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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Industry Proposal for Rating)
Video Programming)
)

CS Docket No. 97 - 55

REPLY COMMENTS OF
AMERICAN LIBRARY ASSOCIATION

Submitted May 8, 1997

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Federal Communications Commission
1919 M. St. NW
Washington ,D.C. 20554

RE: CS docket No. 97-55

To the Commission:

The American Library Association ("ALA"), the nation's oldest and largest library association representing 58,000 members, submits these Reply Comments to the Federal Communications Commission ("FCC") to address the question of whether the FCC should mandate a content based rating system for the television industry.¹ The American Library Association strongly opposes a government rating scheme. In our view, any such rating system is squarely at odds with longstanding First Amendment principles that "foreclose public authority from assuming a guardianship of the public mind." *Thomas v Collins*, 323 U.S. 516, 545 (1945) (Jackson, J, concurring). If the federal government has the power to do what has been proposed here --- to convene a federal advisory panel to rate video programming and compel broadcasters to display those ratings --- then it has the power to blacklist ideas it deems undesirable in a broad range of other expressive forums. We submit that such a empty view of the First Amendment cannot be reconciled with either the spirit or the letter of the Constitution.

The American Library Association has been opposed to labeling or otherwise rating library material for almost fifty years, since it was first pressured to label and segregate publications in libraries, "which advocate or favor communism" or which were distributed by

¹ Comments in support of such a rating system have been filed *inter alia*, by the Children's Defense Fund, the American Psychological Association, Children Now, the National Alliance for Non-Violent Programming, Concerned Women for America, and the American Academy of Pediatrics.

“subversive organizations.” Since that time --- despite repeated demands for labeling portions of library collections that some found inappropriate or offensive --- the ALA has never wavered from its belief that labeling stands in fundamental opposition to the most basic principles of intellectual freedom.

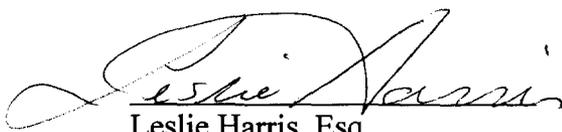
The ALA policy on labeling states that “labeling is a means of predisposing people’s attitudes toward library material....” It “... is an attempt to prejudice attitudes and as such, it is a censor’s tool.” We are deeply concerned that, no matter how well intentioned or carefully crafted, government mandated ratings on television also will prove to be little more than that a “censor’s tool.” Indeed, that is precisely what the Supreme Court concluded in a host of decisions in which similar ratings systems have been struck down on constitutional grounds. See, e.g. *Interstate Circuit, Inc. v Dallas*, 390 U.S. 676 (1968), *Bantam Books v Sullivan*, 372 U.S. 58 (1963). As the Court made clear in *Bantam Books*, the government’s identification and characterization of material that it deemed to be “objectionable” amounted to “...a scheme of state censorship... [where the government] acted as an agency not to advise but to suppress.” *Id.* at 72.

It is difficult to imagine how the implementation of Congress’ vague mandate to rate content that is “sexual, violent, or indecent” can be implemented in a manner that simply advises rather than suppresses ideas. The statute vests unlimited and standardless discretion in the FCC and its advisory panel to select which programming will be labeled as excessively violent, indecent or otherwise inappropriate for children. Such a scheme will inevitably chill laudable ideas and viewpoints or drive them from the marketplace altogether. Who should determine whether *Schindler’s List* should be rated as excessively violent, or whether *The Color Purple* is indecent and thus inappropriate for all children because of its frank sexual content? Should it be

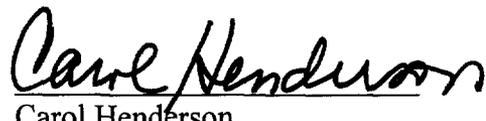
agency officials or their designees? Members of Congress who may seek to influence those decision through the media or the committee process? Or by interest groups who will lobby vigorously to assure that programs that offend their values and tastes receive unfavorable ratings? As Sen. Patrick Leahy (D.VT.) recently observed, "Whatever the control, it will never be ratcheted down strictly enough for everyone. TV programming is a tempting subject for demagoguery."²

As librarians who regularly provide guidance and advice to parents about selection of appropriate reading materials for their children, we believe that decisions about what children read or view must be made by parents, not government officials. To make those decisions wisely, parents must be free to exercise their judgement based on information and advice from a variety of sources *of their choosing*. But government labeling, which serves to suppress ideas rather than inform and advise, has no place in a society governed by constitutional principles.

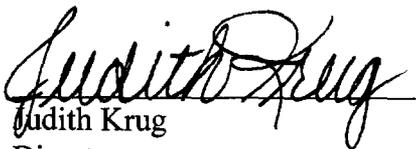
In conclusion, the ALA strongly urges that the FCC reject demands for a content-based government rating system. We appreciate the opportunity to present our views.



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² Statement of Sen. Patrick Leahy Before the Senate Commerce Committee on Voluntary T.V. Rating System. February 27,1997.