

# Facing the Future: An Analysis of the Television Ratings System

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## I. INTRODUCTION

When the first television-ratings icon flashed upon the television screen on January 1, 1997, it was just the beginning of the debates over television ratings. Even after many months of discussions, proposals, and hearings, including a modification of the original system, the controversy remains strong today.

The newly revised system, which took effect on October 1, 1997, is a combination of an age-based system and a system based on content. One of six ratings categories (TV-Y, TV-Y7, TV-G, TV-PG, TV-14, and TV-MA), similar to the categories used by the current movie ratings system, is attached to each television program, not including sports or news. Following the ratings category, specific program content will be listed, if applicable. Categories of program content are designated as follows: V—violence, L—language, S—sex, D—suggestive dialog, and FV—fantasy violence. As a result, a show that is rated TV-PG S denotes that in addition to requiring parental guidance, the show contains content of a sexual nature. Additionally, if a program is rated TV-14 V, the level of violence contained within the program makes it unsuitable for children under 14.

This newly revised system is confusing, and fails to adequately, and specifically, depict the level of sex or violence in the respective television program. Additionally, when used in conjunction with V-chip technology, it does not give parents the flexibility needed to block

out the types of programming they desire. Conclusively, a simpler, but more comprehensive system is needed.

This Comment begins with an examination of the current state of the television ratings system. Included in this section will be a discussion of the advent of the current system, including the key players involved in its creation. Part III will examine the history of television, as well as the history of broadcast regulations, from the Radio Act of 1927 to the most recent Telecommunications Act of 1996. Part IV will discuss the controversy surrounding the television ratings system. This section will give a historical perspective of the ratings controversy, including a detailed discussion of the network, interest group, parental, and congressional responses to the ratings system. Included in this section is a discussion of the numerous hearings and talks that have led to the system's most recent refinement. Part V examines the process for revising the originally proposed ratings system. Included in this section is information regarding White House involvement in the compromise, as well as industry response to this involvement. Finally, Part VI addresses specific problems with the current ratings system, and examines suggested solutions. Additionally, a new system is proposed; it was created to address the concerns of those involved on all sides of the controversy.

## II. CREATING THE TELEVISION RATINGS SYSTEM

Much thought and effort has gone into establishing the current television ratings system. Similar to the movie ratings system, television ratings provide advance information to parents, enabling them to make judgments about the types of television programs that they want their children to watch. Ultimately, the goal of the system is to give consumers, most notably parents, more information upon which to base their viewing decisions.

### A. *Advent of the Current System*

The creation of the current television ratings system did not occur overnight. Rather, it is the result of years of talks and discussions. In 1975, when Representative Edward J. Markey (D-Mass.) was a state representative, he was deeply affected by a heinous crime that occurred in Boston. At the hands of a street gang, a homeless man was doused

with gasoline and burned to death. Markey recognized that this incident paralleled a gruesome scene from a television program that had aired earlier in the week.<sup>1</sup>

Because of the acute similarities between the crime and the television program, a debate began as to who was at fault. Many placed blame on the parents of the kids in the street gang who let their children watch such a violent television program. Others, including Markey, felt that it was the responsibility of the broadcasters of the program. This event sparked Markey to begin what would turn out to be his twenty-year crusade against violence on television.<sup>2</sup>

Fourteen years later, in 1989, a similar occurrence in Canada led to significant technological advances that would have a great impact on Hollywood. Before turning the gun on himself, a man walked into an engineering school in Montreal and shot many students to death. Police later found numerous violent videos in the gunman's apartment.<sup>3</sup> Tim Collings, a Canadian engineer and professor at Simon Fraser University, heard of the occurrence and was outraged. "It seemed to me that there was no way you would ever convince the industry to tone things down . . . ," Collings said, "[but] surely we can develop something . . . ."<sup>4</sup> It was this experience that motivated Collings to develop what is known today as the V-chip. Originally called the Vyou Control (a play on words), Collings's device, which could be attached to any television set, gave consumers—to wit, parents—the freedom to block out any programming encoded with a rating they chose not to have viewed in their home.

Originally introduced at the G-7 Technology Conference in Brussels in February of 1995, the V-chip sparked great interest. When Washington became aware of the device, Markey and other politicians began advocating the creation of a ratings system in the United States that could be used in conjunction with the V-chip. Ultimately, the Telecommunications Act of 1996 was passed. It required that

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<sup>1</sup> Sheryl Stolberg, *TV Focuses on the Other Set of Ratings*, L.A. TIMES, Feb. 27, 1997, at E1.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

television sets be equipped with V-chip technology by February 1998. The 1996 Act also mandated that a voluntary ratings system "be developed to disclose 'sexual, violent or other indecent material about which parents should be informed before it is displayed to children.'"<sup>5</sup>

Talks to create a television ratings system, which was to be used with the V-chip technology, began at a White House summit on February 29, 1996, between President Clinton and television executives.<sup>6</sup> Politicians threatened that if a voluntary system was not created, some sort of government-imposed system would be enacted. As a result, Jack Valenti, president of the Motion Picture Association of America (MPAA), the organization that oversees the current movie ratings system, convinced the industry to create a voluntary ratings system.

Controversies over the proposed television ratings system emerged immediately. Originally, television broadcasters and others associated with the television industry completely opposed the introduction of such a ratings system. However, threats by politicians regarding a government-imposed system gave the television industry the motivation it needed to create its own voluntary system.

#### B. *Key Players in Creation of the System*

A group of television executives and producers known as the Television Parental Guide Implementation Group was assembled in 1996 to create the new system. Led by Jack Valenti, the industry-assembled group included Eddie Fritts, president of the National Association of Broadcasters (NAB), and Decker Anstrom, president of the Nation Cable Television Association (NCTA).<sup>7</sup> Given roughly a year with which to work by Congress, the group's deadline for creating the system was February 1997.

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<sup>5</sup> Diane Holloway, *Starting Today, TV Programs Come with Rating*, AUSTIN AM.-STATESMAN, Jan. 1, 1997, at A1.

<sup>6</sup> Stolberg, *supra* note 1.

<sup>7</sup> Alicia Mundy, *Valenti's Presidential Powers: By Getting Bill Clinton to Support His TV Ratings System, Jack Valenti has Foiled the Naysayers—for Now*, MEDIAWEEK, Jan. 6, 1997, at 15.

On December 19, 1996, roughly two months ahead of schedule, the new system was unveiled at a briefing before the National Press Club.<sup>8</sup> The system immediately met opposition from lobbyists and special interest groups, including the Center for Media Education, the Parent Teacher Association (PTA), and numerous psychologists and pediatricians.<sup>9</sup> The system established by Valenti's group was an age-based system similar to the current movie ratings system, which was also established by Valenti approximately 28 years ago. Under the proposed television ratings system, ratings would be broadcast as an icon for fifteen seconds at the beginning of each half-hour of programming. The icon, which designated the program's rating, was to be placed in the upper left-hand corner of the television screen. The system consisted of six separate ratings categories. They are as follows:

TV-Y: Suitable for all children, including very young children ages 2-6

TV-Y7: Directed to older children age 7 and above. These programs may include mild physical or comedic violence

TV-G: Designated for viewers of all ages and generally suitable for children, although not designated specifically for children

TV-PG: Parental guidance is suggested for programs that may contain some material that parents will find unsuitable, including coarse language, limited violence, and suggestive sexual dialogue or situations.

TV-14: Parents are strongly cautioned that the program may contain material unsuitable for children under the age of 14, including adult themes, sexual content, strong language, and more intense violence.

TV-MA: Mature audiences only for this program, which is designated for adults and is unsuitable for children under the age of 17. The program may contain adult themes, profane language, graphic violence, and explicit sexual content.

Although similar to the current movie ratings system, Valenti's system faced immediate opposition from critics. Specifically, opponents felt that the ratings were too vague. They argued that more information regarding content was needed. Despite such opposition

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

and criticism, the first television ratings icon premiered on January 1, 1997.

### III. THE HISTORY OF TELEVISION AND AN OVERVIEW OF REGULATIONS

Throughout the history of television, broadcasters have been faced with government regulation. As originally enacted, much of this regulation affected only radio broadcasts. Later, as television evolved, so did the regulations. Today, much emphasis is put on broadcasting standards, including much of the recent legislation was created with children in mind. Toward this end, Congress has attempted to limit the types of programming that can be broadcast at times when children are likely to be watching.

#### A. *Early Regulations*

It is unlikely that Russian-born Vladamir Kosma Zworykin could have fathomed the amount of regulation to come when he invented the iconoscope, the first television pickup device, in 1923.<sup>10</sup> There have been regulations imposed upon broadcast media since even before the first regularly scheduled television program in the United States in 1928 by WGY in Schenectady, New York.<sup>11</sup> One of the earliest examples of these regulations is the Radio Act of 1927, which restricted the broadcasting of indecent programming. Originally, section 29 of the Radio Act of February 23, 1927, provided:

Nothing in this Act shall be understood or construed to give the licensing authority 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 licensing authority which shall interfere with the right of free speech by means of radio communications. No person within the jurisdiction of the United States shall utter any obscene, indecent, or profane language by means of radio communications.<sup>12</sup>

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<sup>10</sup> Alphastar Technology, *A Condensed History of Television* <<http://www.alphastar-tv.com/tvhist.html>>; see also History of Film, Video, and Television, *Brief History of Film, Video, and Television Technology* <<http://www.soundsite.com/history/filmhis.html>>.

<sup>11</sup> *Id.*

<sup>12</sup> *FCC v. Pacifica Found.*, 438 U.S. 726, 735 (1978) (quoting 44 Stat. 1172-73).

Although section 29 is, in essence, an anti-censorship provision, it is "inapplicable to the prohibition on broadcasting obscene, indecent or profane language."<sup>13</sup> Ultimately, Congress intended to allow freedom of broadcasting as long as it was not obscene, indecent, or profane.

It was Congress' intent to give meaning to both the anti-censorship provision and the provision against indecency. As a result, in 1934, Congress reenacted both provisions by means of the Communications Act. Additionally, courts have concluded that regulatory agencies, like the Federal Radio Commission (FRC) and its successor, the Federal Communications Commission (FCC), have the "undoubted right" to consider a broadcaster's past programming content when they consider a licensee's renewal application. Specifically, it was noted that this behavior "is not [considered] censorship."<sup>14</sup> Ultimately, the Supreme Court has concluded that "[i]n considering the question whether the public interest, convenience, or necessity will be served by a renewal of [licensee's] license, the commission has merely exercised its undoubted right to take note of [licensee's] past conduct, which is not censorship."<sup>15</sup>

Fourteen years later, in 1948, the criminal code was revised to include provisions that had been located in other titles of the United States Code. Most notably, the anti-censorship provision and the prohibition against indecent broadcasts were codified. The anti-censorship provision was codified as 47 U.S.C. §1464.<sup>16</sup> It states that "whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined under this title or imprisoned not more than two years, or both."<sup>17</sup> Additionally, the prohibition against obscene, indecent, and profane broadcasts was removed from the 1934 Act and codified as 18 U.S.C. §326.<sup>18</sup>

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<sup>13</sup> *Id.* at 738.

<sup>14</sup> *Id.* at 736 (quoting *KFKB Broad. Ass'n v. Fed. Radio Comm'n*, 47 F.2d 670 (1931)).

<sup>15</sup> *Id.* (quoting *KFKB*, 47 F.2d at 672).

<sup>16</sup> *Id.* at 734 (citing 47 U.S.C. § 326 (amended 1948)).

<sup>17</sup> 18 U.S.C. § 1464 (1994).

<sup>18</sup> *Pacifica*, 438 U.S. at 738 (citing 62 Stat. 769, 866).

### B. *Recent Regulations*

As America entered the second half of the twentieth century, televisions became staple items in most homes. With the growing popularity of televisions, broadcasters have come under strict scrutiny to limit the types of programming that they show. Moreover, a handful of regulations enacted within the past decade have significantly affected the current state of television. Three specific regulations have had the most effect. These regulations are the Children's Television Act of 1990, the Public Telecommunications Act of 1992, and the Telecommunications Act of 1996.

The Children's Television Act, enacted by Congress on October 18, 1990, established standards for commercial television broadcast licensees. Congress determined that, "as part of their obligation to serve the public interest, television station operators and licensees should provide programming that serves the special needs of children."<sup>19</sup> Congress further stated that when considering whether to renew a broadcast license, the FCC must determine the extent to which licensees have served the educational and informational needs of children.<sup>20</sup>

Protecting the youth of America from indecent programming is a great concern to Congress. Many members of Congress have expressed their concerns regarding the overall quality of programming available to children. Consequently, the Public Telecommunications Act of 1992, enacted August 26, 1992, addressed these concerns and helped further efforts to provide quality programming for children. As a result of the 1992 Act, Congress prohibited indecent broadcasts outside of the established "safe harbor" hours.<sup>21</sup> Conclusively, such "indecent material" may only be broadcast between the hours of 10 p.m. and 6 a.m., when children are least likely to watch.<sup>22</sup>

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<sup>19</sup> Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996 (codified as amended in scattered sections of 47 U.S.C.).

<sup>20</sup> *Id.*

<sup>21</sup> See Public Telecommunications Act of 1992, Pub. L. No. 102-356, §16, 106 Stat. 949, 954 (1992) (codified as amended at 47 U.S.C. § 303 (Supp. V 1993)).

<sup>22</sup> *Id.*

The Telecommunications Act of 1996 also potentially affects the types of programming to which children will be subjected. The 1996 Act, enacted on February 8, 1996, is primarily responsible for the creation of the new ratings system.<sup>23</sup> In attempting to assist parents in controlling the types of programs their children watch, Congress required that television manufacturers equip all newly produced televisions over thirteen inches with V-chip technology.<sup>24</sup> Ultimately,

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<sup>23</sup> The Telecommunications Act acknowledges the impact of television upon children and calls for "parental choice in television programming." As 47 U.S.C. § 303 notes, under the Act, Congress made the following findings:

- (1) Television influences children's perception of the values and behavior that are common and acceptable in society.
- (2) Television station operators, cable television system operators, and video programmers should follow practices in connection with video programming that take into consideration that television broadcast and cable programming has established a uniquely pervasive presence in the lives of American children.
- (3) The average American child is exposed to 25 hours of television each week and some children are exposed to as much as 11 hours of television a day.
- (4) Studies have shown that children exposed to violent video programming at a young age have a higher tendency for violent and aggressive behavior later in life than children not so exposed, and that children exposed to violent video programming are prone to assume that acts of violence are acceptable behavior.
- (5) Children in the United States are, on average, exposed to an estimated 8,000 murders and 100,000 acts of violence on television by the time the child completes elementary school.
- (6) Studies indicate that children are affected by the pervasiveness and casual treatment of sexual material on television, eroding the ability of parents to develop responsible attitudes and behavior in their children.
- (7) Parents express grave concern over violent and sexual video programming and strongly support technology that would give them greater control to block video programming in the home that they consider harmful to their children.
- (8) There is a compelling governmental interest in empowering parents to limit the negative influences of video programming that is harmful to children.
- (9) Providing parents with timely information about the nature of upcoming video programming and with the technological tools that allow them easily to block violent, sexual, or other programming that they believe harmful to their children is a nonintrusive and narrowly tailored means of achieving that compelling governmental interest.

<sup>24</sup> Under 47 U.S.C. § 303(x):

Require, in the case of an apparatus designed to receive television signals that are shipped in interstate commerce or manufactured in the United States and that have a picture screen of 13 inches or greater in size (measured diagonally), that such apparatus be equipped with a feature designed to enable viewers to block display of

it was Congress' intent to assist parents in limiting their children's access to "sexual, violent, or other indecent" programming, and Congress recognized that parents want to be informed of such programming before it is displayed.<sup>25</sup> Based upon Collings's original design, the V-chip will be installed in television sets or cable boxes and equipped to read a code broadcast with the television program. These codes will be broadcast along the same band as closed-captioning.<sup>26</sup> In order for this code to assist parents in choosing appropriate programming, a ratings system of some kind had to be established. Specifically, the 1996 Act denotes that a "television rating code" should be developed "in consultation with the television industry."<sup>27</sup>

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all programs with a common rating, except as otherwise permitted by regulations pursuant to section 330(c)(4).

47 U.S.C. § 330(c) states:

(4) As new video technology is developed, the Commission [FCC] shall take such action as the Commission determines appropriate to ensure that blocking service continues to be available to consumers. If the Commission determines that an alternative blocking technology exists that—

(A) enables parents to block programming based on identifying programs without ratings,

(B) is available to consumers at a cost which is comparable to the cost of technology that allows parents to block programming based on common ratings, and

(C) will allow parents to block a broad range of programs on a multichannel system as effectively and as easily as technology that allows parents to block programming based on common ratings, the Commission shall amend the rules prescribed pursuant to section 303(x) to require that the apparatus described in such section be equipped with either the blocking technology described in such section or the alternative blocking technology described in this paragraph.

<sup>25</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, §551(b)-(c), 110 Stat. 56, 139-42 (codified in scattered sections of 47 U.S.C.). The Act contains a family empowerment provision that ensures that the FCC will consult with "parents, television broadcasters, television programming producers, cable operators, appropriate public interest groups and other interested individuals from the private sector." Additionally the FCC, in implementing the Act, suggested that networks reserve at least three hours per weeks for children's programming. *See In the Matter of Policies and Rules Concerning Children's Television Programming, Notice of Proposed Rulemaking*, 10 F.C.C.R. 6308 (1995).

<sup>26</sup> *Id.*

<sup>27</sup> 47 U.S.C. § 303(w)(2).

#### IV. THE CONTROVERSY OVER THE PROPOSED TELEVISION RATINGS SYSTEM

Soon after its inception, the television ratings system faced opposition. Opponents argued that the system was not sufficient to address the needs of the public and that it did not give parents enough information upon which to base their viewing decisions. Opponents argued that the system was not as useful as it could be, since it did not address the programming content of each individual show. They argued that some sort of content-based system would be more helpful.

The creators of the age-based system, as well as broadcasters and executives in the television industry, alternatively argued that the system had been successful. They stressed that the new system was strictly a guide and was not a substitute for parental control. Further, creators warned of the impracticality of content-based ratings. "We gave intense thought to ratings for sex, violence and language and concluded that they wouldn't work," said Valenti of his group's methods in creating their system.<sup>28</sup> Valenti continued:

An 'S' rating would have to be applied to *Dr. Quinn, Medicine Woman* which has been praised for its family values (sex in this program is mild to almost nonexistent but for accuracy the rating would have to be applied). 'S' would also have to be assigned to Sharon Stone's film, *Basic Instinct*. How would parents, unaware of the content of these shows, make a distinction between the two? A 'V' rating would be attached to the movie *Natural Born Killers* but also to *National Geographic's Explorer* and *The Three Stooges*. How are parents to sort out the violent content in those programs?<sup>29</sup>

According to industry officials, content-based ratings are potentially confusing and misleading to viewers. Additionally, the sheer abundance of daily programming would make it impractical to impose such a system as some households receive over 1,500 hours of programming each day.<sup>30</sup> Moreover, the age-based ratings, according to industry officials, do take into consideration the content of each

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<sup>28</sup> Jack Valenti, *The Television Ratings System is Simple and User-Friendly*, L.A. TIMES, Jan. 3, 1997, at B9.

<sup>29</sup> *Id.*

<sup>30</sup> Holloway, *supra* note 5.

show. Valenti stated, "[w]hen critics of TV parental guidelines assail us for not including content, they are wrong, clearly, provably wrong."<sup>31</sup> Valenti noted that the ratings do include assessments about content, but that those judgments are not publicly detailed because the system must be easy to understand.<sup>32</sup> Additionally, Valenti stressed that the age-based system was a new system and that a period of time would be needed to determine its usefulness. He was confident that the public, as well as the Senate committee overseeing the ratings systems, "will see what we are doing is right."<sup>33</sup> He also noted that "[i]t's going to take a year or two for this system to become familiar with American viewers."<sup>34</sup> President Clinton agreed that it would take some time for the new system to work. At a December 13, 1996, news conference, Clinton called for giving the industry's age-based system "ten months to work."<sup>35</sup> If the ratings proved "inadequate, or there needs to be some more content in the systems," Clinton stated, "then, after a ten month test period, we'll be able to make that argument."<sup>36</sup>

#### A. Network Response

Despite Valenti's reassurances and President Clinton's support, two broadcasters, the Public Broadcasting System (PBS) and Black Entertainment Television (BET), indicated that they would not utilize the television ratings system. PBS president Ervin Duggan stated that he felt that the ratings system did not go far enough in providing parents with useful information. "I see no reason to embrace the ratings system devised by commercial television," he said. "It's imprecise—virtually everything is rated PG—and it's grudging in the

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<sup>31</sup> Jeff Barker, *TV Ratings Creators Go to Bat*, ARIZ. REPUBLIC, Feb. 27, 1997, at A1.

<sup>32</sup> *Id.*

<sup>33</sup> Sheryl Stolberg, *Early Analysis Calls TV Ratings Code a Failure*, L.A. TIMES, Feb. 12, 1997, at A15.

<sup>34</sup> Teri Sforza, *TV Ratings Still a Puzzle for Parents*, ORANGE COUNTY REG., Jan. 13, 1997, at A01.

<sup>35</sup> Jane Hall, *TV Executives Walk Out of Talks on New Ratings Plan*, L.A. TIMES, June 20, 1997, at A14.

<sup>36</sup> *Id.*

information it provides to parents."<sup>37</sup> Additionally, he stated that PBS already provides content advisories on programs it deems necessary.

BET also did not follow the ratings system. BET president Robert Johnson stated that his cable service, which reaches 45 million homes, would boycott the system because the network felt that the ratings system was adopted in response to government pressure and that it violated the industry's First Amendment rights. "The broadcasters caved on [ratings] without so much as a nod to the First Amendment," Johnson said. "They looked at their business interests . . . and decided to sacrifice free speech."<sup>38</sup>

Home Box Office (HBO) and other premium cable stations, including Showtime, Cinemax, and The Movie Channel, faced a different situation. "We are still trying to figure out how to integrate these new ratings with what we've already been doing," said HBO spokesman Chris Donlay.<sup>39</sup> Valenti's age-based ratings system provided substantially less information than the ratings system already used by the channels. Specifically, the premium cable channels used a ten-point viewer advisory scheme that informed viewers of the content of their programming. The categories and abbreviations used by the premium channels included the following: AL—adult language, GL—graphic language, MV—mild violence, V—violence, GV—graphic violence, N—nudity, BN—brief nudity, AC—adult content, SC—strong sexual content, and RP—rape. Because of the more comprehensive nature of the ten-point scheme, many of the premium channels continued to use it.<sup>40</sup>

### B. *Interest Group Response*

The creators of the ratings system came under attack from other groups as well. Arguments centered around the fact that not only did the ratings not give enough information to parents, but also were

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<sup>37</sup> Jane Hall, *PBS, BET Dig In Against TV Ratings*, L.A. TIMES, Mar. 31, 1997, at F1.

<sup>38</sup> *Id.*

<sup>39</sup> John Carman, *Ratings Get a 'C' for Confusing: New System Makes Almost No Sense*, S.F. CHRON., Jan. 9, 1997, at E1.

<sup>40</sup> *Id.*

inconsistent, and many times shows were incorrectly rated. The most frequently heard argument from critics, including numerous special interest groups, was that the ratings did not provide enough information.<sup>41</sup>

These interest groups argued specifically that the ratings did not provide sufficient information regarding content. One group of psychiatrists compared the current ambiguous system to the labeling on a cereal box.

When a parent goes to the supermarket to buy a box of cereal for their child, they pick up the box . . . to see what is contained inside . . . . The label does not say, 'This package *may* contain some oats, *may* contain some rice, *may* contain some wheat, and it *might* be nutritious for you.' Quite the contrary. Simply and precisely, the package indicates what is inside.<sup>42</sup>

"The advantages of a content-based system are plain — it's objective instead of subjective; it describes instead of judges," stated Lois Salisbury, president of Children Now, a California-based advocacy group.<sup>43</sup> A content-based system would also give parents sufficient information from which to make informed decisions as to what type of programming their children should watch.

### C. Parental Response

In a recent study of a randomly selected week of television programming, it was found that roughly two-thirds of prime-time shows were rated TV-PG.<sup>44</sup> Opponents of the system complained that the "sea of PG's" ultimately rendered the ratings meaningless.<sup>45</sup> "If this is [the] ratings system, I'm going to have to turn off the TV set completely," said Carrie Flick, mother of three. "Everything on TV is

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<sup>41</sup> Jane Clifford, *For Two Families, TV Ratings System Just Isn't Quite Clicking Yet*, COPLE NEWS SERVICE, Feb. 16, 1997, available in LEXIS, News Library, Curnws File.

<sup>42</sup> Barker, *supra* note 31 (emphasis added).

<sup>43</sup> *Id.*

<sup>44</sup> Brian Lowry, *Rating TV's New Order: The Early Verdict: Guidance Suggested*, L.A. TIMES, Jan. 3, 1997, at F1.

<sup>45</sup> Jane Hall, *TV Ratings Don't Play Here, Peoria Says*, L.A. TIMES, May 20, 1997, at A1.

rated PG."<sup>46</sup> Other parents stated that they do not want to know merely that a program is rated TV-PG, but rather why the program is rated TV-PG.<sup>47</sup>

The ratings, it was argued, did not do enough to designate why a specific show received a particular rating. A "TV-PG" rating designated that a specific show may contain some material that parents would find unsuitable, including coarse language, limited violence, and suggestive sexual dialogue or situations. The equivocal nature of the system irritated many parents.<sup>48</sup> They argued that the ambiguous language made the ratings worthless.

Many parents also raised arguments about inconsistencies and incorrect ratings. Some parents pointed to the fact that Jay Leno's *Tonight Show* on NBC was rated TV-14, while David Letterman's *Late Show* on CBS was rated TV-PG, as proof that the ratings were inconsistent. Others questioned why *Chicago Hope* was rated TV-14, while *ER* was rated TV-PG.<sup>49</sup> Some programs which were rated TV-G included words and phrases such as "ass" and "bite me," as well as sexual jokes about breasts.<sup>50</sup> Parents argued that this type of programming should not be given a TV-G rating. Additionally, some pointed to the CBS series, *Orleans*, which received a TV-14 rating, as a show with an incorrect and inconsistent rating. In one episode, which parents argue should have received a TV-MA rating, a stripper demonstrates her techniques in a courtroom, a nude woman is thrown off a bridge with a block tied to her leg, and a lawyer has a steamy romance with his cousin.<sup>51</sup> Many argued that allowing the industry to rate its own shows is one reason for the inaccurate and inconsistent ratings.

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<sup>46</sup> *Id.*

<sup>47</sup> Clifford, *supra* note 41.

<sup>48</sup> Teri Sforza, *Rating System is Just So Much Alphabet Soup for Viewers, Experts*, ORANGE COUNTY REG., Jan. 13, 1997, at A6.

<sup>49</sup> Carman, *supra* note 39.

<sup>50</sup> Stolberg, *supra* note 33; *see also* Stolberg, *supra* note 1.

<sup>51</sup> Hal Boedeker, *Parental Wariness Suggested for New TV Ratings System*, FRESNO BEE, Jan. 8, 1997, at E6.

#### D. Congressional Response

Because of the sheer volume of complaints it received regarding the television ratings system, Congress took it upon itself to investigate and address the issue. Through a series of hearings and legislation, Congress helped to shape negotiations regarding the adoption of a revised system.

##### 1. February 27, 1997 Hearing

To further examine the current system and the challenges against it, Congress called for a hearing to be held on February 27, 1997. The hearing would bring together representatives on all sides of the issue. Eleven members of Congress testified at the hearing and asked industry officials to "hear the pleas" of lawmakers for a content-based system.<sup>52</sup> Numerous critics testified that the current system was inadequate. One opponent of the ratings system, Joan Dykstra, the president of the National PTA called it "confusing and insufficient."<sup>53</sup> She felt that nothing less than labeling sex, violence, and language would be sufficient.<sup>54</sup>

Valenti, speaking on behalf of the industry, was "puzzled by all th[e] criticism for a system that ha[d] been in place for [such a short period]."<sup>55</sup> Nonetheless, creators of the age-based system continued to defend their system. In support of their position, Valenti referred to a poll conducted by the Pew Research Center in Washington, D.C.. The Pew Center found that 27% of all respondents said the ratings were very helpful, while an additional 42% felt that the ratings were somewhat helpful.<sup>56</sup> This poll, argued Valenti, proved that many people benefited from the ratings system. Further, he addressed the

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<sup>52</sup> Jane Hall, *Senators Push Content-Based TV Ratings*, L.A. TIMES, Feb. 28, 1997, at A4.

<sup>53</sup> Heather Fleming, *TV 'Open to Ideas' on Program Ratings; Valenti Retreats as Senator Attack and Legislation Threatens; Motion Picture Association of America President Jack Valenti*, BROADCASTING & CABLE, Mar. 3, 1997, at 8.

<sup>54</sup> *Id.*

<sup>55</sup> Jane Hall, *Congressmen Lining Up to Oppose TV Ratings System*, L.A. TIMES, Feb. 15, 1997, at F1.

<sup>56</sup> Stolberg, *supra* note 1.

concerns of parents about the content of today's programs. Specifically, he noted that not a single show on prime-time television, if it were presented to the MPAA, would be rated higher than PG-13.<sup>57</sup> Throughout his testimony before Congress, Valenti defended his group's system. He conceded, however, that it was not perfect and that "[s]ome shows are misrated."<sup>58</sup>

Despite Valenti's plea to give it some time to work, the age-based rating system continued to receive congressional criticism. The Senate Commerce, Science and Transportation Committee voted 19-1 for Senator Ernest Hollings' (D-S.C.) bill, which required broadcasters to abandon the age-based system for a content-based system, or otherwise restrict violent programming to late-night hours when children are less likely to watch.<sup>59</sup> The "safe-harbor" measure, which was also backed by Senator Kay Bailey Hutchison (R-Tex.) and Majority Leader Trent Lott (R-Miss.), was an attempt to get industry officials to understand the "depth of opposition to the present system."<sup>60</sup> Representative Markey introduced a similar bill in the House,<sup>61</sup> while Senator Daniel R. Coates (R-Ind.) sponsored a bill that conditioned the renewal of a broadcaster's license upon providing detailed content-specific information about their programming.<sup>62</sup>

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<sup>57</sup> *Id.*

<sup>58</sup> Hall, *supra* note 45.

<sup>59</sup> Dori Meinert, *Attn: Peoria*, COPLEY NEWS SERVICE, May 7, 1997, available in LEXIS, News Library, Curnws File; see also Jane Hall, *TV Industry Considers Adding Content Labels*, L.A. TIMES, Mar. 12, 1997, at F2.

<sup>60</sup> Jane Hall, *Company Town: Senator to Call for Vote on Bill to Limit TV Violence*, L.A. TIMES, Apr. 30, 1997, at D4; see also Catalina Camia, *Senate Panel Seeks More Detailed TV Ratings*, DALLAS MORNING NEWS, May 2, 1997, at 8A.

<sup>61</sup> Lawrie Mifflin, *Senator Tells Network To Revamp New Ratings*, N.Y. TIMES, June 4, 1997, at C13.

<sup>62</sup> Kinney Littlefield, *To Be Continued. . . : The Current Controversial Television Ratings System is Not the Final Word*, ORANGE COUNTY REG., June 8, 1997, at F7.

## 2. Peoria Hearing

Interest groups and parents have petitioned Congress and the FCC to reject the age-based system.<sup>63</sup> Surveys, too, have established dissatisfaction with the ratings system. A *USA Today* poll indicated that 81% of the 22,000 respondents said that they do not trust the industry to rate its own shows. Additionally, 65% felt that the ratings should include a combination of content and age.<sup>64</sup>

In order to get a true representation of what parents thought of the system, as well as to determine whether the stance taken by the House would be similar to that taken by the Senate, Congress called for another hearing on the matter. This hearing, unlike traditional congressional hearings, took place in Peoria, Illinois, on May 19, 1997. It was Congress' hope to get the community's opinion on the ratings system. "We've heard from members of Congress and lobbyists in Washington on this issue—it's time to hear from the American public . . . . The purpose of this Peoria meeting is to facilitate a dialogue between the industry and the American public over what changes should be made in the system," said Representative W.J. "Billy" Tauzin (R-La.), chair of the House Commerce Subcommittee on Telecommunications, Trade and Consumer Protection, which organized the Peoria town-hall-style hearing.<sup>65</sup>

Three hundred randomly selected families in Peoria were asked to participate in the hearings. They were instructed to watch a week's worth of prime time programming so that they could offer their opinions and suggestions to the congressional subcommittee. The creators of the system – Valenti, Fritts, and Anstrom – also attended the hearing on behalf of the entertainment and television industry. Moderating the hearing, in which roughly ten House members were present, was Sander Vanocur, the host of the History Channel's *Movies in Time* and former NBC White House correspondent.<sup>66</sup>

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<sup>63</sup> Larry Williams, *All Sides Want Parents to Address TV Ratings*, HOUSTON CHRON., Apr. 20, 1997, at A15.

<sup>64</sup> Jane Hall, *Peoria to Tell How Well Television's New On-Air Ratings System Plays*, L.A. TIMES, May 19, 1997, at A4.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

The hearing began with seventeen-year-old Scott Olson inquiring about the method used by industry officials to decide on particular ratings. Commenting on a previous TV-PG rated *Seinfeld* episode, Olson stated, "it was basically about orgasm."<sup>67</sup> This comment set the tone for a hearing that sent a clear message to industry officials that parents were not completely satisfied with the system. They felt some refinements were necessary. NBC senior vice president for broadcasting standards and content policy, Rosalyn Weinman, agreed, stating that "[t]here is no question that more shows need to be rated TV-14 . . . . That was the message of the parents of Peoria about the ratings system, and I think there will be and should be re-rating of some shows."<sup>68</sup> Publicly, the views of the creators of the ratings system remained steadfast. "I didn't hear anything tonight that we haven't heard before," said Valenti, in reference to the Peoria hearing.<sup>69</sup> Privately, however, industry officials seemed more willing to compromise.

#### V. REVISING THE TELEVISION RATINGS SYSTEM

In response to public sentiment toward the ratings system, changes seemed inevitable. The industry, through its oversight monitoring board, began reviewing complaints regarding the rating system. Additionally, industry officials and lobbyists met privately on more than one occasion with key members of Congress to revamp the system. In one instance, it appeared that the networks may have been ready to compromise and include some sort of content rating. Tony Podesta, representative for the networks, discussed with Senator Kent Conrad (R-S.D.) and Senator Joseph Lieberman (D-Conn.) the possibility of adding content ratings for violence, sex, and language (V,

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<sup>67</sup> Elaine Hopkins, *Broadcasters Feel Heat from TV Ratings Hearing*, COPLEY NEWS SERVICE, May 20, 1997, available in LEXIS, News Library, Curmws File.

<sup>68</sup> Jane Hall, *More TV-14 Ratings Seen After Outcry*, L.A. TIMES, May 21, 1997, at F4.

<sup>69</sup> Hopkins, *supra* note 67.

S, and L, respectively). Although this was a big step for the networks, the senators felt that the move was insufficient and that the ratings needed to address the specific level of objectionable content.<sup>70</sup>

### A. *Beginning of Compromise*

In anticipation of FCC public hearings which were set for June 20, 1997, Senator John McCain (R-Ariz.), chairman of the Senate Committee on Commerce, Science, and Transportation, called a June 4th, meeting between the committee and television industry representatives, including ABC, CBS, Fox, NBC, and Time Warner. In the closed-door meeting, the participants discussed restructuring the television ratings to include some sort of content information. Under the pressure of facing even stiffer requirements imposed by Congress and the FCC, some of the participants seemed more willing to compromise, including Fox and some cable channels.<sup>71</sup> In response to the meeting, though, McCain stated that "the S, V, L ratings system was neither embraced nor rejected."<sup>72</sup> Although not present at the meeting, Valenti conveyed a message of compromise and flexibility. However, he warned against any radical changes absent a complete breakdown of the system.<sup>73</sup>

Some industry representatives remained steadfast in their opposition to content-based ratings, especially NBC. Industry executives expressed concern that increased requirements would lead to First Amendment problems; they stressed that additional requirements would make the system involuntary.<sup>74</sup> Ultimately, industry officials did not speak overtly about the meeting; it was described only as "constructive."<sup>75</sup>

As the time came closer to the FCC hearings, the White House decided to step in, despite its original plan to give the ratings ten

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<sup>70</sup> Hall, *supra* note 64; *see also* Hall, *supra* note 68.

<sup>71</sup> Phil Kloer, *Channel Surfer; Senator, TV Bigwigs Huddle on Rating System*, ATLANTA J. & CONST., June 5, 1997, at 6C.

<sup>72</sup> Sara Fritz and Jane Hall, *TV Industry Pledges to Improve Besieged Ratings System*, L.A. TIMES, June 5, 1997, at A23.

<sup>73</sup> *Id.*

<sup>74</sup> Mifflin, *supra* note 61.

<sup>75</sup> Fritz and Hall, *supra* note 72.

months to work. Hoping that the White House and industry executives would come to some sort of agreement, the June 20th FCC hearing was postponed until July 14, 1997. "There is a good chance of some modification on the current system, so an FCC hearing on the current system could be a waste of effort," said Rich Taylor, a spokesman for the MPAA.<sup>76</sup>

Nonetheless, industry officials were upset when Vice President Al Gore entered the negotiations on the side of parents' groups, urging the industry to adopt some kind of content-based ratings system. Specifically, in a released statement, Gore stated that "[n]ow more than ever, it's time for the industry to put the 'V' back in the V-chip . . . . We need a 'V' to tell us when our youngest children could be exposed to violence."<sup>77</sup> As a result, industry executives immediately broke off negotiations. Officials of the NAB, NCTA, and MPAA released a brief statement saying that "due to the vice president's unwarranted intervention in the process, [they would break off all talks] until further notice."<sup>78</sup> Congress responded to the industry's withdrawal from the negotiations by informing the industry that it would promptly begin creating a tougher system to be voted into law.

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<sup>76</sup> Bob Dart, *Agreement Appears Near on TV Rating System*, AUSTIN AM.-STATESMAN, June 20, 1997, at A5.

<sup>77</sup> Hall, *supra* note 35.

<sup>78</sup> *Id.*

### B. *The Compromise for a Revised System*

Talks resumed in early July, and a compromise was close to being achieved. The industry, however, was determined to get a fair deal. In return for accepting the inclusion of content ratings within the current system, industry executives asked for a three-year moratorium on any new content-related legislation.<sup>79</sup> Once again, talks stalled. Both sides wanted to get the best deal possible. However, the television industry was quickly losing its bargaining power; opposition to the age-based system continued to grow. Not only were Congress and special interest groups fighting for reform, but also the White House expressed its concerns with the system.

Eight months earlier, Valenti had warned against any government involvement. He said, "[i]f there is any intervention by government, we are going to be in court in a nanosecond."<sup>80</sup> Valenti's threats, however, soon changed into compromise. On July 11, 1997, a compromise was reached. The new system, which took effect October 1, 1997, is a combination of the old age-based system and a content-based system. In addition to the age-based ratings, content-based symbols will be added to signify program content. The newly revised system is as follows:

**TV-Y: All Children.** This program is designed to be appropriate for all children.

**TV-Y7: Directed to Older Children.** This program is designed for children age 7 and older. It may contain intense fantasy violence—TV-Y7 FV.

**TV-G: General Audiences.** Most parents would find this suitable for all ages.

**TV-PG: Parental Guidance Suggested.** Some parents would find this unsuitable for younger children. It may contain moderate violence—TV-PG V; sexual situations—TV-PG S; infrequent coarse language—TV-PG L; suggestive dialogue—TV-PG D; or any combination thereof, such as TV-PG V S L D.

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<sup>79</sup> See Eric Mink, *More TV Labeling is on the Way – And That's Just the Start*, ST. LOUIS POST-DISPATCH, July 6, 1997, at 3B.

<sup>80</sup> *Id.*

**TV-14: Parents Strongly Cautioned.** Many parents would find this program unsuitable for children under 14 years of age. It may contain intense violence—TV-14 V; intense sexual situations—TV-14 S; strong course language—TV-14 L; intensely suggestive dialog—TV-14 D; or any combination there of, such as TV-14 V S L D.

**TV-MA: Mature Audiences Only.** This program is specifically designed to be viewed by adults and therefore may be unsuitable for children under 17. It may contain graphic violence—TV-MA V; explicit sexual activity—TV-MA S; crude indecent language—TV-MA L; or any combination thereof, such as TV-MA V S L.

In addition to noting program content, the new ratings system allows for the identification of programs that programmers deem to be of educational or informational value.<sup>81</sup> Moreover, ratings icons will be enlarged and will remain on-screen for a longer period of time.<sup>82</sup> The compromise includes a three-year trial period during which no further content-based legislation will be introduced.<sup>83</sup> The new system, like the old system, will not be applicable to sports and news.

### *C. Responses to the Revised System*

Vice President Gore praised the new ratings system. "Today, America's parents have won back their living rooms," said the Vice President at the White House.<sup>84</sup> However, as quickly as the compromise was signed, discontent emerged. Both sides began denouncing the newly revised system. Some industry officials claimed that the new system went too far. Representatives of the Writers Guild of America (WGA), the Directors Guild of America (DGA), and the Screen Actors Guild (SAG) threatened to sue to enjoin implementation of the new system, claiming that it unconstitutionally infringes upon

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<sup>81</sup> Under new FCC requirements, all local broadcast stations must eventually air three hours of children's programming each week. Television guide publishers, like *TV Guide*, denote these type of programs by labeling them 'EI.'

<sup>82</sup> David Zurawik, *Ratings Deal Signed*, BALTIMORE SUN, July 11, 1997, at 1E.

<sup>83</sup> Lawrie Mifflin, *TV Ratings Accord Comes Under Fire from Both Flanks*, N.Y. TIMES, July 11, 1997, at A1.

<sup>84</sup> *Id.*

their freedom of speech.<sup>85</sup> Further, they stated that "they had 'serious concerns about the detrimental impact the new system may have' in limiting the variety of shows made."<sup>86</sup>

Robert Iger, president of ABC, said that he did not share these creativity concerns. He said that he "would decide to [sign a television program] based on the merits of the program, not on what its potential rating was."<sup>87</sup> All industry officials obviously do not share the same view on the new ratings. NBC disagrees with the new system so much that it refused to participate in it; BET, too, did not participate in the ratings system. Despite claims that further legislation would violate the terms of the new agreement, Senator McCain threatened to back either the Hollings or the Coates bill if NBC and BET did not begin to comply with the new system.<sup>88</sup>

Although Iger has accepted the new system, he does not believe there should be any further government regulation. He said, "We (ABC) stand firmly against any attempt by the government to legislate or regulate content, [however,] I don't care to comment on whether [NBC's decision] will screw up the rest of the industry, but I don't think there's room for any legislation on these issues."<sup>89</sup> CBS, on the other hand, disagrees with NBC's decision outright, and like ABC, will fight against any further legislation. CBS's senior vice president, Martin Franks said, "I disagree with NBC's decision, but I will respect their right to make it . . . . We (CBS) will fight any legislation, period—even if it's just targeting NBC."<sup>90</sup>

On the other side, many parents' groups felt that the newly revised ratings system was merely a start, but nonetheless a step in the right direction. Parents felt that a milestone had been reached as the new ratings system debuted October 1, 1997, roughly five months before

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<sup>85</sup> Julie Hirschfeld, *Tag Team; Groups Expand TV Ratings System*, DALLAS MORNING NEWS, July 11, 1997, at 37A.

<sup>86</sup> Mifflin, *supra* note 84.

<sup>87</sup> *Id.*

<sup>88</sup> Matt Pottinger, *Ratings Don't Satisfy Senators*, HOLLYWOOD REP., July 11, 1997.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

televisions equipped with V-chip technology were to begin rolling off the assembly line.

#### D. *Legality of the System*

Like the movie ratings system,<sup>91</sup> the televisions ratings system potentially faces many legal challenges. After its introduction on October 7, 1968, the movie ratings system was immediately challenged. Many regarded the system as censorship. The ratings system, however, was not intended to rate the merits of the film or even advise adults as to which films they may wish to see;<sup>92</sup> rather, it was created to rate the film as to the suitability of viewing by children.<sup>93</sup> The same is true for the television ratings system.

The Supreme Court has addressed the censorship issue. Ultimately, the Court, invoking the First Amendment, has restricted governmental censorship of movies. In *Erzonik v. City of Jacksonville*, the Court invalidated a local ordinance that prohibited showing movies

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<sup>91</sup> The movie ratings system was originally introduced as a voluntary ratings system. Under the original system, movies were categorized in one of four categories:

G: appropriate for all ages.

M: parental guidance suggested.

R: children under a certain age not admitted without an accompanying parent or adult guardian.

X: no one under 17 admitted.

The movie ratings system has undergone much refinement since it was first introduced. The current rating categories include the following:

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 not permitted without parent or adult guardian.

NC-17: No Children Under 17 Admitted.

The MPAA no longer uses the 'X' rating. Newly released movies with an 'X' rating have not undergone viewing by the Classification and Rating Administration (CARA) of the MPAA. Rather this rating is applied by a party not associated with the MPAA.

<sup>92</sup> *Miramax Films Corp. v. MPAA*, 560 N.Y.S.2d 730, 732 (N.Y. Sup. Ct. 1990).

<sup>93</sup> *Tropic Film Corp. v. Paramount Pictures Corp.*, 319 F. Supp. 1247, 1249 (S.D.N.Y. 1970).

including nudity at drive-in theatres.<sup>94</sup> However, unlike the ordinance in *Erzonik*, which was created by a governmental entity, the movie ratings system, like the television ratings system, is a completely self-imposed, voluntary system. Further, it is merely a method for allowing parents to make viewing decisions for their children; thus, it should not be considered censorship. President Clinton supports this view. In his State of the Union Address, he noted that "when parents [are able] to control what their young children see, that is not censorship. That is enabling parents to assume more personal responsibility for their children's upbringing."<sup>95</sup>

Additionally, in *Ginsberg v. New York*, the Court upheld the constitutionality of a New York statute which made it unlawful to sell a ticket to a minor for any motion picture that depicts "nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors."<sup>96</sup> The Court, through its decision in *Ginsberg*, has provided more leeway as to classifying the suitability of a film for minors. This leeway can feasibly be extended to include the classification of television programs as well. Furthermore, Justice Brennan noted in *Roth v. United States*, that "implicit in the history of the First Amendment is the rejection of obscenity . . . ."<sup>97</sup> This view recognizes a parent's right to limit their children's access to movies and television programs that they consider obscene.

Despite inevitable challenges, the ratings themselves should not be considered censorship. They are merely a guide from which parents can make an educated decision about the type of programming they want their children to watch. Furthermore, the ratings systems are voluntary systems created by the industry. Just as producers of movies are free to distribute their film without a rating, a television network can refuse to participate in the television ratings system. It is their choice to do so. Parents also have the freedom to forbid their children from watching these unrated movies or television programs.

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<sup>94</sup> *Erzonik v. City of Jacksonville*, 422 U.S. 205 (1975).

<sup>95</sup> President Bill Clinton, State of the Union Address Before the United States Congress (Jan. 23, 1996), in WESTLAW, 1996 WL 26252.

<sup>96</sup> *Ginsberg v. New York*, 390 U.S. 629 (1968).

<sup>97</sup> *Roth v. United States*, 354 U.S. 476, 484 (1957).

## VI. PROPOSAL FOR A NEW TELEVISION RATINGS SYSTEM

Although the television ratings system—enacted July 11, 1997 and revised October 1, 1997—represents an improvement over the previous system, it still does not completely address parental concerns. Ultimately, parents need even more information on content from which to base their viewing decisions.

A. *Problems and Concerns with the Current System*

The concerns of broadcasters and industry executives, however, are not wholly unjustified. The effects of requiring a program to be rated could be costly, both economically and creatively. Economically, industry officials are concerned about losing valuable advertisers. Industry executives describe the ratings system as a "minefield for advertisers."<sup>98</sup> The American Association of Advertising Agencies is strongly opposed to the ratings system. "The more criteria you put in there [the ratings system], the more reticent companies will be to put commercials in there [television programs]," said Hugh O'Brien of Timerlin McClain, a large Southwest ad agency.<sup>99</sup> Ave Butensky, president of the Television Bureau of Advertising, does not agree. Butensky has said that in his conversations with advertisers regarding the television ratings system, most advertisers said that their decisions would not be impacted by it.<sup>100</sup> Butensky's opinion has proven to be correct. A TV-MA rating of *Shindler's List* did not sway Ford Motor Company from sponsoring the television broadcast of the uncut version of the movie. Ultimately, while some advertisers may choose the programs that they sponsor a bit more carefully, the effect on broadcasters seems to be insignificant.

Creatively, many in the industry feel restrained by the ratings system. In a joint statement, WGA president Brad Radnitz, SAG president Richard Masur, and DGA president Jack Shea, stated that they were "troubled by the threat that the new system poses to the

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<sup>98</sup> Hirschfeld, *supra* note 86.

<sup>99</sup> *Id.*

<sup>100</sup> Mifflin, *supra* note 84.

creative rights and responsibilities of our members."<sup>101</sup> Radnitz feels that shows "heavily weighed down with (television ratings) icons probably stand less of a chance of being renewed if they are borderline in terms of viewer ratings. And in terms of new programming, shows with these kinds of icons may stand less of a chance of going into development and appearing on new schedules." He says that television ratings could have a "chilling effect on what's on the air."<sup>102</sup> Masur agrees with Radnitz, citing three shows—*Fallen Angel*, *The Burning Bed*, and *Adam*—that he feels would not have been made had the newly revised ratings system been in effect, despite the "real difference" these shows made in people's lives.<sup>103</sup>

While many believe that the ratings system will restrain creativity, ABC president Iger states that he bases his opinions upon the "merits of the program," not its potential rating.<sup>104</sup> Whether the ratings system truly affects creativity has yet to be seen. Ultimately, it is the public that decides which programs should remain on the public airways. If the public is not watching a show—even if it is because of television ratings—it is based upon the conscious choices of individuals not to watch. If the creators of these types of shows feel that their creativity is being inhibited, perhaps they are producing shows for the wrong medium. The public airways are just that—public.

Other concerns arise over the blocking of shows that have an educational value. As Dr. Rosalyn P. Weinman, executive vice president for broadcasting standards at NBC states, "[I]f you block out all programs with a V, you could lose some very positive, anti-violence kinds of shows as well as the junkier stuff."<sup>105</sup> This is a valid concern of broadcasters and one that a new system should address.

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<sup>101</sup> Pottinger, *supra* note 89.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> Mifflin, *supra* note 84.

### B. *Previously Suggested Solutions*

Many people and organizations have attempted to create a new television ratings system that they feel will help better serve the public. One of these systems is a traffic signal system known as KidScore. It was developed by the Minneapolis-based National Institute on Media and the Family under the direction of David Walsh.<sup>106</sup> The system uses the green, yellow, and red colors of a traffic signal to rate the content of programming in terms of "violence, harmful or illegal behaviors, sex, fear, nudity, language, and age appropriateness."<sup>107</sup> Additionally, KidScore gives a brief program description as well as a summary of its ratings.

The following are examples of KidScore ratings. *7th Heaven*, which airs on the WB network, received a green light in all categories and is recommended for all age groups. ABC's *NYPD Blue*, on the other hand, which received a red light for language, and a yellow light for both violence and harmful or illegal behaviors, was deemed not appropriate for young children. The Institute's KidScore system has rated over 200 television shows in addition to numerous movies, videos, and computer games.<sup>108</sup>

Another system that has been suggested is the "VALUE system." It was developed by Andre Douglas of Thousand Oaks, California.

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<sup>106</sup> David Walsh, Ph.D., the father of three teenagers, founded the non-profit institute in 1996 to maximize the benefits and minimize the harm of media on children and families through research, education, and advocacy. The Institute seeks to educate and inform the public and to encourage practices that promote positive change in the production or use of mass media. Additionally, the Institute is not affiliated with any religious or political groups, and is funded by grants from foundations and corporations as well as individual donations. See National Institute on Media and the Family <<http://www.mediaandthefamily.org>>.

<sup>107</sup> The ratings icons of KidScore are as follows:

GREEN - GO!: The raters found no or very few instances of material in this category.

YELLOW - CAUTION!: The raters found some instances of material in this category.

RED - STOP!: The raters found a lot and/or some very intense instances of material in this category.

<sup>108</sup> Comprehensive ratings can be found on the World Wide Web at <<http://mediaandthefamily.org>>.

Douglas is a father of two and facility manager of a newspaper printing plant. The system employs the use of the acronym VALUE, breaking ratings into five categories with six levels of each. The letters of VALUE represent the following categories:

V: Violence

A: Acts of or implied sex/nudity

L: Language

U: Umbrella rating (the age-based rating system)

E: Education

The numerical aspect of his system begins with a zero, meaning a show is free of such material. Beginning with a two, parents should be warned. The educational aspect of his system was created to designate that positive material is included within the program. So far, Douglas has had no success with his copyrighted system.<sup>109</sup>

A third approach that has been suggested as an alternative to the current system was developed by a Washington-based not-for-profit organization, the Institute for Mental Health Initiatives. Their proposed system would offer guidelines based upon the Institute's studies of child development and health science. According to Suzanne Stutman, president of the organization, such guidelines "would provide consistency, validity, some sense for viewers that these ratings were based on something substantive rather than a feeling."<sup>110</sup> For fifteen years, the Institute for Mental Health Initiatives "has been working with writers, producers and directors to accurately portray a variety of constructive role models of behavior on television and film."<sup>111</sup> Despite success with its studies, and a publication entitled *Dialogue: Insights into Human Emotions for Creative Professionals*, the Institute has had no success instituting the ratings system.

### C. Proposed Solution

There are many things that must be taken into consideration by the creators of a new television ratings system. The ratings should

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<sup>109</sup> *He's Pressing for TV Guidelines with Different Value System*, L.A. DAILY NEWS, Apr. 30, 1997, at L5.

<sup>110</sup> Boedeker, *supra* note 51.

<sup>111</sup> Institute for Mental Health Initiatives <<http://www.imhi.org>>.

adequately and accurately address the needs of parents. The system should be easy to understand and compatible with V-chip technology. Finally, the system should be fair and flexible to both parents and broadcasters.

In creating a new system that will be acceptable to both parents and broadcasters, one runs the risk of making the system too complicated. To avoid this, the system must be easy to understand. The original age-based system created by Valenti's group was very easy to understand; it was similar to the current movie ratings system and thus is familiar to the American public. However, critics complained that the system lacked sufficient useful information regarding the content of the programs.

Ultimately, parents have different needs as to what information they desire in a ratings system. Any new system must be able to address those needs. For example, some parents prefer the simplicity of the original age-based rating system rather than content-based systems, while some parents favor the additional information provided by a content-based system. In order to accommodate both preferences, I propose a system that will allow parents to select the ratings system that they prefer. Consequently, each program will be coded such that the V-chip technology recognizes both types of ratings.

First, I propose a slight modification to the originally proposed age-based ratings system. In order to keep the ratings system simple and easy to understand, I recommend a change from the TV-14 rating to a TV-13 rating. This change will make the television ratings system more consistent with the current movie ratings system, although the television ratings themselves should be uniquely adjusted to the level of appropriateness allowed by the FCC for television broadcasts. For example, a movie rated PG-13 may contain brief nudity, while a TV-13 program would not, as based upon the standards set forth by the FCC. Second, in order to keep the ratings simple and allow both sets of ratings (age-based and content-based) to be easily published in newspapers and periodicals such as *TV Guide*, the age-based ratings must be brief. Thus, I propose that the ratings drop their "TV" prefix. Additionally, the current 'MA' rating should be changed to 'M.' This will allow ratings to be a maximum of eight characters (e.g. 13, L2 S4 V4), or nine, if the program is denoted as educational (e.g. PG, L1 S1

V4 E). This is comparable to the newly revised system that could contain as many as nine characters (e.g. TV-14, V S L D). Other than these minor changes, the six categories would remain the same. Specifically, children's shows would be rated either Y or Y7, while all other broadcasts (excluding news and sports) would be rated either G, PG, 13, or M.

In developing a content-based system, merely stating that a show contains violence or sexual situations defeats its purpose. Ultimately, enough information has to be supplied to parents in order to allow them to make an informed decision. In order for parents to understand the true content of a specific program, each program will be rated between one and five. A rating of '1' is indicative of no objectionable material, while a '5' indicates the maximum level of objectionable material in each of the following categories: L—profane/crude language (including suggestive dialog), S—sexual content/situations, and V—violent content (including fantasy violence). Therefore, a program that is rated L1 S1 V1 contains little or no objectionable content, while one rated L5 S5 V5 contains the highest level of objectionable material in each of the categories. This system allows parents to adjust the level of objectionable material that they choose to allow in each category.

This type of system is similar in some regards to a system that has already been tested in Canada. The Canadian system rates content in the above three categories at levels ranging from 0 to 5. In addition, a fourth category rates the show based upon the Canadian movie ratings system.<sup>112</sup> The Canadian system has been well received by most persons. Additionally, the fact that 90 percent of Canadian prime-time shows come from United States proves that such a system is workable with American programming.<sup>113</sup> Canadians liked the freedom they had to control the types of programs that *they* wanted their children to watch. Jo Dechambre, a 25-year-old mother of three, said, "I really liked the idea that I could control what my kids watched, not what the general consensus is of what they should watch."<sup>114</sup> According to Alison M. Clayton, co-chairwoman of the classification committee for

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<sup>112</sup> Anthony DePalma, *Canada Fine-Tunes New Rating System; U.S. Version Making Its Debut Wednesday*, DALLAS MORNING NEWS, Jan. 1, 1997, at 38A.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

the Action Group on Violence in Television, overall tests of the system showed that more people liked the system than did not.<sup>115</sup>

Despite much praise, the Canadian system was eventually canceled because some felt that it was confusing. Many variables, however, led to this conclusion. First, the remote controls used to program the units were very confusing. Second, some Canadians complained of lack of consistency in the ratings. Third, Canada has tested roughly three different systems within the past two years; this, in itself has led to further confusion.

The new system that I propose addresses these concerns. First, it would be easy to operate. Through a series of menu-driven on-screen options, a parent can choose and program their ratings preferences. Additionally, the remote controls allow parents to save their preferences. Thus, after programming the unit one time, a parent could feasibly recall a specific set of ratings preferences and activate the system by touching only two buttons. Moreover, parents can select and save ratings preferences for up to five children. This allows parents to tailor a specific set of preferences to a particular child.

As with all new systems, however, some time must be allowed for the system to work, and for there to be consistency in the ratings. The American movie ratings system is an example of this. It took two to three years for the ratings to become consistent and familiar to viewers. Additionally, because the television ratings are the responsibility of the broadcaster rather than an independent agency (like the movie ratings system's MPAA), broadcasters must be held accountable for incorrect or inaccurate ratings. Although an independent agency would ensure accuracy, such an agency could not handle the sheer volume of programs that are broadcast daily. Furthermore, by having the choice to select the type of ratings system they prefer, a compromise can be made between parents and broadcasters. Parents can select the system that best fits their needs, while broadcasters can continue with their originally proposed system. Therefore, the new system is both fair and flexible.

Another improvement over the Canadian system would be a feature that would allow parents to select alternative allowable ratings for

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<sup>115</sup> *Id.*

shows that are produced for educational or informational purposes. These programs will be designated by the letter 'E.' For example, a parent may have chosen to limit violent content to a V2 rating. Many educational programs, which parents would not ordinarily object to, such as *National Geographic's Explorer*, may contain a V3 rating. Because the new system will allow for parents to select alternative ratings maximums for educational programming, such programs would not be blocked. This feature allows children to truly get the most out of television. Additionally, the new system will be broadcast for fifteen seconds at the beginning of each half-hour as well as for five seconds after each commercial break. This will help ensure that parents are aware of the ratings of the television show that they are watching, even if they begin watching the show after it has already begun.

Although a television ratings system may be helpful in controlling what one's children watch, nothing compares to parental involvement in selecting and discussing the programming viewed by their children. A television ratings system, in conjunction with V-chip technology, is not a substitute for parental involvement. It is merely a tool with which parents can more effectively fulfill their parental duties.