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The Need for a Two Tiered First Amendment to Provide for the Protection of Children

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ABSTRACT

This Paper addresses two problems that arise from attempts to shield children from harmful media influences. With regard to spillover problems, where the law recognizes that children can be limited but is concerned that restrictions spill over to limit adult rights, the Paper argues that there are ways to limit the effect on adults, even on the Internet. Furthermore, some spillover effect is allowed and may leave open the possibility of protecting children from tobacco or alcohol advertisements. The Paper also addresses areas in which material has been seen as protected even for children, areas such as violence and hate speech. The Paper argues for a two-tiered First Amendment that would allow the State to protect children from damaging material, unless their parents want to provide it, while leaving open adult-to-adult communication.

This Paper was originally published as an article in volume 79 of the *Chicago-Kent Law Review* in a symposium entitled “Do Children Have the Same First Amendment Rights as Adults?” Most references in the Paper are to other articles in the Symposium. Minor revisions have been made, and all the footnotes in the original article have been omitted.

Professor Saunders’s new book, *Saving Our Children from the First Amendment*, was recently published by the New York University Press. The book argues for limitations on free expression, where children are involved. While the protection of adult-to-adult speech should be very strong, the expression rights of adults should not include a right to express themselves to other people’s children. Nor should children have a right to access material that may be harmful to them.

ABOUT THE PROGRAM

The Intellectual Property & Communications Law Program (IPCLP) at Michigan State University College of Law was established to promote global, interdisciplinary understanding of intellectual property and communications law. The Program provides students with a solid foundation in the theoretical and practical aspects of these specialized, yet interrelated, fields.

Aligned closely with the various internationally recognized colleges and research centers at Michigan State University and the distinguished intellectual property and technology law faculty at the University of Ottawa, IPCLP offers an innovative curriculum, two new masters' programs, an externship program, joint J.D./LL.B. and other multi-degree options, and study abroad opportunities in Canada and Mexico.

The Program also sponsors ground-breaking symposia, lectures, and career panels; hosts distinguished speakers and internationally recognized experts; and supports both the faculty-edited *Michigan State Intellectual Property Review* and the student-edited *Entertainment and Sports Law Journal*.

In addition, the Program publishes an *Occasional Papers* series. Written by IPCLP faculty, visitors, special guests, and symposium participants, this series seeks to stimulate innovative thinking about critical issues and promote a deeper understanding of intellectual property and communications law in the academy and among the practicing bar.

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