21st Amendment Enforcement Act.

Additionally, alleged violations of state laws governing alcohol shipments can be reported by any state to the Trade & Tax Bureau for investigation. Penalties for infractions can include revocation of a winery's basic permit to produce wine by the TTB and revocation of a retailers' alcoholic beverage license by the local state authorities.

Finally, the wine industry's model direct shipping bill for wine stipulates that the winery or retailer holding a direct shipping license has consented to the jurisdiction of the state issuing the license, and that state's courts concerning enforcement of the law. A copy of the model bill is located at <http://www.freethegrapes.org/wineries.html#model>

What this is really all about is the national wine market and the consumer's right to participate in that market; a right that is being restricted and that the wholesaler's are attempting to revoke (through legislation and litigation) in those states (such as Texas and California) where the right to access the national wine market now exists. The amount of excess profits from the sale of wine being earned by the wholesalers from their monopoly is huge; the stakes have been estimated by industry experts at upwards of \$5 billion dollars per year in excess profits. The only way for the wholesalers' to protect those monopoly profits is to control and limit the wine products available to consumers to those products the wholesalers choose to make available at a premium price.

Had your reporters done their job, they would have discovered these facts and could have at least published a balanced story. They didn't and as a result a skewed, slanted story was foisted off on the unsuspecting public from media sources who should know better.

For shame; we expect better from a network as respected as NBC.

The Board of Directors of the Specialty Wine Retailers Association