

# THE MEDIA COALITION INC

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## MEMO IN OPPOSITION TO NEW YORK ASSEMBLY BILL 1782

The members of Media Coalition believe that New York Assembly Bill 1782 threatens the distribution of First Amendment-protected material in New York. The trade associations and other organizations that comprise Media Coalition have many members throughout the country including New York: publishers, booksellers and librarians as well as manufacturers and retailers of recordings, films, videos and video games and their consumers.

A.B 1782 would bar the display, dissemination at a business or advertise to a person less than 17 years old or possess with the intent to do so any material the cover or content of which exploits, is devoted to or is principally made up of descriptions or depictions of illicit sex or sexual immorality or which is lewd, lascivious or indecent or which consists of nude or partially nude figures posed or presented in such a manner to provoke or arouse lust or passion or to exploit sex, lust or perversion for commercial gain or any article or instrument capable of indecent or immoral use.

This bill is obviously unconstitutional. While minors do not enjoy the protection of the First Amendment to the same extent as adults, the U.S. Supreme Court has ruled that “minors are entitled to a significant measure of First Amendment protection, and only in relatively narrow and well-defined circumstances may government bar public dissemination of protected material to them.” *Erznoznick v. City of Jacksonville*, 422 U.S. 212-13 (1975). Governments may restrict minors’ access to some sexually explicit speech but it is a narrow range of material determined by a specific test. Merely containing sexual content is not enough to make a book, movie, magazine or sound recording illegal. In the case of *Ginsberg v. New York*, 390 U.S. 629 (1968), the U.S. Supreme Court established a three-part test for determining whether material is “harmful to minors” and may therefore be banned for sale to minors. The material deemed illegal for minors in A.B. 1782 does not include any of the three prongs and would criminalize a far broader range of material than is allowed under the definition in *Ginsberg*. A recent law enacted in Illinois barred the sale of video games with sexual content but without the third prong of the *Ginsberg* test. The law was permanently enjoined by the U.S. District Court and the ruling was heartily affirmed by the Seventh Circuit Court of Appeals. *ESA v. Blagojevich*, 469 F.3d 641 (7<sup>th</sup> Cir. 2006) upholding 404 F. Supp 2d 1051 (N.D. Ill. 2005).

The Media Coalition is a trade association that defends the First Amendment rights of publishers, booksellers, librarians, recording, motion picture and video games producers, and recording, video, and video game retailers and consumers in the United States.

Because it threatens the distribution of constitutionally protected works, A.B. 1782 will be vulnerable to a legal challenge if it is enacted. If the law is overturned, the state could be ordered to pay the plaintiffs' attorneys' fees. In recent challenges to such legislation plaintiffs have been able to recover fees in excess of \$400,000.

If you would like to discuss further our position on this bill, please contact David Horowitz at 212-587-4025 #11 or at [horowitz@mediacoalition.org](mailto:horowitz@mediacoalition.org).

Please protect the First Amendment rights of all New Yorkers and defeat A.B. 1782.