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LABELING VIOLENCE: HOW USEFUL ARE LABELS AND HOW FAR CAN WE GO?

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Labeling Violence: How Useful are Labels and How Far Can We Go?

At the end of May 1993, ABC, CBS, NBC and Fox announced the adoption of an "advance parental advisory plan" to warn television viewers of the presence of violent content in television programs. The networks would decide which programs merited the warning. No current series would contain warnings, though individual episodes might. No cartoons would contain warnings (McAvoy 1993b). Responding to the announcement, President Bill Clinton wrote, "Millions of parents are rightly concerned that their children are exposed to far too many graphic pictures of murder and mayhem. The announcement of voluntary violence warnings is an important, commendable first step in dealing with this crucial issue." (quoted in McAvoy 1993b p. 10).

This announcement by the television networks followed years of concern over the effects of violent television content. In particular, the announcement followed a resurgence of political activism in Congress on this issue. At the time the announcement was made Congress was considering at least eight bills aimed at reducing the amount of violence in American television (McAvoy 1993c, p. 31). Speaking at a July 1993 industry-wide summit on TV violence sponsored by the National Council for Families & Television, Senator Paul Simon, a long-time critic of television violence, warned the broadcast industry to reduce the violence in television programming or Washington would do it for them (Flint 1993).

But is it legal for Congress to interfere with the business decisions of a private industry? Even though broadcasting has traditionally received lesser First Amendment protection than other forms of media, the *Communications Act of 1934* specifically warns the government against interfering with the First Amendment rights of broadcasters except as absolutely necessary to ensure the public interest, convenience, or necessity (see sections 303r and 326). Can the government force the broadcast industry to take voluntary action regarding televised violence, or can the government take action itself in this sensitive First Amendment area? This essay will examine the constitutionality of voluntary and involuntary television violence ratings or labels. It will also consider the usefulness of such ratings for the government and the average television viewer. Discussion will begin with an examination of the voluntary rating.

Voluntary Ratings

As long as the ratings or labels associated with violent program content are placed there voluntarily by the networks and individual broadcasters and cablecasters, then there is no risk of violating the First Amendment. In *Writers Guild v. FCC* (1976) Judge Ferguson wrote that if a licensed broadcaster in good faith adopts a policy

> ...which it reasonably believes conforms with the public interest and applicable regulations and if it has not adopted that policy because of government pressure but because it believes it to be wise policy, the First Amendment not only permits the decision but secures it from judicial restraint. (p. 1140)

In writing the court's opinion, Judge Ferguson reaffirmed the 1943 decision in *NBC v.*

US that it is the responsibility of the licensed broadcaster to program their station and that, while they have the right to share programming ideas with industry and public interest groups, those groups have no right to censor or regulate broadcasting. In addition, Ferguson wrote that licensees and networks have a "...duty as public trustees and fiduciaries to resist government intrusions into the programming domain." (p. 1143)

Once voluntary ratings are in place, there may be temptation for the FCC to use such ratings to zone violent programs to hours of the day when children are not likely to be in the audience or to require broadcast stations to keep records of the number of violent programs they broadcast to be used at license renewal. If violence ratings are strictly voluntary, then the government must resist the temptation to use the ratings in this manner. A number of cases involving the voluntary movie ratings of the Motion Picture Association of America illustrate this point.

The MPAA began a voluntary film rating system in 1968. The purpose of the rating system is to "...provide advance information to enable parents to make judgments on the movies they [want] their children to see or not to see." (*Swope v. Lubbers* 1983, p. 1337) There is no government involvement in determining movie ratings nor is there any requirement that every movie made be submitted for a rating by the MPAA. Several attempts by government to use MPAA ratings have arisen since 1968. In each case, governmental use of voluntary ratings was rejected by the court.

In 1970 the city of Kenosha, Wisconsin passed an ordinance prohibiting persons

under age 18 from viewing "adult" movies. The ordinance defined "adult" as any movie with an MPAA rating that recommended against the admission of minors when not in the company of an adult, in other words, R or X-rated movies. The court overturned the ordinance on the grounds that the City of Kenosha had given over judgement of what constitutes "adult" to a private organization (*Engdahl v. City of Kenosha* 1970).

> ...the judgement as to what is protected or unprotected expression with regard to minors is not even exercised by the City of Kenosha. Rather, the judgement is reached by the Motion Picture Association using standards and procedures, if any, known only to them and unknown to both the defendants and this court. The procedures utilized by the City of Kenosha in imposing a prior restraint on First Amendment freedoms, albeit with regard only to persons under age 18, do not meet the constitutional requirements of governmental regulation of obscenity. (p. 1136)

That same year, 1970, the Commonwealth of Pennsylvania passed a statute which imposed criminal sanctions against film exhibitors who exhibited films rated by the MPAA as unsuitable for children to children (if they did so knowingly). The court felt that because MPAA ratings are devised on a voluntary basis according to the individual reactions of 12 persons, the MPAA itself has "...no defined standards or criteria against which to measure its ratings." (*MPAA v. Specter* 1970, p. 825) The court found that the Pennsylvania statute was

> ...patently vague and lacking in any ascertainable standards and so infringes upon the plaintiff's rights to freedom of expression, as protected by the First and Fourteenth Amendments to the Federal Constitution, as to render it unconstitutional...The conclusory standards "suitable for family or children's viewing" and " not suitable for family or children's viewing" are left undefined in the statute and the attempted recourse to the Association ratings is of no avail.

(p. 826)

In 1983, Grand Valley State College in Michigan refused to transfer school funds for the showing of an X-rated film by a student organization. The students sought injunctive relief. The court found that the school had acted improperly in refusing to fund this movie out of student fees when it had funded other movies chosen by the students in the past. The school argued that the movie was obscene because of the X-rating (*Swope v. Lubbers* 1983). The court responded

> ...If the "X" rating was a short-hand label for judicially-defined pornography, then defendants' content-based discrimination against funding such films could be deemed lawful. This argument must fail, however, since it is well-established that the Motion Picture ratings may not be used as a standard for a determination of constitutional status...The standards by which the movie industry rates films do not correspond to the Miller v. California criteria for determining whether an item merits constitutional protection or not. (p. 1334)

The assertion that the X-rating does not correspond to the *Miller v. California* (1973) standard was reiterated in 1985 in *Brown v. Pornography Commission of Lower Southhampton Township.* This case involved the constitutionality of a Pennsylvania ordinance forbidding a drug store not located in an adult zone from renting X-rated videotapes to adults.

Most recently, the Springfield, Oregon public library adopted a policy of refusing to lend R-rated moves to children under 16. The ACLU challenged this policy on the grounds that for a public library or any other municipal agency to enforce such guidelines by law is a violation of the First Amendment (Sadowski & Meyer 1994). In a January

3rd, 1994 letter to the mayor of Springfield, MPAA director of State Affairs, Vans Stevenson, said, "The MPAA Rating System is voluntary and strictly advisory, with no force of local, state, or federal law." (p 11)

Each of the above cases clearly shows that the courts will not allow a voluntary rating system to be used as the basis for governmental restrictions on First Amendment freedoms. There is no reason to believe that voluntary violence ratings for television content would be treated any differently by the courts. If the ratings are truly voluntary, and if the government does not attempt to use them to infringe on broadcasters' and viewers' First Amendment rights, then there is no legal problem with rating or labeling television violence. But are the violence ratings really voluntary?

In August 1993, *Broadcasting & Cable Magazine* listed nine proposals for dealing with televised violence that were being considered in Congress. Two of the proposals would tie license renewal to a reduction in violent programs, three would require the FCC to somehow "keep tabs" on violent programming by individual stations, two would require some sort of mandated violence ratings (V-chip technology would necessitate ratings) [1], one would disallow tax deductions for the cost of advertising on programs deemed violent, and one would require that shows with violent content air only

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[1] V-chip is an electronic device that would allow parents to program out automatically any program with a violent rating. Such programs would have to be electronically "tagged" for this to work, therefore, a rating system is required (Scully 1993).

after 9p.m. (p. 24). In May of 1993, Congressman Ed Markey, the Chairman of the House Telecommunications Subcommittee, sent a letter to key cable, broadcast and program production executives, "...urging them to consider using a violence rating." (McAvoy 1993, p. 14). In a Senate panel convened to discuss the problem of televised violence, some industry witnesses and some members of the Senate Constitution subcommittee expressed doubt that a voluntary system could work.

> ...Their comments, along with testimony from other lawmakers, indicated they are growing impatient. And as Senator Paul Simon (D-Ill.), who convened the TV violence hearing, put it, "There are two choices: censorship or responsible voluntary conduct."
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> Senator Howard Metzenbaum (D-Ohio) said Congress wants action now. And he warned the TV industry not to forget that "they don't own the airwaves... they have a franchise. What Congress giveth, it can taketh away." (McAvoy 1993a, p.14)

In January of 1994, new FCC Chairman Reed Hundt, in a speech to the Association of Independent TV Stations in Miami, warned broadcasters that "he was prepared to aggressively enforce and defend laws aimed at curbing violence on TV." (McAvoy 1994, p. 8). In an August 13, 1994 speech before the American Psychological Association, Hundt described his new "social compact" policy.

> ...First, we want a policy that promotes choice, opportunity and fairness in media markets...Second, we want a policy that redefines, restates and renews the public-interest responsibility of broadcasters...Responsibility means that the TV industry must recognize the full implications of its huge role in our society. Specifically, responsibility means that the TV industry must address needs of all Americans in its programming - children, minorities, the disabled and the elderly. *Responsibility also means admitting the real impact of TV violence.* [emphasis added] (quoted in Jessell 1994, p. 32)

Based on the above, it does seem likely that the adoption of violence ratings is not entirely "voluntary" on the part of the industry. The future of such ratings depends on whether the courts will see them as voluntary. In 1976 the major commercial television networks adopted a voluntary "family viewing hour" policy as a response to similar governmental pressure over television violence. The constitutionality of this policy was immediately challenged by the Writers Guild of America. The federal district court found evidence that the FCC had improperly pressured broadcasters to adopt the family viewing hour (*Writers Guild v. FCC* 1976). Writing for the court, Judge Ferguson said the

> ...FCC has no right to accompany suggestions for programming with vague or explicit threats of regulatory actions if broadcasters consider and reject the suggestions; the FCC has no right to demand or to secure commitments from broadcasters that its suggestions will be accepted and has no right to launch orchestrated campaigns to pressure broadcasters to do what they do not wish to do...FCC, by declaring that broadcasters had to reduce substantially the broadcasting of violence and adult material in the early evening hours and that, if such a reduction was not forthcoming, regulatory actions up to and including the relicensing process would be used and by threatening such action even though it did not believe that it could develop a record sufficient to support regulatory action, violated prohibitions against FCC imposition of programming decisions on licensees. (pp. 1149-1150)

The above would seem to make it quite clear that the government may not pressure broadcasters into adopting voluntary programming policies. However, *Writers Guild v. FCC* was vacated and remanded on appeal. The appeals court based its decision

on jurisdictional grounds. In the original case, the trial court determined that it was inappropriate for the FCC to have primary jurisdiction over the case because of its involvement in pressuring the broadcast industry (*Writers Guild v. FCC* 1976). The appeals court (*Writers Guild v. ABC* 1979) disagreed, vacated the decision, and suggested that the FCC should be asked to determine whether it acted properly. Since the networks did not choose to reinstate the family viewing hour, the case became moot. Although the appeals court did not rule specifically on any issues other than jurisdiction, it did hint at other potential bases for appeal. Writing for the court, judge Sneed questioned the assumption that broadcasters have the right and duty to make independent decisions regarding programming. He said,

> It is simply not true that the First Amendment bans all limitations of the power of the individual licensee to determine what he will transmit to the listening and viewing public...Regulation through "raised eyebrow" techniques or through forceful jawboning is commonplace in the administrative context, and in some instances may fairly be characterized, as it was by the district court in this case, as official action by the agency. (pp364-365)

Although *Writers Guild v. ABC* (1979) did not specifically invalidate the reasoning of the district court as to whether or not improper governmental coercion had taken place in pressuring the broadcast industry to adopt the family viewing hour, it did raise questions about the bedrock assumption upon which the lower court's determination of improper conduct was based. It is, therefore, uncertain whether the current efforts to pressure the broadcast industry into adopting a voluntary system of violence ratings represent

improper conduct on the part of the government. A future judicial challenge will no doubt resolve this issue.

Voluntary violence ratings, while potentially useful to parents and other television viewers, may not satisfy critics of television violence. If such ratings were mandated by law or official FCC policy, then it is possible they could be used to restrict access to television violence through zoning such violence into a "safe harbor," a time period when children are not likely to be in the audience, or in judging the performance of broadcasters at license renewal. Can such ratings be mandated without violating the constitutional rights of broadcasters?

Mandated Ratings

The *Communications Act of 1934* specifically forbids the FCC from engaging in censorship in section 326.

> ...Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication. (*Communications Act 1934*)

However, in section 303 the *Act* contradicts itself and says that the Commission may "...make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act..." (*Communications Act 1934*). Among the provisions of the *Act* that must be carried out is the requirement to see that licensees perform in the public interest, convenience, and

necessity. In *Red Lion v. FCC* (1969) the Supreme Court of the United States used section 303 of the *Communications Act* and the concept of "scarcity of channels"[2] to justify the FCC's right to promulgate content regulations, specifically the Fairness Doctrine and rules regarding Personal Attacks and Political Editorials. While the Supreme Court's decision in *Red Lion v. FCC* might be seen as "...a statement of permission, if not positive obligation, for the government to regulate the media..." (Lipsky 1976), *Red Lion* contains some warnings against government censorship.

> ...We need not and do not now ratify every past and future decision by the FCC with regard to programming. There is no question here of the Commission's *refusal to permit the broadcaster to carry a particular program* or to publish his own views; of a discriminatory refusal to require the licensee to broadcast certain views which have been denied access to the airwaves; of government *censorship of a particular program*...Such questions would raise more serious First Amendment issues. [emphasis added] (*Red Lion v FCC* 1969, reprinted in Kahn 1984, p. 290)

The rules in question in the *Red Lion* case were seen as methods of enhancing free speech rather than restricting it.

Violence labels or ratings may also be seen as enhancements to free speech rather than restrictions depending on how they are used. Requiring that the contents of

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[2] "Where substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish...There is nothing in the First Amendment which prevents the Government as a proxy or fiduciary with obligation to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves." (*Red Lion v. FCC 1969*; reprinted in Kahn 1984, p. 286)

products be divulged has never been a constitutional problem. Such requirements have only been struck down when they would compel an individual to express an allegiance, to adopt a particular political position, disclose a private matter, or disclose incriminatory facts. And that it would financially burden broadcasters to provide such warnings has also not been found to violate the First Amendment (Krattenmaker & Power 1978).

One problem that would arise in requiring violence ratings is the problem of vagueness. A statute or regulation is void for vagueness if it "...either forbids or requires the doing of an act in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application"(*Action for Children's Television v. FCC 1991*, p. 1508). This point was brought home in the case of *Winters v. New York* (1948).

In 1948 New York passed a statute forbidding the publication and distribution of massed collections of pictures and stories of bloodshed and lust. These collections were judged to be vehicles for inciting violent and depraved crimes. The Supreme Court of the United States found that the statute was overbroad.

> ...When a legislative body concludes that the mores of the community call for an extension of the impermissible limits, an enactment aimed at the evil is plainly within its power, if it does not transgress the boundaries fixed by the Constitution for freedom of expression...the crime must be defined with appropriate definitions...Men of common intelligence cannot be required to guess at the meaning of the enactment. (*Winters v. New York 1948*, p. 515)

In order for violence ratings to be mandated, a precise definition of what constitutes violence must be agreed upon. While the definitions used in academic studies of televised violence share some similarities, they do differ in substantial ways. Some definitions exclude violence committed by animals and in sports (Hickey 1994). Some weight violent incidents depending on the degree of harm done or intended or the type of weapon used (Wurtzel & Lometti 1984, National Coalition on Television Violence, personal communication, 1983). While all definitions include physical force, killing, or injuring; definitions vary as to whether they include psychological violence, violence against property, and violence portrayed in humorous contexts (Lowery & DeFleur 1988). It is fair to say that "Over the past twenty years, violence has probably been defined almost as many times as it has been studied." (Signiorelli et.al. 1982, p. 158) Following are some examples of these definitions.

> ...the overt expression of physical force against others or self, or the compelling of action against one's will on pain of being hurt or killed - Cultural Indicators Project, George Gerbner (Lowery & DeFleur 1988, p. 300)

> ...force or the compelling threat of force that may result in harm to life or to valued objects. Violence involves harmful or anti-social consequences, Violence involves behavior which violates, damages, or abuses another person, animal, or valued object - ABC Television (Wurtzel & Lometti 1984, p. 92)

> ...any deliberate act involving physical force or the use of a weapon in an attempt to achieve a goal, further a cause, stop the action of another, act out an angry impulse, defend oneself from attack, secure a material reward, or intimidate others - Harry Frank Guggenheim Foundation (Hickey 1994, p. 38)

The most recent study of televised violence, conducted by the Center for Media and Public Affairs, defined violence as "...a deliberate act of physical force that is aimed at hurting someone, destroying property or intimidating someone." (*TV violence study released.* 1994, p. 56) The broadcast industry has criticized this particular study for counting as a violent incident the caning of a pommel horse in a news report. Industry critics decry the tendency to count incidents witho' taking into account the context of the violence. (McClellan 1994)

The issue of defining violence would have to be resolved in a manner that satisfies the courts before mandatory ratings could be imposed upon the broadcast and cable industry. Violence is a complex construct. It involves issues of motivation and context, not just overt action. Quantitative measurements of filmed violence run into problems when they try to include motivation and context. Qualitative measurements become the subjective interpretation of the researcher or critic. If one ignores issues of motivation and context, then a sufficiently specific definition of televised violence is possible. Such a definition would not leave a "reasonable person" wondering exactly what types of content must be disclosed in advance. Yet, such a definition is unlikely to differentiate between the violence that occurs in a Road Runner cartoon and that which occurs in a serious drama.

Let us assume, for the sake of argument, that a sufficiently precise definition can

be developed and violence ratings mandated by law or FCC rule. Can the FCC then use these mandated violence ratings to restrict viewer access to televised violence? The problems inherent in just such a use of mandated ratings can be seen in the example of zoning.

Zoning Violence

In order to justify the zoning of televised violence into time periods where children are not likely to be in the audience, the FCC would have to provide reasons why such restrictions are needed and judicial precedent. In the *FCC v. Pacifica* (1978) the Supreme Court of the United States upheld FCC restrictions on the broadcast of indecent language. The restrictions were upheld on the grounds that the language used in the "Filthy Words" monologue by comedian George Carlin was indecent and therefore subject to FCC regulation according to section 1464 of the *United States Criminal Code* which states "Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined not more than $10,000 or imprisoned not more than two years, or both." (*United States Criminal Code 1948*). In addition to the obvious violation of United States law, and more pertinent to the problem of zoning televised violence, were the following statements made by the court

> ...the broadcast media have established a uniquely pervasive presence in the lives of all Americans. Patently offensive, indecent material presented over the airwaves confronts the citizen, not only in public, but also in the privacy of the home, where the individual's right to be left alone plainly outweighs the First Amendment rights of the intruder...broadcasting is uniquely accessible to

> children, even those too young to read...Other forms of offensive expression may be withheld from the young without restricting the expression at its source... the government's interest in the "well-being of its youth" and in supporting "parents' claim to authority in their own household" [justifies] the regulation of otherwise protected expression. (*FCC v. Pacifica 1978*, p. 3040)

Proponents of zoning televised violence may argue that having televised violence thrust unwillingly upon the viewer is a similar invasion of privacy. However, the broadcast of indecent language is specifically enjoined by U.S. law, the broadcast of violence is not. Obscenity, to which indecency is linked by a matter of degree, is not a form of expression protected by the First Amendment. There have been anti-obscenity laws in this country dating back to 1712 when the Massachusetts colonial legislature passed a law that made it a crime to publish any "filthy, obscene, or profane song, pamphlet, libel or mock sermon." (Overbeck 1993, p. 300) In an examination of colonial statutes, Krattenmaker and Power (1978) could find no indication to suggest that depictions of violence in literature could or should be suppressed in the same way as indecency or obscenity. Given the lack of judicial history banning depictions of violence, it is unlikely that the court would accept the argument that televised violence is offensive enough to constitute an invasion of privacy.

The other argument is that children should be protected from viewing televised violence. The Court has accepted the notion that children are uniquely vulnerable to the influence of television and that, in some circumstances, they may be protected (*FCC v. Pacifica 1978*). The challenge is to show that viewing televised violence is harmful to

children, contrary to societal mores, and therefore merits special treatment. Albert (1978) suggests that a "public health" argument might be used. In 1971 the FCC issued a *Notice and Memorandum Opinion and Order* expressing "...its grave concern that the use of illegal drugs was threatening the health and well-being of thousands of young people" (p. 1333) and warning broadcasters not to promote the illegal use of harmful drugs. However, Krattenmaker and Power (1978) argue that the social science evidence concerning the harmful effects of televised violence is inadequate to carry a public health justification. Nor can the social science evidence sustain a "clear and present danger" test in that such a test requires that the speech to be suppressed must have caused

> ...specific, particularized harm or is the type of speech very likely to do so...the perceived harm that justifies suppression [must be] more than the shock value of the words employed...the state's concern must be with the tangible effects the speech is likely to inflict or incite. (Krattenmaker & Power 1978 p. 1191)

Nevertheless, without bringing the case to court, one can only guess whether the social science evidence would be sufficiently convincing to justify zoning televised violence to hours of the day when children are not likely to be in the audience.

Assuming the court were to agree that there was sufficient evidence of potential harm to justify zoning televised violence, there are still some problems to be overcome. In *Consolidated Edison Co. v. Public Service Commission* (1980) the Supreme Court of the United States noted that content-based restrictions "...may be sustained only if the government can show that the regulation is a precisely drawn means of serving a

compelling state interest." (p. 2335) In that same case, the Court pointed out that any time, place or manner restrictions must be content-neutral. Although the courts have found that protecting the physical and psychological health of our children is a compelling state interest (*Action for Children's Television v. FCC 1988*), segregating a television program based on an element of its content (violence) is not a content-neutral time, place or manner restriction. Even where such zoning has been allowed, as in the case of broadcast indecency, problems have arisen as to what constitutes an appropriate zone.

Following the Supreme Court's 1978 decision in *FCC v. Pacifica*, the FCC zoned indecent language to the post 10 p.m. time period. In 1987 the FCC declared that there would no longer be a post 10 p.m. "safe harbor" for indecent language and that it was expanding its definition of indecency beyond the "seven dirty words" to include a much more general standard of what constitutes indecency. In response to industry pressure, the FCC set the new "safe harbor" for broadcast indecency between midnight and 6 a.m. (Overbeck 1993). This new "safe harbor" was challenged in *Action for Children's Television v. FCC* (1988). The federal appeals court accepted the FCC's new, generic definition of indecency, but felt the Commission had not adequately justified its new, more restrictive "safe harbor." Writing for the court, judge Ginsburg said

> ... [the Commission should] reopen the time limitation or channeling aspect of the rulings for fresh decision on a full record and in a manner sensitive to these considerations: (1) the speech at issue, as the FCC has acknowledged,

> is protected by the first amendment; (2) the Commission's avowed objective is not to establish itself as censor but to *assist parents* in controlling the material young children will hear. (p. 1334)

Judge Ginsburg found that the FCC had been arbitrary in its choice of time period for the "safe harbor" and wanted the FCC to give valid reasons for its choice. Those reasons would have to demonstrate that the time period chosen for the "safe harbor" would actually work to protect the children while not restricting unnecessarily the access of adults to the programming.

Two months after *ACT v. FCC* (1988) was decided, and before the FCC had taken any action to obey the court, Congress passed and the President signed into law a 1989 appropriations bill that contained the following rider:

> ...By January 31, 1989, the Federal Communications Commission shall promulgate regulations in accordance with section 1464, title 18, United States Code, to *enforce the provisions of such section on a 24 hour per day basis.* (*ACT v. FCC 1991*, p. 1507)

Subsequent to the passage of this bill, the FCC solicited public comments on the validity of a 24 hour a day ban. After receiving and reviewing the comments, the FCC issued a 24 hour a day prohibition on indecent broadcasts. This prohibition was challenged in *ACT v. FCC* (1991). The appeals court felt that the precedent set in *ACT v. FCC* (1988) should stand, and that a total ban on broadcast indecency was a violation of the constitution. "While 'we do not ignore' Congress' apparent belief that a total ban on broadcast indecency is constitutional, it is ultimately the judiciary's task, particularly in

the First Amendment context, to decide whether Congress has violated the Constitution." (*ACT v. FCC 1991*, p. 1509).

If all other judicial challenges to the constitutionality of rating and zoning televised violence can be overcome, the above cases make it clear that it will still be necessary to justify exactly which time periods should be violence free zones. The example of the problems inherent in zoning broadcast content demonstrates that even if violence ratings can be legally mandated, the government will not be free to then use those ratings at will to restrict the broadcast of violent programs.

Usefulness of Violence Ratings

Except for reassuring the American public that the government "cares" about the issue of televised violence, it is hard to see what use violence ratings are to the government. A tremendous amount of time is currently being spent in Congress to pressure the broadcast and cable industry into adopting some kind of rating system. To mandate such ratings by law or FCC rule would require an even greater investment of time and resources, particularly in mounting a defense to the inevitable legal challenge. But whether or not violence ratings are useful to the government may be less important than whether such ratings are useful to the viewing public.

Common sense provides several suggestions for how to optimize the usefulness of violence ratings for the viewing public. Keeping in mind that the express purpose of such ratings is to assist parents in monitoring their children's television viewing and to

inform all viewers, in advance, of potentially offensive program content, then it is necessary that such ratings be easy to find and understand. The definitions associated with each "rating" should be clear and unambiguous, and well-publicized. Ratings should be published in all program guides and should be announced, in advance, during broadcast. It is also very important to resist the temptation to combine a violence rating with one for other aspects of content such as mature themes. Such a combination simply does not work well, as an examination of the MPAA film ratings shows.

Parents and film critics alike complain that the MPAA film ratings do not give parents the information they need to make informed choices. Diana Huss Green, editor of Parent' Choice, a nonprofit review of children's media, says,

> ...The ratings system, as it stands now, is simply not working...The key is information. Are parents getting the information they need to make smart decisions? Obviously they aren't. The challenge is to come up with a ratings system that is simple and clear, and, right now, we don't have that - yet. (quoted in Dawidziak 1992, p. D1)

Film critic Michael Medved says, "To be successful, a ratings system needs to provide basic guidelines and information about a film's contents. It's impossible for parents to make informed decisions based on what the letters PG or PG-13 tell them." (quoted in Dawidziak 1992, p. D1)

In particular, there is concern that the MPAA ratings system is not sensitive to the issue of violence. According to Jack Valenti, President of the MPAA, violence has

always been a key factor in the MPAA rating assigned to a film.

> ... The Rating's Board's criteria are four: theme, language, nudity and sex, and violence, and part of the rating comes from the assessment of how each of these elements is treated in each individual film. There is no special emphasis on any of the elements. All are considered and all are examined before a rating is given. *Contrary to popular but uninformed notions, violence has from the outset been a key factor in the ratings.*[emphasis added] (*Swope v. Lubbers 1983*, pp. 1337-1338)

However, media watchers complain that the MPAA has a double standard for sex and violence. "The severing of a man's arms in ... *Total Recall* (rated R) passed but the male posterior in *Henry & June* flunks the test" (Kroll et.al. 1990, p. 58). Film critic Roger Ebert (1990) states that

> ... as someone who has seen virtually every Hollywood movie made over the past two decades, I've noticed that the MPAA's tolerance level for violence has grown steadily more permissive...These days, sex and nudity seem to be more offensive to the ratings board than violence and profanity. (p. 31)

Ebert (1990) goes on to suggest that the MPAA may be responding to pressure from major Hollywood studios that depend on action/adventure movies for their profits. These major studios also pay the MPAA's bills.

The original three ratings adopted by the MPAA were G, PG and R. The MPAA added the PG-13 rating in 1984 following complaints about violence in the PG -rated *Indiana Jones and the Temple of Doom* (Tusher, 1984). In response to the controversy over the adult themes in *Tie Me Up! Tie Me Down!*, the MPAA added the NC-17 rating for those films that are too mature for an R-rating but are not clearly pornographic

(*Flicks Nix*, 1990). The current ratings are as follows:

> **G (General audiences):** All ages admitted
> **PG (Parental guidance suggested):** Some material may not be suitable for children.
> **PG-13 (Parents strongly cautioned):** Some material may be inappropriate for children under 13.
> **R (Restricted):** Under 17 requires accompanying parent or adult guardian.
> **NC-17 (No children under 17):** Under 17 not admitted.
> (Dawidziak 1992, p. D1)

Since the MPAA never copyrighted the X-rating, any film that is denied an NC-17-rating may voluntarily adopt an X-rating or be released as "unrated" (Ebert 1990).

How well does the MPAA apply its ratings to the films it rates? Do MPAA ratings really give parents useful information regarding the presence of violence in films, or are the critics right? In order to answer this question, a secondary analysis was performed on 915 films (38 rated G, 252 rated PG, 148 rated PG-13, 469 rated R, and 8 rated X) all released between 1984 and 1989. A violence count for each film was obtained from published lists in National Coalition on Television Violence Newsletters. The NCTV's Violence Numerical Scores are actual counts of physically violent acts, hostile acts committed with the intention of hurting another person. The NCTV uses a weighting system so that minor acts of violence, such as an angry push or shove, count very little (1/3 of an act of violence). Violence with serious consequences, such as an attempted murder, murder, rape or suicide count as somewhat more than a standard act of violence (1 2/3 acts of violence). The NCTV does not differentiate between comic

and dramatic contexts. (NCTV, personal communication, 1983).

Using the MPAA rating as the independent variable and the NCTV violence count as the dependent variable, a single factor analysis of variance was performed. The results of the ANOVA indicated that there was a significant difference in the amount of violence in the films when the films were divided into categories according to MPAA rating ($F = 13.1757$, $df = 914$, $p = .0000$). A follow-up t-test indicated that R-rated movies contained significantly more violence (mean = 32.24 acts) than G (mean = 12.32 acts), PG (mean =19.02 acts), and PG-13 (mean = 18.27 acts) rated films. But there was no significant difference in the amount of violence in G, PG, and PG-13 -rated films. There were too few X-rated films in the sample to provide meaningful analysis, however, it is interesting to note that the eight X-rated films contained an average of 2.75 acts of violence, lower than any other category. It should also be noted that there were extremely large ranges of violence counts in each category of film except for X. G-rated films ranged from 0-62 acts of violence, PG- rated films ranged from 0-137 acts, PG-13-rated films ranged from 0-160 acts of violence, and R-rated films ranged from 0-273 acts of violence.

The results indicate both good and bad news for the MPAA. While the ratings do indicate that R-rated movies are likely to be more violent, and thus less suitable for children, than G, PG and PG-13-rated films, the MPAA ratings give little guidance as to the violence in the latter three categories. The extremely large ranges of acts of violence

in each category and the lack of differentiation among G, PG and PG-13 ratings means that a concerned parent really cannot glean much meaningful information as to the level of violence in a film based on the MPAA rating. This demonstrates the danger inherent in trying to blend too many different content elements into the same rating. The rating becomes ambiguous. It may also demonstrate the danger in using a violence counting technique that does not consider context. It is possible that much of the violence in G and PG -rated films is of a humorous, slapstick nature. For example, one film with an extremely high violence count was Jim Henson's *Labyrinth*, a film where the most violent act is an exploding muppet.

This problem with MPAA film ratings should be instructive for those developing television violence ratings. It is important that any such rating measure one and only one aspect of content: violence. If there is a desire to warn viewers of any content other than violence, then it will be better to avoid a simple, letter-based, rating and use longer, more information-rich labels. A good example of such labels appears in *TV Guide Magazine* in the descriptions of pay-cable movies that appears at the end of each issue. These descriptions provide a brief paragraph explaining the plot of the movie, the MPAA rating if available, and specific warnings of the presence of nudity, strong language, sexual situations, adult themes, and violence. This is exactly the type of information a parent, or other viewer, needs to determine the suitability of a program.

Conclusion

How useful are violence ratings and how far can we go? Violence ratings are potentially quite useful for the concerned viewer if the temptation to blend a violence rating with other content elements can be avoided. The ratings will be less useful for government agencies that want to use such ratings to restrict access to violent programming or judge the performance of broadcast stations.

Over the years the courts have made it quite clear that the government may not use voluntary ratings in an effort to restrict First Amendment freedoms. Voluntary means just that - voluntary. A broadcaster may not be prevented from engaging in voluntary self-censorship nor may they be punished or reprimanded for choosing not to engage in such behavior.

It may be possible to mandate violence ratings, but such action would no doubt invite extensive judicial review. The government will have to develop a definition of violence that is not vague or overbroad, that will satisfy both the courts and the critics; a formidable challenge in and of itself! If such a definition can be developed, then there would likely be no constitutional objection to requiring broadcasters and cablecasters to use ratings. However, if the government wishes to use those ratings itself, either to zone violent programming or evaluate the performance of broadcast stations, then it will face further First Amendment challenges.

The example of zoning indecency in broadcasting demonstrated that, at the very least, the government would have to show a compelling need to protect children from

violent programming, provide evidence that the "safe harbors" it proposes for violent programming have some real relationship to childrens' actual television viewing, demonstrate that its actions are merely to help parents control their childrens' viewing not intended either in motive or effect to restrict the First Amendment rights of adult viewers, and show sensitivity to the First Amendment rights of the creators and distributors of violent programs.

It seems that the best solution for the broadcasters and cablecasters is to adopt some form of violence rating or label voluntarily, and, working with the viewing public, refine the system to the point where it is of the most use to viewers and least burdensome to broadcasters. Unfortunately, broadcasters and cablecasters may be reluctant to do this of their own accord out of fear of an economic backlash. Critics and viewers may condemn a network if too many of its programs contain violence warnings. Advertisers may feel pressured not to advertise during programs that contain such warnings. And there is always the fear that the government will use such warnings, legally or not, to judge the performance of the licensed stations. It seems unlikely that the industry will act voluntarily.

How far the government can go in pressuring the industry into taking voluntary action is uncertain. A review of *Writers Guild v. FCC* (1988) suggests that the government must tread a very narrow line between "acceptable leadership" and "serious misconduct." If the only thing gained by such an effort is a definitive court ruling as to

the limits of government influence on the decisions of private industry, then that's a worthwhile thing to know. It would be unfortunate, however, if the attention paid to the issue of violence ratings were to distract us from the more urgent issues regarding violence in our society: poverty, drugs and the disintegration of the American family.

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