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COMMENTS OF MORALITY IN MEDIA, INC.
SUBMITTED TO FEDERAL COMMUNICATIONS COMMISSION
ON TV INDUSTRY PROPOSAL FOR RATING VIDEO PROGRAMMING
(CS Docket No. 97-55)

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Introduction

Morality in Media, Inc. is a New York City-based, not-for-profit, national interfaith organization, working since 1962 to stop the illegal traffic in hardcore pornography constitutionally through vigorous enforcement of federal and state obscenity laws and to uphold standards of decency in the media.

The provisions of the Communications Decency Act of 1996 at issue in this proceeding ("CDA provisions")¹ require (1) TV manufacturers to include a "V-Chip" in most new TV sets and (2) the FCC to establish guidelines and procedures for identifying and rating TV programming that contains "sexual, violent or other indecent material" -- "but only if" the FCC determines that the TV industry, after one year, has failed to voluntarily establish an "acceptable" rating system of its own.

An acceptable rating system would clearly be helpful to many parents. In a pluralistic society such as ours, parents may have very different standards regarding what they deem appropriate entertainment for their children. Some parents may be primarily concerned about violence, while others may be primarily concerned about sex and vulgarity. Some parents may find almost any type of violence to be unacceptable, while others may deem only graphic deaths or sexual violence to be unacceptable. Some parents may object to almost any type of sexual contact, while others may

object only to sexual contact with specified body parts. Some parents may object to all nudity, while others may object only to frontal nudity or to nudity combined with sexual activity. Some parents may object to all vulgarity and profanity, while others may object only if it is frequent or pervasive or if it refers to excrement, the genitals or genital activity (e.g., the "F-word").

No rating system, however, will be able to define with "ultimate god-like precision"² the various categories of offensive content or to provide complete information about the "context"³ in which sex, vulgarity or violence occur. Many parents will not use the "V-Chip" at all; or will not use it wisely when they do; or will not use it until after a problem has arisen (i.e., after the injury has occurred). Many parents will be unable to monitor TV viewing when children are outside the home. Many parents will be unable to control the content of programming when they watch TV with their children, while outside the home⁴. No "V-Chip" will be tamper proof, particularly if parents "de-activate" it to watch programming they block for their children.

While Morality in Media supports an acceptable rating system, it also believes the "V-Chip" will be a "Trojan Horse" if it becomes another excuse to shift responsibility off the purveyors of objectionable programming onto parents. The solution to a garbage spill is a clean-up project, not a rating system. There are no substitutes for responsibility on the part of the TV industry to curb offensive entertainment and for the government to enforce obscenity and indecency laws against violators.⁵

MPAA 'Age-Based' Ratings Are Flawed

In 1968, the Motion Picture Association of America ("MPAA") adopted a voluntary system to rate motion picture films. Without any question, the MPAA rating system has served admirably for the Hollywood film industry. Back in the 1960s, its implementation headed off impending government regulation in the form of local film review boards with power to determine in advance of showing whether films were "harmful to minors."⁶ Since the 1960s, use of the MPAA's "nonjudgmental," age-based ratings has enabled the film industry to avoid most of the responsibility for the floodtide of morally offensive films it has produced by shifting the burden onto parents to try to prevent their children from being engulfed.

But how has it really worked for parents?? In an article "PG-13: Are These Movies For Kids?"⁷ Jane Hammerslough, who writes a parenting column for the New York Post, said:

Full of explicit allusions to sex, explosions galore, cruel humor and methods of conflict resolution that are, uh, questionable, this summer's crop of movies aimed at kids are looking surprisingly like movies marketed to adults in the past. And parents are in a quandary. They don't want to deprive their children of the summer hits, but they question whether the PG-13 films are appropriate.

The problem is the rating system. "Ask any parent what PG-13 really means and they'd be hard-pressed to give you an answer," says Sandy Crawford, Director of Entertainment for the Media Research Center, a conservative think tank.

"The PG-13 rating is muddled and ambiguous and may be becoming more so," comments Todd McCarthy, chief movie critic for Variety... "Obviously, there's lots of subjectivity in what parents feel is appropriate for their kids. But what receives a PG-13 rating varies tremendously, and it's unclear what you're really getting in these movies."

In "The Reel World-Ratings Game,"⁸ AP entertainment writer

John Horn noted that while much of the "hullabaloo" surrounding movie ratings has focused on the NC-17 mark, the "most important debate" involves the less-restrictive PG and PG-13 ratings:

Because so-called family films consistently earn more money than mature-themed, R-rated releases, Hollywood now is turning out scores of movies aimed at all audiences. Along the way, the studios -- and moviegoers -- are finding that the PG and PG-13 ratings are handed out with equal measures of whimsy and logic...The PG-13 rating covers a wide spectrum, with "Josh and S.A.M." at one extreme and "Hot Shots! Part Deux" at the other. Not too long ago, the "Hot Shots!" sequel probably would have been rated R...The comedy jokingly boasts that it features the highest body count in movie history...There's a comically acrobatic sex scene, too, and several double entendres. But since it's a comedy, "Hot Shots!" gets away with it, even flaunting an MPAA rule that says: "If violence is rough and persistent, the film goes into the R rating."

Film critics have also questioned ratings given to particular films. For example, film critic Michael Medved, in his review of the film "Waterworld," commented: "Absurdly rated PG-13, despite intense sexual content and nudity, harsh language and almost non-stop violence."⁹ Of "Cabin Boy," Medved wrote: "Rating PG-13, for sexual references and a good deal of salty language -- with perhaps a record number of 'S-words' for a film that somehow managed to avoid an 'R.'"¹⁰ The failure of the MPAA ratings to provide adequate information for parents is also the primary reason why organizations, other than the MPAA, have sprung up to offer alternative rating systems.¹¹ As PARENTAL DISCRETION put it:

These days, movie ratings (G, PG, PG-13, R, NC-17) don't tell parents much about a film's content. What qualifies as a PG movie today would have been PG-13 in the not-too-distant past. Many parents would be surprised at the content of some films promoted as "children's movies." On the other hand, occasionally an uplifting or socially positive movie earns an R rating by virtue of a few objectionable words or a brief love scene. PARENTAL DISCRETION describes to parents the contents of movies, with children's viewing in mind, so

parents can make informed decisions.

The MPAA rating system has also been criticized by the film industry itself:

But several Hollywood executives complained that the MPAA tends to be more vague than specific. "They prefer to give you general guidelines and let you interpret what they mean," one studio executive says. Another top studio executive adds, "Unless it's a rules violation (you can't say the F-word more than once and get a PG-13), they'll usually be vague."¹²

There have also been criticisms about how the MPAA determines whether a film gets an "R" or "NC-17" (formerly, "X") rating.¹³ In an article "Is Brian De Palma Crossing the Line Between Art and Pornography?" Nina Darnton,¹⁴ noted that many observers were "outraged by the escalation of explicit sexuality and violence in 'Body Double,'" questioning why the movie received an "R" rather than an "X" rating. A study, supported by the National Institute of Mental Health, found that R-rated videos "contain more violence against women than porn tapes."¹⁵ The study's authors, Ni Yang at UCLA and Daniel Linz of UC-Santa Barbara, said:

"Citizen groups may be justified in voicing concern about the levels of sexual and nonsexual violence in these films and about the failure of the R rating to adequately warn about the possibility of extreme forms of violence against women."

In theory, this "R" versus "NC-17" (formerly, "X") rating problem should not have a large impact on minors, since theaters are supposed to permit minors access to R-rated films only if accompanied by an adult. In fact, however, large numbers of teens manage to gain access to R-rated films without an accompanying adult,¹⁶ and one reason why they do is because, as Trip Gabriel noted in his article,¹⁷ "To a teenager, an R is not so much a

prohibition as a challenge; it rarely stops anyone with a desire to outwit the system."

All of this is not to say that the MPAA system is of no value to any parents. According to a NEWS RELEASE issued by the MPAA on October 17, 1994, "support for" the MPAA movie rating system reached "an all time high among parents." The basis for the assertion was that among parents with children under 13, 77 percent of those surveyed rated the system "Very Useful-to-Fairly Useful."

There is a big difference, however, between being "very" useful and "fairly" useful. There is also a big difference between being "useful" to parents who have no other source of information about film content and being the best possible rating system that can be devised to assist parents with the difficult task of protecting children from an irresponsible entertainment media.

TV Industry Proposal For Rating Video Programming Is Unacceptable

Instead of heeding opinion polls¹⁸ and the many requests¹⁹ for a rating system that specifies objectionable content, the TV industry has proposed a rating system patterned in large measure after the flawed "age-based" system utilized by the Motion Picture Association of America. It has done so not because an "age-based" system is the best possible system for parents but because the TV industry fears that if parents and advertisers have specific information about the offensive and irresponsible content of many TV programs, there will be fewer viewers and advertising dollars.²⁰

In a pluralistic society, any rating system based largely on

the subjective value judgments of a small number of individuals will often disappoint and mislead parents. The shortcomings of such a system can only increase, as in the case of the TV industry proposal, (1) when those who do the rating are from the industry that created the problems; (2) when the criteria for determining what ratings are given are kept secret or are so vague as to allow unbridled discretion on the part of raters; (3) when there is no effective procedure to enforce the ratings; and (4) when there is no independent oversight (e.g., judicial) of rating determinations. It is like putting the mice in charge of the cheese.

The concept of "parental guidance," which lies at the heart of both the MPAA rating system and TV industry proposal,²¹ also implies that parental input is in fact needed. But for a "parental guidance" system to work, parents need more information than either the MPAA or TV industry proposal provides. With four or five new movies coming out each week, it is at least possible for parents to get additional information about the two or three films they may be uncertain about before allowing their children to see a film at a local theater.²² But with thousands of hours of TV programming available each week, and the content of individual episodes of the same series often differing radically, seeking additional information about the numerous programs available each day may be an impossibility for even many responsible parents.

Furthermore, the very reason for the "V-Chip" is to provide busy parents with a means of screening out programming without having to obtain "additional information" about individual programs

each day. By failing to provide information that parents need and want, the TV industry proposal defeats the purpose of the "V-Chip." As New York Daily News TV critic, David Bianculli, put it:²³

[O]nce you take away the obvious programming for kids and the most blatant adults-only cable offerings, what you're left with is a rating system where the vast majority of programming, especially in prime time, is lumped into the same catchall TV-PG category -- which is no help at all. Use a V-chip...to exclude those programs, and you've wiped away just about everything in prime time. Deal with the PG-TV shows on a case-by-case basis, and you're back where you started -- making individual decisions about individual programs.

An additional problem with the TV industry proposal is that it provides little assistance to parents once children reach age 14 (i.e., 8th grade or the early part of 9th grade). The TV-14 rating (Parents Strongly Cautioned) means a program "may contain some material that many parents find unsuitable for children under 14 years of age" (emphasis supplied). It is anticipated, however, that almost the entire menu of broadcast TV programs will be rated either TV-PG or TV-14,²⁴ falsely implying that almost all programs on broadcast TV are suitable for children ages 14 and older.

Other than softcore and "cable version" hardcore porn on cable TV premium or pay-per-view channels, it is also anyone's guess what programs, other than the highly acclaimed "Schindler's List," will receive a TV-M rating ("Mature Audience Only...may be unsuitable for children under 17"). As reported in Entertainment Today,²⁵ Stephen King's "Pet Sematary II" was rated "R" by the MPAA but recently was shown on the USA cable network with a TV-14 rating.

A further problem with the TV industry proposal is that does not provide for rating commercials and program promotions.²⁶

According to a report by the American Association of Advertising Agencies²⁷ the average hour of prime time broadcast network TV contained 15 minutes and 21 seconds of nonprogram material, and according to a 1997 Yankelovich Partners survey commissioned by the Family Channel,²⁸ 71% of parents believe on-air promotions and ads are "often more offensive than the programs." As New York Daily News TV critic David Bianculli put it:²⁹

The networks have revealed...plans for their on-air TV ratings that will be instituted next month, but there is one area they haven't confronted -- and absolutely must, if they're to be taken seriously about wanting to help parents use TV and the ratings system effectively. Every network, and every local station, must flat-out guarantee that on-air advertising and promotions -- especially the promotions for other shows on the schedule -- conform to the rating of the programs in which they appear. Otherwise, this entire TV ratings business is a worthless, cynical sham, and even the most diligent parents will be burned by it again and again. This problem pops up almost daily -- almost, in fact, every hour.

Additional Considerations

The Public Notice soliciting comments from "appropriate public interest groups and interested individuals" asks commentators to discuss, inter alia, whether the industry proposal is "acceptable" and to specifically identify the factors they believe the Commission should consider in making its determination.

One such "factor" is that if the TV industry proposal is rejected by the FCC, then the FCC could face an immediate industry legal action based on First Amendment grounds. Mr. Jack Valenti, the former spokesman for the TV industry group said:

If Congress tries to interfere [with the TV industry rating plan] "We'll be in court in a minute" to challenge the legislation on constitutional grounds.³⁰

It behooves the FCC, now that Mr. Valenti has thrown down the gauntlet, to determine whether or not it can defend the statute on "constitutional grounds" or whether the better part of valor is to refuse to fight and deem the Articles of Surrender embodied in TV industry proposal, "acceptable".

According to the terms of the Statute, the TV industry is to be given the opportunity to develop voluntary rules for rating video programming. In the event the FCC determines that the rules are not "acceptable," then the FCC shall prescribe:

On the basis of recommendations from an advisory committee...guidelines and recommended procedures for the identification and rating of video programming that contains sexual, violent or other indecent material.³¹

Assuming that the Commission (1) rejects the industry system, and (2) accepts the advisory committee recommendations, would such guidelines, procedures, identification and rating ever pass constitutional muster? The answer lies in the cases.

Since a rating system established by the Commission would be content based, strict scrutiny might apply.³² Strict scrutiny would, of course, require a compelling governmental interest and the least restrictive effective means.³³

If the FCC accepts the recommendation of an advisory committee and promulgates guidelines, and procedures for the identification and rating and makes the same compulsory on the industry, a prior restraint challenge may also arise. If so, the cases that must be examined are *Freedman*,³⁴ *Bantam Books*³⁵ and their progeny.

It should be noted that Section 312(b) of the Communications Act authorizes the FCC to issue a cease and desist order for a

violation of "any of the provisions of the Act". Section 312 also authorizes the revocation of a license "for violation of or failure to observe any cease and desist order". Under 312 it can also revoke a license for "willful or repeated failure to observe...any rule or regulation of the Commission authorized by this Act". It would also appear that the administrative procedures set forth in Section 312 would govern.

While the FCC could not issue such a cease and desist order or revoke a license without following that procedure, there are no time limits within which the FCC must proceed, no provision for "prompt" judicial review of its determination, and no requirement that the FCC has the burden of going into court to effect its determination. In other words, the procedural protections set forth in *Freedman v. Maryland* are not provided.

Since the TV industry could challenge the Act, at least as soon as the advisory committee makes its recommendations (but perhaps as soon as the FCC rejects the industry rating system), it would be wise to anticipate what defense the FCC could make, to legal challenges that Freedman and its progeny apply and that a government mandated rating system is an invidious prior restraint.

It is the belief of Morality In Media that there is no reason to apply Freedman to an FCC mandated rating system. In the first place, there is no requirement that each video be submitted to a censor, nor is there a requirement of video-licensing. It fits neatly into the Pacifica³⁶ rationale that Section 326 of the Broadcast Act "has never been construed to deny the commission the

powers to review the content of completed broadcasts in the performance of its regulatory duties"³⁷ and "subsequent review of program content is not the sort of censorship at which the statute was directed".³⁸ In addition, the Pacifica rationale relative to the governmental justifications of protection of children, pervasiveness and privacy of the home are also applicable.³⁹

In the unlikely event that the Supreme Court invalidates an FCC-mandated TV rating system because of the failure to provide any or all of the *Freedman* procedural protections, Congress could readily cure any such defect with subsequent legislation.⁴⁰

We must also determine whether an FCC mandated rating system, as distinguished from a "censorship" system is, in itself, an "informal" prior restraint. We now examine Bantam Books v. Sullivan. It is to be noted in that case that the Supreme Court did not hold that the creation of the "Rhode Island Commission to encourage Morality In Youth" was illegal. It was their duty "To educate the public concerning any book, picture, pamphlet, ballad, printed paper or other thing containing obscene, indecent or impure language and to investigate and recommend the prosecution of all violations".⁴¹ As the Supreme Court says, "The Superior Court declined to declare the law creating the Commission unconstitutional on its face".⁴²

We observe that the fault with the Rhode Island Commission was not the law under which it operated, but the illegal, intimidatory practices it utilized to implement it. It is also noted that in Bantam Books the Court said that the Commission subjected

publications to a system "of prior administrative restraints".⁴³ This aspect is not present in an FCC mandated system which does not ban or suppress but merely requires a notice of the nature of the content. Justice Clark, in his concurring opinion, observes that the Court was "unable to strike down Rhode Island's statute" and also observes that the Rhode Island Commission is free, "as my Brother Harlan indicates, to publicize its findings".⁴⁴

Conclusions

Undoubtedly, there are many in the TV industry who are genuinely concerned about America's youth, but it is all too evident that many others are not -- otherwise, most Americans wouldn't be talking about a "moral crisis" and so frequently pointing a finger at the TV as a primary reason for it.⁴⁵

The TV industry says it is just giving the American people "what they want." Opinion polls have repeatedly shown, however, that most Americans object to the glut of gratuitous sex, violence and vulgarity on TV. For example, a 1994 survey sponsored by the Corporation for Public Broadcasting reported that 82 percent of adults think TV is too violent and 70 percent think there is too much sex and offensive language.⁴⁶ In a 1995 survey of teens ages 10 to 16, sponsored by Children Now, 62 percent said sex on TV and in movies influences kids to have sex when they are too young, and 77 percent said there is too much sex before marriage on TV.⁴⁷

A 1997 TV GUIDE survey⁴⁸ reported a "whopping" 82 percent of those polled said they would like to see more references to "moral

issues" on TV, and 61 percent said TV has gotten "less spiritual, and less moral, in the past five years" (emphasis supplied). Among findings from a 1997 Family Channel Survey, 71 percent feel government should do more to regulate or limit TV programming with sexually explicit themes, excessive violence or foul language.⁴⁹

The TV industry has been arguing for decades that it is up to parents to decide what comes into the home, and the Supreme Court has held that the government has a valid interest in assisting parents to carry out this task.⁵⁰ The FCC should now reject the TV industry's proposal as UNACCEPTABLE and devise its own.

An FCC imposed rating system would not involve "censorship" since it would not require the TV industry to submit programming to the FCC for scrutiny *prior to* broadcast or transmission.⁵¹ Nor would it prohibit or restrict in any way the broadcast or transmission of any type of video programming.

We note that many organizations (including those listed in APPENDIX B) and commercial companies have already developed content-based systems for rating motion picture films or the Internet. While Morality in Media does not "recommend" any one rating system as being the best, we do believe that a great deal of thoughtful effort has already been done which will make the task of devising an effective and constitutional TV rating system much easier if the FCC rejects, as it should, the MPAA-style "age-based" rating system now proposed by the TV industry.⁵²

What the American people most want from the TV industry is not a self-serving system to rate the current glut of unacceptable

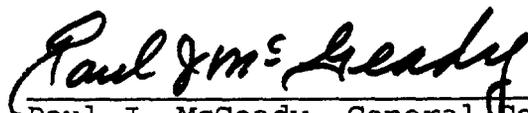
programming but rather a long-term commitment to produce quality programming that respects mainstream American values. Most Americans also want much more programming that promotes socially constructive behaviors, rather than a never-ending flow of programming that promotes, re-examines or re-wallows in almost every form of immorality and other social deviance. And lastly, most Americans want the TV industry to do a much better job of "channeling" programming intended for adults, away from hours when many younger children and almost all teens are still watching TV.

The "V-Chip" must not become another excuse for the TV industry to flaunt standards of decency and civility or another excuse for the FCC to do absolutely nothing when the TV industry violates the broadcast indecency law or any other indecency law.

Dated: April 4, 1997



Robert W. Peters, President



Paul J. McGeady, General Counsel

1. 47 U.S.C. 303(w).
2. *Miller v. California*, 413 U.S. 15, at 28 (1973).
3. For example, in determining whether sexual or excretory speech is "patently offensive" or "indecent," context is all important. See e.g., *FCC v. Pacifica Foundation*, 438 U.S. 726, at 732, n.6, 750 (1978) and 47 U.S.C. 223(d)((1)(B)).
4. *Millions watch away from home: Nielsen*, N.Y. POST, 7/13/95 (More than 23 million adults watch more than 5 hours of TV each week while outside the home).

5. See, Robert Peters, *The FCC must now enforce the indecency law against broadcast TV stations*, *The Morality in Media Newsletter*, November/December 1996 (copy attached to these Comments as APPENDIX A).
6. See e.g., Hal Hinson, *Not as Easy As A-B-C*, *NEWSDAY*, 11/12/88.
7. Jane, Hammerslough, *PG-13: Are These Movies for Kids?*, *N.Y. POST*, 7/25/96.
8. John Horn, *The Reel World-Ratings Game*, AP & US & World Wire Service, 5/27/93.
9. Michael Medved, *Muddy 'Water,'* *N.Y. POST*, 7/28/95.
10. Michael Medved, *'Cabin Boy' Sinks Quickly*, *N.Y. POST*, 1/7/94.
11. Copies of literature describing several organizations which provide alternative ratings are attached to these Comments as APPENDIX B. Information about these organizations is included in APPENDIX B as further evidence of the inadequacy of the MPAA rating system. Morality in Media does not know how many people actually subscribe to their services. The MPAA and newspapers only publish ratings provided by the MPAA. Many of the organizations included in APPENDIX B are religious and all charge a fee -- thus limiting subscriptions.
12. Claudia Eller, *It's a Complicated Process to Set New Movie's Ratings*, *LOS ANGELES TIMES* (reprinted in *THE BAY CITY TIMES*, 8/7/94).
13. See, e.g., Bernard Weinraub, *Film Ratings Come Under Attack From More Than One Angle*, *N.Y. TIMES*, 9/6/94; Claudia Eller, *It's a Complicated Process to Set New Movie's Ratings*, *LOS ANGELES TIMES* (reprinted in *THE BAY CITY TIMES*, 8/7/94); David Edelstein, *Give 'Em An 'A' For Sex*, *N.Y. POST*, 6/7/90; Hal Hinson, *Not as Easy As A-B-C* ("After 20 years, debate still rages over the system of rating films"), *NEWSDAY*, 11/12/88.
14. Nina Darnton, *Is Brian De Palma Crossing the Line Between Art and Pornography?*, *N.Y. TIMES*, 11/8/84.
15. Study: *R Vids More Misogynist Than Porn*, *VARIETY*, 6/13/90.
16. See, e.g., Trip Gabriel, *The Ratings Game At the Complex* ("despite the sanctimoniousness with which ratings are proffered, they do little to prevent young people from seeing inappropriate movies"), *N.Y. TIMES*, 2/18/96; Stephen Advokat, *What's in a rating?* ("Movie-makers and distributors who subscribe to the rating system admit privately that such movies wouldn't succeed without that clandestine [i.e., under-17] following."), *DETROIT FREE PRESS*, 8/13/86.
17. Trip Gabriel, *The Ratings Game At the Complex*, *N.Y. TIMES*, 2/18/96; see also, Alan Bash, *An 'R' Label May Attract Older Kids, Study Shows*, *USA TODAY*, 2/26/96; Marilyn Elias, *Age Ratings May Backfire*, *USA TODAY*, 12/12/96.
18. See, e.g., Alan Bash, *Parents Crave a Clearer TV Ratings Code* (Yankelovich Partners survey sponsored by Family Channel), *USA TODAY*, 3/18/97; Lawrie Mifflin, *Parents Give TV Ratings Mixed Reviews*, *N.Y. TIMES*, 2/22/97; Dale Kunkel, *TV Industry Tunes Out Families* (Op Ed), *N.Y. TIMES*, 12/14/96.

19. See, e.g., Lawrie Mifflin, *Groups Gearing Up to Fight For More Precise TV Ratings*, N.Y. TIMES, 12/16/96; Alan Bush, *TV Industry's Choice of Age Sets Off Debate*, USA TODAY, 12/13/96; OPINIONLINE ("Newspapers, reacting to early reports of the ratings, are almost universally critical"), USA TODAY, 12/17/96.
20. See, e.g., Heather Fleming, *TV Ratings Opponents Get Busy* ("Religious groups call for advertiser boycott"), BROADCASTING & CABLE, 1/13/97; Melanie Wells, *TV Rating System May Turn Off Marketers*, USA TODAY, 12/16/96; *The TV Ratings Wars* (editorial), NEW YORK TIMES, 12/15/96; Donna Petrozzello, *TV Faces Online Competition for Ads*, BROADCASTING & CABLE, 4/17/96; Sally Goll Beatty, *If TV Gets Ratings, Risque Could Be Passe*, WALL STREET JOURNAL, 2/16/96; Joe Flint, *Violence Code Could Be Economic Scarlet Letter*, BROADCASTING & CABLE, 6/21/93.
21. A survey conducted by the Media Research Center in January 1997 found that over three-fifths of prime time entertainment was rated "TV-PG -- Parental Guidance Suggested." See also, Kyle Pope, *Networks Say Most Prime-Time Shows To Have Middle-of-the Road PG Rating*, WALL STREET JOURNAL, 12/20/96.
22. Most parents, however, don't take the time to research each week's new releases. It is not until their children want to see a particular film that they may want information about that film. By then, the newspaper review of that film (if any) is in a recycling center or buried in the local garbage dump.
23. David Bianculli, *Ratings Setup a Crock of Alphabet Soup*, N.Y. DAILY NEWS, 12/11/96.
24. As noted in David Bauder, *Parents Still Advise Vigilance, Despite New Ratings*, N.Y. POST, 1/14/97, the TV-M ratings are expected to be "extremely rare on broadcast television." See also, Alan Bash, *TV Industry's Choice of Age Sets Off Debate*, USA TODAY, 12/13/96 (TV-M rating "will likely be put on shows only on pay cable such as Showtime's *Red Shoes Diary*").
25. *New TV Ratings*, ENTERTAINMENT TODAY, 1/21/97.
26. The problem exists, irrespective of whether promos and commercial ads fall within the definition of "video programming."
27. INNER TUBE (*Commercials, Promos, Etc. Ad Up In Record Numbers*), N.Y. DAILY NEWS, 3/20/97.
28. Alan Bush, *Parents Crave a Clearer TV Ratings Code*, USA TODAY, 3/18/97.
29. David Bianculli, *Promos Should Be Rating-Sensitive, Too*, N.Y. DAILY NEWS, 12/23/96. See also, *Vulgar Ads Encroach on the Family Hour* (Editorial), OMAHA WORLD HERALD, 12/30/96.
30. Cynthia Littleton, *Valenti Calls V-chip 'Quick Fix,'* BROADCASTING & CABLE, 7/8/96 at page 25.
31. 47 U.S.C. 303(w) (1)
32. But see, *FCC v. League of Women Voters*, 468 U.S. 364, at 376 (1984): "[B]ecause broadcast regulation involves unique considerations, our cases have...never gone so far as to demand that such regulations serve 'compelling' governmental interests." See also, *Denver Area Educational Telecommunications Consortium*, 64 LW 4706, at 4709-4711 (1996).

33. See, e.g., *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115 (1989).
34. *Freedman v. Maryland*, 380 U.S. 51 (1965).
35. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963).
36. *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978).
37. *Pacifica*, 438 U.S. at 735.
38. *Pacifica*, 438 U.S. at 737.
39. *Pacifica*, 438 U.S. at 748-750.
40. See, *Star v. Preller*, 352 F.Supp. 530 (D. Md. 1972, *aff'd*, 375 F.Supp 1093 (D. Md. 1974), *aff'd* 419 U.S. 956 (1974)). See also *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990) (third requirement of *Freedman v. Maryland* -- that city must bear the burden of going to court to effect denial of license and bear the burden of proof therein -- did not apply).
41. *Bantam Books*, 372 U.S. at 59-60.
42. *Bantam Books*, 372 U.S. at 61.
43. *Bantam Books*, 372 U.S. at 70.
44. *Bantam Books*, 372 U.S. at 75 (Clark, J., concurring).
45. See, e.g., Howard Fineman, *The Virtuecrats*, NEWSWEEK, June 13, 1994, pp. 31, 36 (Newsweek poll reported 67 percent "blame" TV and popular entertainment "a lot" for the "problem of low morals and personal character in this country.").
46. Shuana Snow, *Morning Report*, L.A. TIMES, Feb. 2, 1994, at F2.
47. Cal Thomas, *Survey Links Teen Violence, TV*, CHRISTIAN AMERICAN, May/June 1995.
48. Joanne Kaufman, *Tuning In to God*, TV GUIDE, 3/29/97.
49. Alan Bash, *Parents Crave a Clearer TV Ratings Code*, USA TODAY, 3/18/97.
50. See, *Pacifica*, 438 U.S. at 749; *Ginsberg v. New York*, 390 U.S. 629 (1968).
51. See, e.g., *FCC v. Pacifica Foundation* ("*Pacifica*"), 438 U.S. 726, at 735-738 (U.S. 1978); *Near v. Minnesota*, 283 U.S. 697, at 713-714 (1931).
52. See, Leslie Miller, *Ratings to Help Screen Internet*, USA TODAY, 2/29/96.

APPENDIX A

THE Morality IN Media Newsletter



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The FCC must now enforce the indecency law against broadcast TV stations

By Robert Peters

Over the last decade, the Federal Communications Commission has often successfully enforced the Broadcast Indecency Law against radio stations. The most notorious offenders have been radio stations that carry Howard Stern. The latest FCC fine against a radio station carrying the raunchy Stern show was October 15, 1996, when the FCC slapped a \$10,000 fine on a Virginia station for airing allegedly indecent comments during two of Stern's programs.

When it comes to broadcast television, however, the FCC has fined a TV station for violating the Broadcast Indecency Law only once in the last two decades, and the FCC later dropped the fine after a Federal Court indicated erroneously that the Broadcast Indecency Law could not be enforced during TV's prime time hours.

The one case in which a TV station was fined involved a Kansas City station's 8 p.m. broadcast in May 1987 of

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A perfect match in 1997: Valentine's Day and Turn Off TV Day

You've heard, of course, that family togetherness went down the tubes, so to speak, when Mom, Dad, Sis, and Brother all got their own TV sets. You may have had some first-hand experience with this.

What better occasion to turn this around than Turn Off TV Day 1997, which by happy coincidence falls on February 14, Valentine's Day! Turn off the set (or sets) in your house, and spend some "quality time" with the people you love. Here are some suggestions for your family-unity building:

- Have dinner with family or friends at a restaurant. Give Mom (or whoever does the cooking) the night off.
- Go to the local museum
- See a good play.
- Stroll in the park (if the weather is right in your neighborhood).
- Play Monopoly, Scrabble, Clue, Chess, or your other favorite board game.
- Read a good book together.
- Help out at your favorite charity.

TV Guide's View of the 'Family Hour'

TV Guide has identified the so-called "family hour" for what it is. In its July 13th issue, reporter Jacquelyn Mitchard mourns the demise of family programming in the 8-9 p.m. slot. "Would it do any harm to try a little tenderness in the evening, when some of the memories we make with our children are linked with the

More reasons to turn it off - page 5

most powerful medium in our environment?" she asks. In another article in the same issue, Ileana Rudolph and Mike Hammer muse, "The family hour is a lot of things these days, but safe is not one of them ... How did family time turn into cursing, conniving, and carousing time?"

It seems the programming executives at the CBS Television Network have decided that common decency and family values make good television, though they are not totally committed to the concept. They have brought back Bill Cosby to prime time. They gave the family-friendly *Touched by an Angel* a good slot on the

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POSTMASTER: ADDRESS CORRECTION REQUESTED

FCC must go after broadcast TV indecency

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an unedited R-rated film, "Private Lessons". As described in an FCC statement, the film, about a 15-year-old boy who learns about sex from his French maid, "included nudity and scenes depicting sexual matters which were dealt with in a pandering and titillating manner." Now consider the following description of a program, sent to MIM by a resident of Vermont, which aired on October 13, 1996, on Sunday evening at 9 p.m. on PBS stations. The description is as follows:

Masterpiece Theatre on Sunday, October 13th, featured "Moll Flanders" in living color, period costumes and lots of nudity. Nudity would not ordinarily offend me except on this show it was featured while Moll and her 5 husbands (one of whom turned out to be her half-brother) were engaged in the marital act. The actors were shown completely uncovered, full length. Before Moll was married, we were treated to fornication with her future husband's brother. The show also featured, besides incest with her half brother...lust...bigamy...prostitution and to top it off, lesbianism, again in the nude. Quite a lesson in morality for our teen-age children, especially on Sunday. This show is on at 9p.m., early enough to be viewed in part, if not wholly, by 14-16 year olds. It was in two parts and continued on Monday evening, again at 9 p.m.

Without seeing the program, we can't say whether a particular scene or scenes may be "indecent," but if you taped it and believe it may contain indecent content, please send it with your letter of complaint to FCC Chairman Reed Hundt. The fact that the program was based on a well-known novel does not prevent the FCC from determining that a scene or scenes were indecent.

While it may be true at present that the worst indecency offenders in the broadcast media are radio "shock jocks," they are not the only offenders. For decades, TV broadcast producers have "pushed the envelope" with regard to sex, nudity, vulgarity and off-color "humor" in soaps, talk shows, promos, ads, movies, sitcoms and dramas, and it is TV, not radio, that has the greatest impact upon our culture and upon our children and youth.

In January 1996, the U.S. Supreme Court turned aside a legal challenge to a Federal

Law requiring the FCC to issue regulations prohibiting indecent broadcast material between 6 a.m. and 10 p.m. What is now needed is tens of thousands of letters reminding the FCC that its responsibility to enforce the broadcast indecency law does not begin and end at the doorstep of broadcast radio stations: it includes broadcast TV stations. To help get that message across to the FCC, we ask you to do two things:

First, write a letter to FCC Chairman Reed Hundt expressing your concerns about specific TV programs or ads/promos and urging him to enforce the broadcast indecency law against TV stations that violate it. Also remind him that the much publicized "V-Chip" is no substitute for enforcing the indecency law. The address is:

Chairman Reed Hundt
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Second, whenever possible, videotape TV programs you believe may contain indecent content and send the tape, along with a letter of complaint, to Chairman Hundt. Make sure you include the station call letters, name of the program and time that it aired. At present, the FCC is only enforcing the broadcast

indecency law between the hours of 6 a.m. and 10 p.m., and Congress must now act to require the FCC to enforce the law until midnight.

Keep in mind that the FCC defines the term "indecent" as a description or depiction of sexual or excretory activities or organs that, in context, is "patently offensive" under community standards. Sexually explicit conduct or nudity, as well as obscene language or vulgarity, can be "indecent" within this definition, even if it is part of a program that, taken as a whole, has serious artistic, literary, political or scientific value.

But also keep in mind that a program, promo or ad can be morally offensive without being "indecent," as defined by the FCC.

For example, soaps often glamorize adulterous relationships; talk shows often provide a platform for abominable lifestyles; and some sitcoms treat premarital sex on the same "moral plain" as having a cup of coffee the next morning. But to be "indecent" under the FCC's definition, a program must depict or describe, in a patently offensive manner, sexual or excretory activities or organs.

If a program is morally offensive, but not "indecent," the best persons to make complaints to are the program's sponsors. Morality in Media expects to have an updated list of the top 100 TV sponsors available in November or December.

To make a complaint about a radio or television program, write to:

Federal Communications Commission, Mass Media Bureau,
2025 M Street NW, Room 8210,
Washington, DC 20554

To complain about a cable television program, write to:

Federal Communications Commission, Cable Services Bureau,
1919 M Street NW,
Washington, DC 20554

Each of the FCC Commissioners has an e-mail address. You can send messages to the commissioners, but a formal complaint that the FCC can act on has to be sent on paper.

Chairman Reed Hundt can be reached at rhundt@fcc.gov,
Commissioners James Quello at jquello@fcc.gov,
Susan Ness at sness@fcc.gov, or
Rachelle Chong at rchong@fcc.gov.

The FCC also has a World Wide Web site. Its address is <http://www.fcc.gov>. That will get you to the FCC's "home page." There is a "link" directly on the home page for "Consumer Issues," which gives you further information about complaints.

APPENDIX B



Provided by Bob DeMoss, President

IN THE NEWS

TEEN RELATIONSHIPS

For the last ten years, I've raised a question about the thirst for horror movies amongst teens. I've held that aside from the obvious reasons to avoid slasher flicks are the issues of desensitization and role playing. I maintained feasting on films glorifying abuse and violence is sure to nurture a violent spirit. The evidence is now in and it appears these concerns are justified.

A study by the University of

Michigan found that physical abuse in teen relationships is at an all time high. The report summarized in USA TODAY (4/1) found that 36% of girls surveyed experienced physical abuse at the hands of a date. Other findings:

- 55% of girls reported their date was drunk; 37% stated sexual advances ultimately led to violence.
- 44% of the girls remained in a relationship following moderate violence (slapping); while 36% stayed after severe physical abuse (punching, choking).

"In the last few years, we've been counseling many more teens who are either victims or aggressors in dating relationships. They just learn and model the aggression... and then there's more violence around them, on TV, in films and on the news," says Robert Geffner, psychologist commenting on the rise in violence in teen relationships.

Using Prov. 4:17 ("They eat the bread of wickedness and drink the wine of violence"), discuss the role of our entertainment choices with the behavior we exhibit.

TUBE WATCH

MORE TROUBLE FOR CODE

Executives at PBS and BET have both rejected and refuse to use the three-month-old TV ratings system, but for very different reasons. The president of Public Broadcasting System Ervin Duggan doesn't believe the new code pro-

vides enough consumer information, such as Violence, Sex, and Language labels.

For Robert Johnson, president of the Black Entertainment Television it's a matter of free speech. He told the Los Angeles Times, "The broadcasters caved on this thing without so much as a nod to the First

Amendment... all this talk about 'family values' can be a slippery slope" (3/31). Actually, the absence of a standard has created a slippery slope in the opposite direction—which is why consumers favor a system providing the content codes suggested by PBS. Jack Valenti who crafted the code refuses that option.

BLOCKBUSTERS

THE DEVIL'S OWN (R)

BOX ACTION: No. 2

STARRING: Harrison Ford, Brad Pitt, Margaret Colin, Ruben Blades

SUMMARY: As best we can research, the film title has nothing to do with the picture. Here, Pitt plays the violent leader of the Irish Republican Army. Out-gunned, under-financed, he heads to America for cash and weapons. He stays in the home of a NY police officer (Ford), who is unaware of Pitt's true agenda.

WHAT'S GOOD: Ford plays a faithful spouse, loving husband and a man of principle. Upon learning the truth of Pitt's mission, Ford doesn't

rationalize away his responsibility to enforce the law. A church scene is presented in a positive light.

WHAT'S BAD: Obscene and profane speech (with more than 20 "f"-words) sunk to a new low with the use of c—t (slang for female genitalia). Intense violence. Several sexual jokes.

ADVISORY: The film underlines the senselessness and brutality of the war in Ireland, yet viewers must wade through a significant amount of disturbing material.

SIXTH MAN (PG-13)

BOX ACTION: No. 6

STARRING: Kadeem Hardison,

Marlon Wayans, Michael Michele
SUMMARY: Kenny Tyler (Wayans) is left holding the ball when older brother Antoine (Hardison) dies unexpectedly on the basketball court. An appeal to his deceased brother brings back Antoine's ghost who leads the team to the NCAA finals—and some zany antics.

WHAT'S GOOD: Issues of personal expectations, self-confidence, and team integrity are addressed.

WHAT'S BAD: Heavy profanity, especially for a PG-13 film. Some sexual banter including a reference to necrophilia. Beer flows freely.

ADVISORY: A wonderful message is clouded by offensive elements.



Because Family values are important to you, we would like to present to you this special offer.

A large number of families have experienced the following. They spend \$20 to take the family to the movies only to be offended by the foul language, violence or other content. Or their child calls home for permission to go to a movie that they have never heard of. Or the movie's preview didn't tell the entire story.

What can concerned parents do?

The STS Family Movie Review Card has an answer--a new product offering instant movie reviews from a family values perspective. A credit-card sized interactive phone card provides access to movie reviews 24 hours a day, 7 days a week. They are prepared by the non-profit publishers of the oldest, most respected movie guides in the country--Preview Family Movie and TV Review and are endorsed by a number of prominent business, media and religious leaders. This card informs you of the themes and morals in recently released major motion pictures as well as the amount and type of violence, profanity, nudity and sexual overtones. You can access a movie you want to see or choose from a list of current films. Reviews are updated weekly, rated for entertainment value and family acceptability and are available until the movie is no longer on.

Each review card is good for 20 minutes (or about 35 movie reviews) and sells for only \$10 which includes shipping and handling. They each come in an attractive, display-ready package. You may resell these cards for any price you choose. This is a very popular and highly consumable product for all responsible families.

To see a sample card or get more information call (352)694-6614 and leave a message. I will return your call.

If you are ready to order now, send a check or money order for \$10/card to:

S. Walling
1408 SE 42nd Ave
Ocala, FL 34471

This card is a needed product for all responsible families who want to enjoy movies.

Movie Reviews Come With a Special Feature: Moral Authority

By GUSTAV NIEBUHR

When it comes to movie making, officials of the Roman Catholic Church have long made it clear that they thought Hollywood could do better at including uplifting messages in mass entertainment.

Pope John Paul II has said as much, most recently in an address last May. About that time, Catholic officials in Washington released the results of a Gallup Poll indicating that a majority of Americans felt that many movies did not reflect their moral values.

Now, officials of the group that sponsored the poll, the Catholic Communication Campaign, an agency of the United States Catholic Conference, have taken a new tack, opening a toll-free phone number to provide callers with access to brief reviews of current movies — all evaluated for plot, entertainment value and, of course, moral content.

It seems to have struck a chord. Begun shortly after Labor Day, the phone line drew 55,000 calls in its first seven weeks, the latest figures available, said Ramon Rodriguez, director of the Catholic Communication Campaign. The project, he said,

was intended "to help parents" learn about current movies "and make better judgments" about what to recommend their children see.

Calls to the number, (800) 311-4CCC, reach a recorded message that offers abbreviated reviews written by the Office for Film and Broadcasting at the Catholic conference and also published each week in many newspapers of Catholic dioceses. The message is updated with new reviews each week.

The office's director, Henry Herx, said, "The capsules are a way of doing something which ratings can't do, which is to give you an idea of the

nature of the film and whether it's any good."

The Catholic film office has its own rating system, one that seems tougher than that of the Motion Picture Association of America. The office has five ratings, from A-1 (general audiences) to O (morally offensive).

A call to the phone line on Wednesday showed that, for would-be movie-goers that day, the offerings were not encouraging. Of six films evaluated, five had negative reviews.

For example, "Goldeneye," a James Bond film that was the top-grossing commercial film last week-

end, was deemed to be "all sound and fury to the detriment of character and storyline." Rated PG-13 by the Motion Picture Association, it was given an A-4 rating (for adults only, "with reservations") by the Catholic film office, for its "stylized violence and mayhem."

But the film office gave "Get Shorty," an R-rated take-off on Hollywood, the thumbs-up, describing it as "fast-paced, wickedly funny satire." It was given an A-3 (adults) rating. That only one movie received a positive review was simply the luck of the draw, Mr. Herx said. "It's something that changes from week to week," he said. "It depends on what's out there."

Wednesday afternoon, Mr. Herx

was finishing reviews of six new films, along with one oldie, "Around the World in 80 Days," which is on videotape. He said the new reviews would be available on the phone line by the weekend.

The Catholic Communication Campaign, established by the American bishops mainly to provide money for certain movies, television documentaries and radio programs, is financed by an annual collection in parishes nationwide.

Mr. Rodriguez said that although the phone line was sponsored by a church agency, it was not meant solely for Catholics. "We've received calls from folks of different religions very happy to have this information available to them," he said.