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Legal positions of the US Supreme Court regarding the admissibility of restrictions on freedom of speech and freedom of creativity

Abstract: It is examined the position of the US Supreme Court, in comparison with the position of the European Court of Human Rights, on the protection of the right to freedom of creativity as freedom of speech and press and the permissibility of restrictions in this sphere. It is established that the peculiarity of the position of the US Supreme Court is the emphasis on the dangers in public administration, inherent in the restriction on the part of the state, and the need to prefer restriction, if necessary, through self-regulation. The history of prohibitions and permits for some creative works, as well as the approaches of the Motion Picture Association of America (MPAA) to the ratings of the permissibility of the distribution of television films are considered

Keywords: freedom of speech; freedom of creativity; freedom of expression; the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950; the European Court of Human Rights; Supreme Court of the United States; the First Amendment to the US Constitution; the Hicklin test; the Miller test; Motion Picture Association of America (MPAA); “obscenity” materials; the case “Roth v. United States”; the case “Miller v. California”; “the average person”, ratings MPAA.

Freedom of self-expression of citizens in any known form (freedom of oral speech, freedom of the press, freedom to search for, receive and disseminate information, freedom of cultural and artistic creativity – fiction, theater, cinema,

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etc., freedom of teaching – academic freedom) is a fundamental right in any democratic society. It acts not only as a tool or tool, but also as a goal in itself. At the same time, freedom of expression is in a complex relationship with restrictions that certain social groups or the state may require. The dualism of rights and duties in the field of freedom of expression is recognized as a democratic legal tradition, expressed in the UN conventions, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (ECHR) and the judgments of the European Court of Human Rights (ECHR), constitutions and judgments of countries liberal type. However, the principle of freedom and the principle of restrictions are not equal principles – under any circumstances, the priority is to ensure freedom of expression, and only exceptionally serious justification on the part of the initiators of restrictions can contribute to their justification and implementation. Therefore, studies on the permissibility of restrictions on freedom of speech and freedom of creativity are relevant.

In liberal systems of state and law, where the principle of freedom takes precedence over the principle of restrictions, any restrictions are subject to certain objections. At the same time, freedom of expression is one of those rights that are guarded by the democratic world most reverently. Freedom of speech is closely associated with freedom of thought. This relationship and its importance for society British philosopher John S. Mill estimated the following theses [4] (1859):

– with freedom of thought... the freedom to talk and write is inextricably linked; freedom to express and publish their thoughts... has for the individual almost exactly the same meaning as freedom of thought, and in fact is inextricably linked with it;

– no society in which these liberties are not, on the whole, respected, is free, whatever may be its form of government; and none is completely free in which they do not exist absolute and unqualified. The only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not



attempt to deprive others of theirs, or impede their efforts to obtain it. Each is the proper guardian of his own health, whether bodily, or mental and spiritual. Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest.

– defence would be necessary of the «liberty of the press» as one of the securities against corrupt or tyrannical government. No argument, we may suppose, can now be needed, against permitting a legislature or an executive, not identified in interest with the people, to prescribe opinions to them, and determine what doctrines or what arguments they shall be allowed to hear;

– but the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.

Table 1 lists the legal positions of the Supreme Courts of democratic countries on the importance of freedom of speech (freedom of expression). It is stressed that the freedom of expression, the press and all other forms of expression belongs to the eternal and inviolable rights, basic human rights, and that the absolute guarantee of such rights is one of the fundamental rules and characteristics of a democratic form of government that distinguishes democracy from totalitarianism (line 4) ; that in a democratic society this freedom is not only a means or an instrument, but also a goal in itself (line 5); freedom of speech and freedom of thought are valuable, first of all, for a democratic society, because each thought enriches such a society with new ideas and information, and also ensures the conscious participation of voters in elections (lines 2, 3); contributing to the development of society, freedom of expression contributes to the development of the individual, allows a person to fully realize his potential (line 2). Moreover,



even the rejection of certain ideas by the majority can not be grounds for limiting their distribution (line 1). As an indicator of public opinion, freedom of expression is allowed within certain limits even by authoritarian power.

Table 1

Legal positions of the Supreme Courts of democratic countries
on the importance of freedom of speech (freedom of expression)

Serial number	Country, court	Content of legal position
1.	Supreme Court of the United States	All ideas having even the slightest redeeming social importance – unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion – have the full protection of the [First Amendment] guaranties), except for certain strictly regulated cases (case «Roth v. United States», June 24, 1957) [6]
2.	Supreme Court of Canada	The theory of freedom of expression involves more than a technique for arriving at better social judgments through democratic procedures. It comprehends a vision of society, a faith and a whole way of life. The theory grew out of an age that was awakened and invigorated by the idea of a new society in which man's mind was free, his fate determined by his own powers of reason, and his prospects of creating a rational and enlightened civilization virtually unlimited. It is put forward as a prescription for attaining a creative, progressive, exciting and intellectually robust community. It contemplates a mode of life that, through encouraging toleration, skepticism, reason and initiative, will allow man to realize his full potentialities. It spurns the alternative of a society that is tyrannical, conformist, irrational and stagnant (case «Attorney-General of Quebec v. Irwin Toy») https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/443/index.do
3.	High Court of Australia	In a unanimous judgment, the Court sought to clarify the interaction between the implied freedom of political communication and defamation laws, and the applicability of the implied freedom to state as well as commonwealth matters. The implied freedom was held to be an ongoing freedom, and not limited to election periods. The freedom's purpose is grounded on the functioning of democratic and responsible government, requiring freedom of communication between the voters and their representatives. The continuous nature of the freedom is justified by the concept of representative government, requiring the freedom to operate continuously, and not merely during election periods (case «Lange v. Australian Broadcasting Corporation») https://en.wikipedia.org/wiki/Lange_v_Australian_Broadcasting_Corporation
4.	Supreme Court of Japan	There is no need to dwell in detail on the fact that freedom of assembly and association, as well as freedom of expression, the press and all other forms of expression ... belongs to the eternal and inviolable rights, fundamental human rights, and that the absolute guarantee of such rights is one of the fundamental rules and characteristics of the democratic form of government that distinguish democracy from totalitarianism



		(case «Metropolitan Orfinance») [8, c. 419]
5.	Supreme Court of Israel	Freedom of expression is closely linked to the democratic process. It acts not only as a tool or tool, but also as a goal in itself. Freedom of expression is one of the main rights and together with such a right to freedom of conscience is a prerequisite for the realization of almost all freedoms. The supreme value contained in the freedom of speech remains constant and unchanged ¹ (case «Kol Ha'am Company Lmt & Al-Ittihad Newspaper v. Minister of the Interior, High Court 73/53, in Selected Judgments of the Israeli Supreme Court», Vol. 1 (1948-53), 90).

The modern democratic society is trying to create obstacles to the administrative pressure of the authorities, which tried to limit these rights. In the British Bill of Rights of 16/26 December 1689 [3] it was assumed that freedom of speech and debate should not be a reason for impeachment or subject to review in any court or place outside parliament (paragraph 9). Guarantees of freedom of speech, press, expression in the modern constitutions of democratic countries are given in Table 2. Similar rules are contained in the Constitution of Ukraine, Art. 34: to each a right to freedom is guaranteed thoughts and words, on free expression of the looks and persuasions. Everybody has a right freely to collect, keep, use and diffuse information orally, in writing or in another way – on the choice; as well as in the constitution Constitution of the Republic of Azerbaijan², Art. 47: everyone may enjoy freedom of thought and speech; nobody should be forced to promulgate his/her thoughts and convictions or to renounce his/her thoughts and convictions propaganda provoking racial, national, religious and social discord and animosity is prohibited³.

Table 2

The provisions of the Constitutions of democratic countries
freedom of speech and thought (freedom of expression)

Serial number	Country, court	Content of legal position
1.	United States	Congress shall make no law respecting an establishment of religion, or

¹ <http://versa.cardozo.yu.edu/sites/default/files/upload/opinions/Kol%20Ha%27am%20Co.%2C%20Ltd.%20v.%20Minister%20of%20the%20Interior.pdf>

² Cited by source: https://www.justice.gov/sites/default/files/eoir/legacy/2013/11/08/constitution_14.pdf

³ Cited by source: http://azerbaijan.az/portal/General/Constitution/doc/constitution_e.pdf



	(US) Bill of Rights, effective December 15, 1791	prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances https://en.wikipedia.org/wiki/First_Amendment_to_the_United_States_Constitution
2.	Declaration of the Rights of Man and of the Citizen (Art. 11), part of the Constitution of France	The free communication of thoughts and of opinions is one of the most precious rights of man: any citizen thus may speak, write, print freely, except to respond to the abuse of this liberty, in the cases determined by the law https://en.wikipedia.org/wiki/Declaration_of_the_Rights_of_Man_and_of_the_Citizen
3.	Basic Law for the Federal Republic of Germany (Constitution of the Federal Republic of Germany) (Art. 5)	1. Every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures, and to inform himself without hindrance from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. There shall be no censorship. 2. These rights shall find their limits in the provisions of general laws, in provisions for the protection of young persons, and in the right to personal honour. 3. Arts and sciences, research and teaching shall be free. The freedom of teaching shall not release any person from allegiance to the constitution https://www.btg-bestellservice.de/pdf/80201000.pdf
4.	Constitution of the Italian Republic (Art. 21)	Anyone has the right to freely express their thoughts in speech, writing, or any other form of communication. The press may not be subjected to any authorisation or censorship... Publications, performances, and other exhibits offensive to public morality shall be prohibited. Measures of preventive and repressive measure against such violations shall be established by law. https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf
4.	Constitution of Japan (Art. 21)	Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. No censorship shall be maintained... https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html
5.	Canadian Charter of Rights and Freedoms (Constitution Act, 1982), (Art. 2)	Everyone has the following fundamental freedoms: (a) freedom of conscience and religion; (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; (c) freedom of peaceful assembly; and (d) freedom of association. http://laws-lois.justice.gc.ca/eng/Const/page-15.html

The generalization of these provisions is contained in Art. 19 of the Universal Declaration of Human Rights, according to which everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions



without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 10 of the ECHR “Freedom of Expression” includes two parts:

1). Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2). The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

These formulations of art. 10 ECHR reflect the dualism of rights and obligations in the field of freedom of expression, according to which these rights may be subject to certain restrictions, but the priority remains to ensure the rights.

The position of the ECHR on freedom of expression is quite widespread and is widely studied [1, 8 etc.]. This is due to the fact that freedom of expression is expressly provided as a guarantee of the ECHR and protected by the ECHR. At the same time, the Convention realizes the dualism of rights and duties in this sphere: guarantees of freedom (Part 1, Article 10 of the ECHR) and the permissible conditions for their restrictions (Part 2, Article 10 of the ECHR). At the same time, the position, for example, of the US courts remains unexplored.

In the US, the guarantees of freedom of speech are provided for by Amendment 1 to the US Constitution. This amendment is a composite Bill of Rights of 1789-1791. The norm of this amendment contains a provision prohibiting



Congress from issuing laws restricting freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances (see Table 1). Thus, in the judgment of 24 June 1957 of the Supreme Court of the United States in the case of «Roth v. United States» states that «all ideas having even the slightest redeeming social importance – unorthodox ideas, controver-sial ideas, even ideas hateful to the prevailing climate of opinion – have the full protection of the [First Amendment] guaranties), except for certain strictly regulated cases (hereinafter the decisions of the US Supreme Court are cited according to the resource [6]).

At the same time, the US Supreme Court, recognizing the possibility of restrictions (although they are not directly mentioned in the First Amendment), very rigidly approaches their possible practical application. Thus, in the above-mentioned decision of 24 June 1957 of the Supreme Court of the US in the case of “Roth v. United States” states that “in the light of history, it is apparent that the unconditional phrasing of the First Amendment was not intended to protect every utterance”. In a decision of 03.07.1978 of the Supreme Court of the US in the case of “FCC⁴ v. Pacifica Foundation” recognized that “the First Amendment does not prohibit all governmental regulation that depends on the content of speech. The content of respondent’s broadcast, which was ‘vulgar’, ‘offensive’, and ‘shocking’, is not entitled to absolute constitutional protection in all contexts; it is therefore necessary to evaluate the FCC’s action in light of the context of that broadcast”.

At the same time, consideration of cases on restrictions of freedom of speech is characterized by the tremulous attitude of the US courts towards this freedom and awareness of the dangers of its limitations. So, in the decision of 21.06.1973, adopted on the basis of the results of the revision of the case “Miller v. California”, the US Supreme Court stressed the need to recognize the inherent dangers of undertaking to regulate any form of expression. State statutes designed to regulate

⁴ Federal Communications Commission



obscene materials must be carefully limited.

In this connection, the US courts constantly searched for criteria that would help to distinguish ‘obscenity’ materials, objectively and without undue restrictive interference, from those that are permissible in a democratic society. Thus, since 1957 (the “Roth v. United States” case), courts have begun to waive the use of the so-called “Hicklin test”, borrowed from English law, on the basis of which the court could recognize as illegal any material that “deprave or corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall”. In the case of “Roth v. United States” the US Supreme Court found the approach unacceptable when the work as a whole can be declared inadmissible on the basis of the analysis of the influence of “separate passages on the most receptive people”, because “the Hicklin test, judging obscenity by the effect of isolated passages upon the most susceptible persons, might well encompass material legitimately treating with sex, and so it must be rejected as unconstitutionally restrictive of the freedoms of speech and press. On the other hand, the substituted standard provides safeguards adequate to withstand the charge of constitutional infirmity”. On the other hand, an alternative test is offered to recognize the work as ‘obscenity’, the so-called “Miller test”, which requires consideration of the work in a complex and taking into account the orientation toward the average person. The Miller test was three parts⁵:

a) whether “the average person, applying contemporary community standards”, would find that the work, taken as a whole, appeals to the prurient interest;

b) whether the work depicts or describes, in a patently offensive way, sexual conduct or excretory functions specifically defined by applicable state law,

c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

⁵ https://en.wikipedia.org/wiki/Miller_test



At the same time, caring about the most accurate average estimate of the impact on the “average person”, the courts cared that such an assessment should be given by a jury. This would justify the averaging of the reaction of the generalized “average man”. In the case of “Roth v. United States” the judge so instructed the jury: “In this case, ladies and gentlemen of the jury, you and you alone are the exclusive judges of what the common conscience of the community is, and in determining that conscience you are to consider the community as a whole, young and old, educated and uneducated, the religious and the irreligious – men, women and children... You may ask yourselves does it offend the common conscience of the community by present-day standards”.

The principled approach of the US Supreme Court to the admissibility/inadmissibility of restrictions on the freedom of creativity has consistently led to the fact that since the 1930s, 20 items, the attitude to ‘obscene’ materials or works is constantly liberalized. In particular, in 1933 p. the US courts removed the 1921 prohibition on the distribution of the book by Irish writer J. Joyce “Ulysses” (hereinafter information about specific works – according to the data from the resource <http://dic.academic.ru>). In 1957, the publisher was acquitted by the court, arrested for distributing the scandalously famous poem “Howl” Ginsberg⁶. Three years later, disgraced for more than 30 years, the novel “Lady Chatterley s Lover” D. Lawrence was found fit for print⁷. A year later, H. Miller’s novels “Tropic of Cancer” and “Tropic of Capricorn” were published⁸. According to the results of the lawsuit on the novel by William Burroughs “The Naked Lunch” (1966), the Supreme Court of Massachusetts decided that the text of the

⁶ The publication of the poem is considered a turning point in the history of modern literature, the birth of new American poetry with free expression, sexual liberalism and other values that will become the cornerstone of the US counterculture ten years later.

⁷ The novel contains numerous frank descriptions of scenes of a sexual nature and was once banned in different countries. Subsequently, the novel was repeatedly filmed.

⁸ To a large extent, the biographical novels of the American writer H. Miller. They were published respectively in 1934 and 1938. They became widely known for their frank and expressive depiction of sex. They were subsequently banned. In 1961 all the prohibitions were lifted. These novels, together with Miller's third work «Black Spring», constitute an autobiographical trilogy, have been repeatedly filmed.



novel is not obscene. With the publisher, all charges were dropped, and the work could be freely sold in the United States. This was the last case in the history of the United States of the prohibition of censorship of the publication of the book. In the same 1966, the Fannie Hill case against Massachusetts recognized the possibility of lifting the prohibition of censorship from the publication of the novel by J. Cleland "Fanny Hill. Memoirs of a Woman of Pleasure"⁹ (banned in 1821).

The application of Miller's test, proposed in the Supreme Court of the US decision in the case of "Roth v. United States", allowed rehabilitating many feature films, narrowing the space of restrictions of self-expression. Thus, in the Jenkins v. Georgia case (1974), in which the owner of one of the cinemas in Georgia was accused of committing a crime for demonstrating the film "Carnal Knowledge"¹⁰ in this movie theater, the US Supreme Court removed all charges from the defendant and pointed out, that the local state government "went too far" in the matter of condemning 'obscenity', and "Carnal Knowledge", in accordance with the decision made in accordance with the "Miller test" decision, cannot be prohibited.

The pornographic film "Deep Throat"¹¹ (1972) banned from showing and selling in much of the US, after numerous trials and arrests of persons involved in the creation and display of the picture was justified in accordance with the Miller test. A similar situation was repeated with the prohibitions of the paintings "The Exorcist"¹² (1973) and "Caligula"¹³ (1979), when the US Supreme Court

⁹ One of the most famous works of English erotic literature.

¹⁰ The film shows the adventures of young men in search of carnal love to meet the sexual desires of youth. Later he received awards and got into competitive nominations

¹¹ The film is the first example of a broad demonstration of explicit pornography. Because of the numerous sexual scenes, the picture received an «X» rating according to the American Film Association system. Despite its importance in the history of cinema, recognized today, it was forbidden to view and became the subject of many legal proceedings.

¹² The film was nominated for ten Oscar awards and received two of them. For many years, the film is on the list of 250 best movies by IMDb.

¹³ Epic film about the customs of the reign of the ancient Roman emperor Caligula, who entered the history of unprecedented cruelty, perfidy and vices. The film was subsidized by the pornographic empire «Penthouse», hence the scandalously obscene character of some scenes, according to which the fighters for morality called it "disgusting, shameful rubbish".



recognized the decision of the lower authorities to violate the US Constitution. In particular, in the case of “*Cincinnati v. The Center for Contemporary Arts*” (1990), it was established during hearings that this sphere of art (exhibits) with minor elements of eroticism is protected.

As for cinematographic and video production, there is no preliminary censorship. In the period 1930-1967. There was the so-called Hays Code, the ethical code for the production of films in Hollywood, which in 1934 became an unofficial operating national standard for the United States. It was possible to film films not by code, but they did not have a chance to be released in the rental. Since 01.11.1968, the rating-restrictions system Motion Picture Association of America (MPAA)¹⁴ has been put in place. Depending on the assessment received, the audience of the picture can be limited by excluding children and adolescents from it. Unreleased film can not get a significant share in the film distribution, which makes the system almost mandatory. In some cases, the limitations of MPAA are stricter than similar restrictions on state bodies in European countries. Since MPAA is a non-governmental organization, its decision can not be appealed in court, but there are internal procedures for the settlement of disputes and disputes [5]. So, to determine the MPAA rating for each specific film, a special commission is created that looks at it. After watching and discussing the vote, during which the film is assigned to his future rating. The producer or director of the film can either agree with the commission's decision and remount the film, removing the questionable scenes, or in case of disagreement with the decision of the commission, – to file an appeal. In this case, there is a re-commission consisting of 14-18 people.

At the same time, MPAA cannot limit the sale of video products on media, in connection with which it is normal practice to release two versions of video

¹⁴ CM.: <http://dic.academic.ru/dic.nsf/ruwiki/148823>



production – ‘softer’ for the cinema and ‘hard’ for video. That is, the appeal of pornographic films is not prohibited, but limited.

At the same time, it must be emphasized that in the United States it is considered that child pornography is unacceptable under any condition and is prohibited regardless of the artistic or other value of the works. It can not be justified by any reference to freedom of expression and is not subject to protection and protection by the First Amendment to the US Constitution. At the same time, US courts separate child pornography and the possible spread of pornography (not children's) among children – the responsibility for the latter lies with the parents. This is also evidenced by the system of classification of films MRAA. For example, the established ratings of MRAA suggest [7]:

- rating G (General audiences) – allowed viewers of all ages. This rating shows that the valued film does not contain anything that most parents might consider unacceptable for viewing or listening to even the youngest children. Exposure, sexual scenes and scenes of drug use are absent; violence is minimal; can use expressions that go beyond the polite conversation, but only those that are constantly found in everyday speech. More coarse vocabulary in films with a rating of G can not be used;

- rating PG (Parental guidance suggested) – recommended the presence of parents. Some material may not be suitable for children. This rating shows that parents may find some scenes in the film unacceptable for children, and that parents are encouraged to watch the film themselves before they show it to their children. There are no explicit sexual scenes and scenes of drug use; nudity, if present, it is only very limited, slight curses and scenes of violence can be used, but only in extremely moderate quantities;

- rating PG-13 (Parents strongly cautioned) – an urgent warning to parents. Some material may not be suitable for children under 13 years old. This rating shows that an appreciated film may not be suitable for children. Parents should be



especially careful, allowing their young children to view. Rough or prolonged violence is absent; there may be scenes with nudity, but not in an explicit sexual context; some scenes of drug use may be present; one can hear single use of gross abuse, but not in a literal sense (in a sexual context);

- R rating (Restricted) – up to the age of 17 is necessarily accompanied by a parent or adult guardian (age may vary in some regions). This rating shows that the evaluation commission concluded that some material of the rated film is intended only for adults. Parents should learn more about the film before taking on his teenage view. Rating R can be assigned because of the frequent use of obscene vocabulary, lengthy scenes of violence, sex or drug use. In 2009, films rated R were banned for viewing by children under 12 years old, even accompanied by their parents;

- rating of NC-17 (formerly X) (No One 17 & Under Admitted) – persons 17 years and under are not allowed. This rating shows that the evaluation commission believes that, in the opinion of the majority of parents, the film is clearly for adults, and children under 17, inclusive, must not be allowed to view. The film can contain explicit sexual scenes, a large amount of obscene and sexual vocabulary, or scenes of excessive violence. Rating NC-17, however, does not yet mean that this film is obscene or pornographic, both in the daily and in the legal sense of these words.

That is, the primary responsibility for restricting children's access to questionable materials rests with their parents.

Conclusions. Thus, the US Supreme Court extends the guarantees of the First Amendment to the US Constitution also on literature and art, and the Court considers that all ideas a priori have full protection for the First Amendment, and while recognizing that the unconditional wording of the First Amendment was not intended to protect each expression, nevertheless considered it unacceptable approach, when the product as a whole can be considered unacceptable on the



basis of the analysis of the influence “separate passages to the most receptive people”, and that such an approach “unconstitutionally restricts freedom of speech and the press”, and in order to obtain the most accurate average estimate of the influence of information on the “average person” it is necessary that such an assessment be given by a jury, which would justify the generalization of the position of the “average person”. The Court notes the need to recognize the dangers inherent in the beginnings of regulating all forms of expression, especially state legislative acts. Under any circumstances, child pornography, which is denied protection by the First Amendment, regardless of the possible cultural value, is unacceptable.

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