

## Rod Kovel

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April 9, 2019

Mr. Ajit Pai  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Dear Mr. Pai:

### Reply Comment

*The Failure of the V-Chip*  
Proceeding 19-41

I am concerned by the comment submitted by the NAB and the film about the “Oversight Monitoring Board,” industry at <https://ecfsapi.fcc.gov/file/103120644411713/NAB-NCTA-MPAA%20TV%20Ratings%20Comments.pdf>.

It seems to me the comment contains a material falsity.

The FCC should obtain more information from the commenter about the facts relying on its contents and abide by the legal maxim *Falsus in uno, falsus in omnibus*, a Latin phrase meaning “false in one thing, false in everything,” at least pending additional proof.

This is not based on my own extremely unsatisfactory experience with OMB described in <https://ecfsapi.fcc.gov/file/103122217500784/FCC%20letter%20March%202019.pdf>, but on developments after I submitted that comment.

To recap, CBS/Showtime ignored my complaint about airing what I believe is “The Seduction of Emma Marx 3,” a dirty movie containing at least one lengthy, graphic, oral sex scene.

I next tried complaining to OMB – the supposed “guarantor” of television ratings – but found the effort futile. Calls, email, and hard copy mail to OMB vanished into a black hole. Even a simple hard copy mail Are you there? sent to a Washington Post Office box was unanswered.

Extensive on line research then revealed no actual trace of OMB. No work product, no members, no offices. Literally nothing consistent with an actual existence.

With my complaint vanished into a black hole, Showtime continued to air its filth, mysteriously down rated to TV-MA – same as some cartoons – on its networks. These were left as Trojan Horses, waiting to be found by kids channel surfing or toying with its On Demand service. As it took heroic methods, luck, and/or sentry duty necessary as before the V-chip to keep Showtime’s porn at bay, parents were left almost helpless to it out of their homes.

Fast forward. The industry submitted unsworn comments on March 13, 2019. Among other things, at page 4, the industry commented, quite precisely, that OMB handled 26 viewer complaints in 2018.

I was and am skeptical about this claim, not only because I was repeatedly unable to contact OMB to file a complaint, but because its assessment is self-serving and astoundingly fact free. There is no mention of who complained about what shows or what networks were involved

or what resulted from deliberations. There is no mention of OMB street address or landline or meeting sites and agendas. No individual committee members were identified. Who had tackled the precisely 26 cases? When? Where?

So as far as I am concerned, the FCC record consists of an uncorroborated, unsworn “I say so” about OMB and its quite precisely 26 case workload versus my unchallenged, detailed account of OMB being MIA.

With this background, I took it up the gauntlet of fact checking its submission by challenging the industry to show me some *real proof* to back up its claim there was an OMB busy with quite precisely 26 complaints handled in 2018.

I started with the only checkable facts in the submission – its sparse contact information.

The industry identified one (and only one) person ostensibly attached to OMB: Emily Pappas, telephone number (231) 357-6330, (the area code relates to Traverse City, Michigan). The submission was also signed by Robert Corn-Revere, Esq. of the Washington DC law firm of Davis Wright Tremaine, LLP, apparently as industry counsel.

I called each and left messages, including a warning the gist of which was that I thought the industry comment was false and that I would report it to the FCC as false if I did not get some *real proof* to the effect that OMB was not simply a figment of the imagination. I then allowed a reasonable amount of time for responses.

The result of no proof whatever was disappointing but not unexpected.

*As best I can tell after fact checking and a non-response from the industry's contacts, it surely appears its comment is false and that OMB does not exist save for the imagination.*

A live receptionist in Corn-Revere's office took a detailed message, but legal counsel never responded. His silence suggests an unwillingness to try to verify OMB's existence by compounding the one lie with more lies. Is there another plausible explanation why the industry mouthpiece/lawyer could not avert the threat by sending me even a single link to an OMB action taken in one of its quite precisely 26 cases? Or one email about an OMB meeting or result?

Ms. Pappas, to her credit, returned a voice mail. During our conversation, she explained her Traverse City number was her cell phone.

I quickly discovered after a brief Google search that Pappas's real job is that of Washington professional crisis manager employed by the Washington lobbying company Cogent.  
<https://www.cogent-strategies.com/team/emily-flynn-pappas>.

I found no indication she is a moonlighting employee of NAB, MPAA the film industry or OMB.

I consider it telling that the industry suppressed the fact the only person in any way identified by name as being attached to OMB is its Washington-based crisis-manager/mouthpiece working with an out of town cell phone number.

It occurred to me that if OMB was real and serious in its role of backstopping the entire 1000 channel television universe's ratings system, that it would have industry employee sitting in a real office somewhere with a land line ready to file incoming complaints from parents, not a bills-by-the-hour consultant working from a cell phone.

During my extended discussion with Pappas – and before I knew she is a crisis manager – I found my complaint to OMB in my email outbox and Pappas found it in the OMB inbox. As I recall, she said it was unopened. It was dated Dec. 28, 2017, and carried the subject line “Complaint about Showtime's After Hours programs rating.”

Despite her engagement as mouthpiece/crisis manager – a person whose job it is to have enough access to help cover up ineptitude by persuading people with half-truths and against reason that all is copacetic – and despite being the only person known to be with OMB, Pappas could not provide a firm explanation why my complaint ended up in a black hole.

But at the end of the day, Pappas, like the industry lawyer, never provided anything suggesting that OMB – guarantor of ratings – really exists. A roster of members or staff, photos of people at work, work product, a manifest of the quite precisely 26 matters it supposedly handled in 2018 or those allegedly pending, even blank letterhead might have shown something. Instead, there was nothing, quite evidently because there is nothing for show and tell.

Recalling that Pappas is the hired gun industry mouthpiece, her inability to have or provide even a tidbit to demonstrate the reality of the core function of OMB is, I submit, also very telling about the industry submission.

Further developments also supports my hypothesis that the industry statement is false.

The 2017 email that Pappas found asked OMB to forward my complaint to Showtime so it could revisit its filth rating. Soon after I spoke to Pappas and she opened my complaint, I received the annexed letter from Showtime's Columbia-trained lawyer Andrea Simon, Esq. Under the circumstances it would seem the Showtime response was not a freak timing coincidence.

The Simon letter is remarkable only in that it failed to apologize for ignoring my hard copy complaint for more than a year.

Other than that, Simon explains nothing, such as what the impetus is for Showtime to make parents' lives more complicated by forcing itself to rate the porn it airs as TV-MA (Simon calls it “the most restrictive rating”) when all other porn in the universe is rated NC-17 or X. The rating system is entirely voluntary; NC-17 and X are easy for parents to block. Why must Showtime – perhaps uniquely – feel it must impose the borderline impossible on parents?

Simon also declined to indicate the issue of how Showtime rates its porn would ever be a matter for discussion at any level within the company. Instead, Simon makes it clear by her tenor noting will change and that Showtime will show fellatio, cunnilingus, orgies, etc., during 10pm slots as Trojan Horses on school nights in the Central and Mountain Time zones indefinitely, and that parents with objections remain free to take their complaints on a long walk off a short pier.

Nor did Showtime's lawyer offer to submit my complaint to any OMB for review or suggest that I do so; perhaps this is a function of certain knowledge that there is no OMB. I do not know. Perhaps you should ask attorney Simon what she knows about the reality of OMB.

But the curious routing of the Simon letter is also revealing. It seems to have been parsed by Showtime's internal publicist (?), lobbyist (?) or crisis manager (?) and then forwarded to me, or so say the email headers. I sent an email to the sender asking for details why the Simon letter was routed through him, and, naturally, I was again met with stone cold silence.

I have taken the liberty of attaching the covering email demonstrating its routing through the Showtime consultant to Simon's letter.

So here we are:

- After it took a full court press just to get my complaint to its attention, Showtime has no remorse and plans to continue to force feed its Trojan Horse, deliberately under-rated porn into homes in a manner such that parents cannot reasonably control it notwithstanding that properly rated porn is easy for parents to control.
- Despite a full court press and threats, Ivy league lawyers and paid crisis management could find neither hide nor hair of the allegedly existing and supposedly wildly popular OMB (94% approval!) that the industry and its lawyers and lobbyists have for decades characterized to Congress and the FCC as being the backstop protecting children from danger, but which has, quite evidently morphed into a complete failure because the V-chip technology is disabled in a cable tv home, and that failure is compounded by the deliberate evasions of the scheme by certain networks.

So it seems reasonably clear to me that there really is no OMB. The missing paper trail; the lack of an identified staff, membership or location; and the apparent absence of a working telephone would seem to be overwhelming proof that the kinds of things that Washington lawyers and mouthpieces are paid to say on a fact-free, fake news basis to avoid government control, and the subsequent clam-up confirms that. So, in my humble opinion, mere mention of OMB and its apparitional but quite precise caseload of 26 matters in 2018 seems like a cover up of this industry fail.

But that may be a function of a system that was designed to fail. There is no reason for an OMB to exist if it has nothing to accomplish because the ratings are contrived.

All of this means that enough filth will remain accessible on home tv until there is a new and honest ratings system and better chips or, more likely cord cutting in which family fare will be harder to find and more expensive in a world where every bit of programming is an a la carte purchase from Netflix, Hulu Plus, Amazon, etc., whose streaming options don't play nicely with the V-chip either. There will be no true national form of communication as we know it today in the form of networks and broadcasters who can reach everyone.

It bears belaboring that I am not a prude. If consenting adults want to have oral sex on television and other adults want to see them have oral sex on television, that is their business. What I want as the parent of a minor is the ability to keep it out of my house without having to resort to heroic measures such as supervising every minute of my child's screen time.

If the FCC wants this terrible outcome averted, then the entire ratings scenario has to be reexamined, and that has to be done with real facts, not bogus self-serving assertions from mouth pieces about apparitions and unexplained refusals to be reasonable about what a network chooses to air or why it insists on inadequate and misleading ratings. Accordingly, I am urging the FCC to treat the industry comment as false unless it demonstrates with real facts what it has been up to with its alleged OMB and that it is not only real but that it has some teeth.

Sincerely,

Rod Kovel