THE JURISPRUDENCE OF RATINGS: PART I

On March 25, 1996, the *Cardozo Arts & Entertainment Law Journal*, the Howard M. Squadron Program for Law, Media, and Society, and the Columbia Institute for Tele-Information presented a provocative conference entitled *The Jurisprudence of Ratings.* Inspired by the intense debate surrounding the proliferation of sex, violence, and profanity in the mass media and the legislative, parental, and industry responses to this issue, the conference was structured to explore three themes: 1) contrasting private approaches to ratings and classifications systems; 2) assumptions concerning the impact of ratings on audiences; and 3) implications for the First Amendment. In light of the industry's unveiling of its parental guidelines for cable and broadcast television in response to the Telecommunications Act of 1996 and its V-Chip provisions, the ratings discussion in this volume and the forthcoming volume 15-2 are particularly timely.

Representative of the top policymakers, industry representatives, and academicians who attended the conference, this volume features its keynote address by Senator Joseph Lieberman and an article by Richard M. Mosk, Chairman of the Classification and Rating Administration of the Motion Picture Association of America. Volume 15-2 will also feature additional articles by Professor Matthew Spitzer, U.S.C. Law School, Professor C. Dianne Martin, George Washington University, and Julius Genachowski, Chief Counsel to the Chairman of the Federal Communications Commission.

The Journal would like to express its gratitude to Professor Monroe E. Price and former Journal Acquistions Editor Marc Szafran for their instrumental roles in ensuring this conference's success.

Michelle M. Graham
Acquisitions Editor

ON THE PLURALITY OF RATINGS

DIANE ROBERTS*

I. INTRODUCTION

With the emergence of new media technologies[1] and with the differing interests of parents, organizations, and governments, a pluralistic ratings system is evolving. More choices have become available to consumers, and with these choices a greater sense of social responsibility. Eli Noam, Columbia University Professor of Finance and Economics and Director of the Columbia Institute for Tele-Information asks, "[h]ow [is] the political system, the media, and the technology [to] accommodate . . . a pluralistic ratings system? Can we leave it, in fact, to the marketplace or must we have some values that go beyond individual choice in this matter?"[2] This Article addresses issues of semiotics, obscenity, First Amendment rights, and other related issues that arise when considering the development of a pluralistic ratings system. It incorporates information from the Benjamin N. Cardozo School of Law's conference on the Jurisprudence of Ratings, while focusing on the Telecommunications Act of 1996 ("Telecommunications Act" or "Act")[3] and its impact on the development of ratings systems.

II. RATINGS AND THE TELECOMMUNICATIONS ACT

In the context of a pluralistic ratings system, the word "plurality" refers to a plethora of systems used to rate media technologies. These systems vary based upon the technology used. For instance, the movie industry relies on an age-based ratings system, whereas

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* J.D., 1996, Benjamin N. Cardozo School of Law. Ms. Roberts is a legal editor at Warren, Gorham & Lamont in New York City. Special thanks to Professor Monroe Price, Marc Szafran, Timothy Hamilton, and everyone who contributed to the development and publication of this work.

[1] For the purposes of this Article, new media technologies encompass television, cable, and satellite broadcasting, movies, music, computer games, and on-line services.

[2] Videotape: The Jurisprudence of Ratings (Benjamin N. Cardozo School of Law, Yeshiva University, Mar. 25, 1996) (on file with the Cardozo Law School Library) [hereinafter Ratings Conference].

[3] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 15 U.S.C. §§ 79, 79z-5c, 79z-6, 5714, 18 U.S.C. §§ 1462, 1465, 2422, and scattered sections of 47 U.S.C. (1996)). The Act was designed to "open the entire telecommunications industry to competitive market forces." 142 CONG. REC. S10,383, 10,399 (daily ed. Sept. 12, 1996) (statement of Sen. Shelby). According to Senator Shelby (R-Alabama) it will "put local exchange carriers, cable companies, and utilities in fierce competition in their respective market segments. With proper implementation by the [FCC] . . . and state public service commission, the long-term impact of telecommunications reform undoubtedly will be new technology, better services, and new market entrants available to our citizens." *Id.*

the recording industry relies on a parental advisory system. Ratings systems also vary in that some control systems (for example, control filters) may be selected by consumers, while other systems (for example, movie ratings) are predetermined. Depending on the technology used, ratings may function as a deterrent (as with movies) or may block certain information (as with blocking technologies, such as control filters and the V-chip).

Variation also exists within similar technologies. For instance, computer technologies, such as video games and on-line services, are rated with different criteria, incorporating content-based or age-based information. Computer technologies pose additional difficulties because they often convey ratings through semiotics, a system of "signs" or "symbols," which at times may seem cryptic to the viewer. Furthermore, blocking technologies, such as the V-chip, raise complex issues of censorship and government regulation.

Because of the conflicting nature of media technologies and the means by which they are rated, consumers face difficult decisions when confronting different ratings systems. Should a parent heed the "R" movie rating? How much weight should be given to video game ratings? Will a blocking device be too restrictive? These are just a few of the questions to be considered.

III. The V-Chip in the United States

In the United States, television ratings systems emerged because of concerns related to children's programming.[4] The Tele-

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[4] The Telecommunications Act acknowledges the impact of television upon children and calls for "parental choice in television programming." 47 U.S.C. § 303 note. Under the Act:

> Congress makes the following findings:
> (1) Television influences children's perception of the values and behavior that are common and acceptable in society.
> (2) 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 that 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.

communications Act strives for the "establishment of [a] television rating code" developed "in consultation with the television industry."[5] The Act requires the Federal Communications Commission ("FCC") to establish an advisory committee to recommend procedures for the identification and rating of video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children, provided that the material is not rated on the basis of its political or religious content.[6] This committee was "composed of parents, television broadcasters, television programming producers, cable operators, appropriate public interest groups, and other interested individuals from the private sector."[7]

The Act states:

> (4) As new video technology is developed, the Commission 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—
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> (A) enables parents to block programming based on identifying programs without ratings,
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> (B) is available to consumers at a cost which is compara-

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(7) Parents express their grave concern over violent and sexual video programming in the home that they consider harmful to their children.

(9) Providing parents with timely information about the nature of upcoming video programming and with the technological tools that allow them to easily 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.

Id.

The Act contains a family empowerment provision which ensures that the Federal Communications Commission ("FCC") will consult with "parents, television broadcasters, television programming producers, cable operators, appropriate public interest groups[,] and other interested individuals from the private sector." *Id.* In implementing the Telecommunications Act of 1996 the FCC suggested that television networks set aside at least three hours per week for children's programming. *See* In the Matter of Policies and Rules Concerning the Children's Television Programming, Notice of Proposed Rulemaking, 10 F.C.C.R. 6308, ¶ 7 (1995); Broadcast Screens—Children's Television, 61 Fed. Reg. 43,981 (1996) (amending 47 C.F.R. § 73.671 to provide that licensees who have aired at least three hours per week of Core Programming (as defined in 47 C.F.R. § 73.671(c)) will be deemed to have satisfied their obligations to air such programming and shall have the Children's Television Act portion of their license renewal application approved by the FCC's staff). For further discussion of the issue see Scott R. Flick & Lauren Lynch Flick, *Stations Face Regs for Kid's Programming: FCC's Strict View or "Educational" in Three-Hour-Per-Week Gets a Poor Reception.* NAT. L.J., Jan 20, 1997.

5 47 U.S.C. § 303(w)(2).

6 *See* 47 U.S.C. § 303(w)(1). The Act also provides for blocking of cable programming through scrambling, 47 U.S.C. § 561(a). Scrambling, however, restricts programming on particular channels, but does not necessarily restrict particular programming (such as violent or sexually explicit material).

7 47 U.S.C. § 303.

> ble to the cost of technology that allows parents to block programming based on common ratings, and
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> (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 § 303(x) to require the apparatus described in such section be equipped with either the blocking technology described in such section or the alternative blocking technology described in the paragraph.[8]
>
> The commission shall amend the rules prescribed pursuant to § 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.[9]

Section 303(x) provides:

> [I]n the case of an apparatus designed to receive television signals that are shipped in interstate commerce[10] 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 all programs with a common rating, except as otherwise permitted by regulations pursuant to § 330(c)(4).[11]

The Telecommunications Act calls for the manufacture of televisions that block programs.[12] The programs are blocked by a microchip called the V-chip, which "decodes closed captioning on the blanking interval of the TV signal."[13] Both the Telecommunications Deregulation Act of 1995 and the Parental Choice in Television Act provided the groundwork for the V-chip provisions in the Telecommunications Act. In drafting the Act, Congress em-

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8 47 U.S.C. § 330(c)(4)(C).

9 *Id.*

10 This section reasserts the FCC's authority to regulate blocking technologies for televisions shipped in interstate commerce.

11 47 U.S.C. § 303(x).

12 *Id.* Technologies are becoming available which block programming on the basis of certain time periods, channels, and transmitted ratings. *See* JOEL FEDERMAN, MEDIA RATINGS: DESIGN, USE AND CONSEQUENCES 43-52 (1996).

13 Sarah Cohen, *"V-chip" Impact on Industry Weighted; Industry Trend or Event*, ELECTRONIC NEWS, Mar 25, 1996, at 1. 47 U.S.C. § 330(c)(3) further characterizes the V-chip and its application in the Act:

> [O]versight by the Commission of the adoption of standards by industry for blocking technology. Such rules shall require that all such apparatus be able to receive the rating signals which have been transmitted by way of line 21 of the vertical blanking interval and which conform to the signal and blocking specifications established by industry under the supervision of the Commission.

phasized the importance of making the blocking technology available to consumers at an affordable price.[14] Consumers were not expected to absorb the expense of developing and implementing V-chip technology. That burden was meant to fall on the broadcast industry. Congress also intended that the V-chip be accessible to consumers by making the technology easy to use.[15]

While broadcasters, cable operators, and other video distributors will not have to rate programs, they will be required to transmit ratings for rated programs. Under the Telecommunications Act, the television industry was given until February 1997 to adopt its own ratings system and to transmit ratings signals to viewers.[16] The system was unveiled by the television industry in December 1996, and instituted by the ABC, CBS, NBC, and several cable networks on January 1, 1997.[17] Under the system, the ratings are: "TV-G" (for general audiences), "TV-PG" (parental guidance suggested), "TV-14" (parents strongly cautioned), and "TV-M" (mature audiences only).[18]

Jack Valenti, President of the Motion Picture Association of America ("MPAA"), prefers an age-based system, like that used in the movie industry.[19] Valenti suggests including two additional ratings into the television ratings system: "TY-Y" (very young viewers) and "TV-M" for those over 17.[20] Child advocacy groups and others have proposed expanding the current television ratings system to

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14 47 U.S.C. § 330(c)(4) provides that "the Commission shall take such action as [it] determines appropriate to ensure that blocking service continues to be available to consumers." This would include financial accessibility as provided under the Telecommunications Act of 1996, Pub. L. No. 104-104, § 551(d)(B), 110 Stat. 56, 140 (1996).

15 This concern is evident in the language of 47 U.S.C. § 330(c)(4)(C), which states that parents should be able "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."

16 The Commission will take action after February 1997 if it has determined:

> [I]n consultation with appropriate public interest groups and interested individuals from the private sector, that distributors of video programming have not, by such date—
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> (A) established voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to their children, and such rules are acceptable to the Commission; and
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> (B) agreed voluntarily to broadcast signals that contain ratings of such programming.

47 U.S.C. § 303 note.

17 *See* Lawrie Mifflin, *TV Industry Leaders Unveil Technique of Rating Shows: Popular Shows May Get an "Over 14" Label*, N.Y. TIMES, Dec. 20, 1996, at A18; Anthony DePalma, *Canadian Parents Test Limits on TV Access*, N.Y. TIMES, Dec. 30, 1996, at C9.

18 *See* Editorial, *The TV Rating Wars*, N.Y. TIMES, Dec. 15, 1996, at E12 [hereinafter *Rating Wars*].

19 *See* Walter Goodman, *TV Ratings: New Game for Adult and Child*, N.Y. TIMES, Dec. 26, 1996, at C11.

20 *Id.*

include more specific content descriptors for violence ("V"), sex ("S"), and language ("L").[21] Thus, "V-1" would signify "a little violence," "S-3" "considerable sex," and "L-2" "moderate dirty words."[22] According to Valenti, however, complex ratings systems are likely to confuse the viewer.[23]

Despite initial support, the incorporation of the V-chip into the Telecommunications Act raises a myriad of First Amendment issues involving free expression and government regulation. Some individuals and organizations fear that the V-chip will restrict consumers' freedom of speech through censorship.[24] When used in an extremely exclusionary manner, viewers may lose a great deal of programming (both rated and unrated).[25] Some congressmen expressed concern that the V-chip may manipulate broadcasters more than it would empower parents.[26]

According to FCC Chairman Reed Hundt, "the V-chip is about giving parents the power to choose."[27] With the V-chip, parents will be able to block the display of video programming that they have determined is inappropriate for their children. The United States developed a "technology fund" to encourage "video programming distributors" to develop the technology necessary to block programming.[28] The V-chip is supposed to empower parents by permitting them "to block a broad range of programs on a multichannel system."[29] Because it is impossible to rate 1640 hours of programming each day,[30] and because parents prefer to exercise control in different ways, the V-chip will enable parents to block unrated programs. According to President Clinton, the implementation of the V-chip marks the moment when "[t]hey're handing

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21 *Id.*; *see Rating Wars*, *supra* note 18, at E12 ("Many parents' groups have embraced the 10 categories adopted by Home Box Office, which describe adult content in more detail.").

22 *See* FEDERMAN, *supra* note 12, at 43-52.

23 *See Rating Wars*, *supra* note 18, at E12.

24 This position is consistent with Justice Douglas's dissent in *Miller v. California*, 413 U.S. 15 (1973), in which Douglas asserts that the definition and treatment of obscenity should be made not by judges, but by the people.

25 *See* J.M. Balkin, Comment, *Media Filters, The V-chip, and the Foundations of Broadcast Regulation*, 45 DUKE L.J. 1131 (1996).

26 *See, e.g.*, 142 CONG. REC. H1155 (daily ed. Feb. 9, 1996) (statement of Rep. Fields).

27 Reed Hundt, America Needs Quality Free TV, Speech Before the National Association of Broadcasters Annual Convention, (Apr. 16, 1996) (on file with the author). For a dissenting view, see Susan Ness, Out of Many, One, Remarks Before the Oklahoma Broadcaster's Association (Feb. 16, 1996) (on file with the author) (arguing that the three-hour requirement is unnecessarily restrictive and would have the unintended result of sacrificing quality and creativity for quantity).

28 *See* 47 U.S.C.A. § 302 note.

29 47 U.S.C. § 330(c)(4)(C).

30 *See* Mark Landler, *Television: TV Turns to an Era of Self-Control*, N.Y. TIMES, Mar. 17, 1996, at 1.

the TV remote back to America's parents."[31] In his State of the Union Address, President Clinton noted, "[w]hen parents control what their young children see, that is not censorship; that is enabling parents to assume more personal responsibility for their children's upbringing."[32] Nevertheless, the V-chip is not as enabling or as empowering as one might think.

With the V-chip a collaborative effort develops in which both the raters and the parents are the censors. The parent is required to trust a third party by using its rating system. As with all ratings systems, the question arises as to how "we place some bounds, some rules, some sense of appropriateness to the range of this swing between 'voluntariness' and coercion?"[33] While consumers have the freedom to customize the application of blocking technologies, ratings are determined by third parties whose views may differ from those of consumers. Thus, blocking technologies can inadvertently censor material that consumers want to receive.

IV. THE V-CHIP IN CANADA

Canada is the birthplace of the V-chip. The device was developed through the collaboration of Professor Tim Collings of Simon Fraser University and Shaw Communications Inc., the country's second largest cable company.[34] In February 1995, the chip was introduced in Brussels at the G-7 Technology Exposition Conference, where it attracted Vice President Al Gore's attention.[35] Canadian legislation aimed to implement the chip by September 1996, but no later than January 1997.[36] The Canadian Radio-Television Telecommunications Commission ("CRTC"), Canada's equivalent of the FCC, also ordered the broadcast industry to develop a four to six level rating system subject to CRTC approval; that the cable industry make V-chip devices universally

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[31] Allison Mitchell, *TV Executives Promise Clinton a Violence Ratings System by '97*, N.Y. TIMES, Mar. 1, 1996, at B14; *see also* Jonathan Yardley, *TV's Voluntary Rating System Rates an "F,"* NEWSDAY, Mar. 15, 1996, at A53.

[32] President Clinton, State of the Union Address before Congress, Jan. 23, 1996, *in* FDCH Political Transcripts, 1996 WL 26252, at *12.

[33] Statement of Professor Monroe E. Price (Mar. 25, 1996), *in* THE JURISPRUDENCE OF RATINGS: A SOURCE BOOK 3 (Benjamin N. Cardozo School of Law, 1996) [hereinafter CONFERENCE SOURCE BOOK].

[34] Tim Collings has granted Tri-Vision Electronics, Inc. exclusive world-wide rights to the V-Chip. *See Tri-Vision International Wins Exclusive World-Wide V-Chip Rights*, BUS. WIRE, Jan. 14, 1997, at 1.

[35] *See* Shaw Communications Inc., Canada NewsWire, *News* (visited Mar. 14, 1996) <http://www.newswire.ca/releases/March1996/14/c2206.html>.

[36] *See* Sarah Cohen, *"V-chip" Impact on Industry Weighed; Industry Trend or Event*, ELECTRONIC NEWS, Mar. 25, 1996, at 1; *see also CRTC: Respecting Children—A Canadian Approach to Helping Families Deal With Television Violence*, M2 PRESSWIRE, Mar. 22, 1996, at 2.

available; and that the cable, DTH satellite, and multipoint distribution systems monitor American programs by September 1996, but no later than January 1997.[37]

According to Martine Valee, Special Assistant to the Chairperson of the CRTC, "[i]n Canada, we see program ratings and V-chip style ratings system not . . . as a freedom of expression issue, but as a 'tool to give parents to help parents decide what programming is appropriate for their children.'"[38] Canada completed its third round of trials of the V-chip on 130 families in five cities,[39] using two different broadcasters.[40] The chip screened on the basis of age and content using four criteria: age group, violence, sexuality/nudity, and language. The content was assessed on a scale from zero to six. The CRTC aimed to have the V-chip available by placing converters in existing television sets by September 1996. The industry wanted to have the chip available in new sets no later than January of 1997. By that time, Canada hoped to ensure that a greater amount of American programming (representing twenty-five percent of the programming entering Canada) would be rated.[41]

The Action Group on Violence on Television ("AGVOT") has played a major role in the development and use of V-chip technology. AGVOT, which represents the Canadian broadcasting, cable, and television production industries, was granted the responsibility of establishing the Canadian television program classification system. The organization requested additional time (beyond September 1996) from the CRTC to establish a program classification system and to make the V-chip technology available to cable subscribers. AGVOT based its request on four requirements: 1) to resolve technical issues related to mass implementation of the blocking technology; 2) to test larger populations of people using different classification systems; 3) to allow more public input; and 4) to increase the likelihood of harmonization of the Canadian and American systems by introducing the systems concurrently.[42]

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[37] *See Satellite TV: Canada's Radio-TV & Telecom. Commission*, SATELLITE WK., Mar. 18, 1996, at 1; Canada NewsWire, *CRTC Sets Deadline For A V-Chip Based Television Classification System* (visited Nov. 12, 1996) <http://www.newswire.ca/releases/March1996/14/c2174.html>.

[38] Ratings Conference, *supra* note 2, tape one, at 917-19.

[39] *See How the System Plays Across the Border*, USA Today, Mar. 14, 1996, at 3D.

[40] *Id.*

[41] *Id.*

[42] *See* Shaw Communications, Inc., Canada NewsWire, *AGVOT seeks Extension for Introduction of Program Classification & the V-Chip* (visited Sept. 13, 1996) <http://www/newswire/ca/releases/August1996/23/c3381.html>.

The CRTC granted AGVOT's request for an extension.[43]

Under the revised timetable, AGVOT further refined its classification system,[44] and Canadian broadcasters began a fourth set of trials with 500 Canadian families,[45] using "age related categories, similar to the U.S. system."[46] The broadcasters are expected to submit a ratings system to the CRTC by April 30, 1997 and to begin using the system in the fall of 1997.[47]

V. Ratings in the Computer Software Industry

A. *ESRB*

Since 1994, ratings have been used by the computer software industry.[48] The software ratings systems include: the Entertainment Software Rating Board ("ESRB"), the Recreational Software Advisory Council ("RSAC"), and the Software Publishers Association ("SPA"). The first such system, the ESRB,[49] was established by the Interactive Digital Software Association ("ISDA"). The ESRB uses "an industry-designed board of lay folk" to assign age-based ratings similar to those of the Motion Picture Association of America. The ratings are: "EC" for early childhood, "K-A" for kids-to-adults, "T" for teens thirteen and over, "M" for players seventeen and over, and "A" for adults only.[50]

The ESRB consists of a diverse cross-section of 100 specially trained individuals. Publishers voluntarily submit their software and supporting materials to the ESRB for evaluation.[51] Three ESRB members are randomly selected to rate the software, and the publishers' product information is reviewed for accuracy.[52] The

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[43] *See Public Notice CRTC 1996-34; Revised Timetable for the Implementation of V-chip and Program Classification System* (visited Oct. 4, 1996) <http//www.crtc.gc.ca/eng/news/releases/1996/r96/r961004e.htm>.

[44] *See id.*

[45] *See* DePalma, *supra* note 17, at C9.

[46] Joanne Ingranvia, *Canada V-chip on Trial Again*, Electronic Media, Jan. 13, 1997, at 1.

[47] *See* DePalma, *supra* note 17, at C9.

[48] *About the Entertainment Software Rating Board* (visited Nov. 11, 1996) <http://www.esrb.org/news.html>.

[49] *See* Gene Emery, *Dueling Software Ratings Gaining Acceptance*, Reuter Bus. Rep., Jan. 31, 1996.

[50] *See* Bebe Gribble, *Consuming Passions: The Shoot-Out Over Video Game Violence*, Wash. Post, July 21, 1995, at R32.

[51] "A publisher can submit a range of material, including videotape, storyboards, scripts, and narratives to the rating board. The publisher must submit materials that show the most extreme portions of the game." *Video Rating System: Hearing Before the Senate Subcomm. on Regulation and Government Information and the Senate Subcomm. on Juvenile Justice*, 103 Cong. July 29, 1994 (statement of Jack Heistand, Chairman, Interactive Digital Software Association) 1994 WL 14190898, at *31.

[52] *See* Federman, *supra* note 12, at 92.

ESRB's ratings are evaluated by consumer focus groups.[53] Publishers may "1) accept the rating, 2) modify and resubmit the title, or 3) appeal to the ESRB appeal board."[54]

B. *RSAC*[55]

In contrast, RSAC relies on a content-based system, using four criteria: violence, nudity, sex, and language. The RSAC system, which "employs a questionnaire completed by the publisher,"[56] incorporates five rating categories: "Early Childhood," "Kids to Adult," "Teen," "Mature," and "Adults Only."[57] The system considers the child's cognitive skills (for example, reading skills, fine motor skills, and higher-level thinking skills) and includes several content descriptors that describe the images, themes, and language used (for example, mild animated violence, comic mischief, animated violence, realistic violence, animated blood and gore, realistic blood and gore, suggestive themes, mature sexual themes, strong sexual content, mild language, strong language, gaming, and use of tobacco and alcohol).[58] According to RSAC President Dianne Martin,[59] despite efforts to create a single system, one "cannot reconcile" the content- and age-based systems because they are based on different criteria.[60]

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[53] *See* Elliot Basner, Is Ms. Pacman Rated "X"? 41 (Feb. 29, 1996) (unpublished manuscript, on file with the *Cardozo Arts & Entertainment Law Journal*).

[54] *Id.*

[55] The Recreational Software Advisory Council ("RSAC"), a non-profit organization, was developed by a consortium of computer software companies ("Computer Game Ratings Working Group" or "Working Group"). *See* FEDERMAN, *supra* note 12, at 93. The Working Group consists of "over twenty-five associations, including the Software Publishers Association (SPA), the Association of Shareware Professionals (ASP), the Educational Software Cooperative (ESC), Shareware Trade Association and Resources (STAR), the Software Entrepreneurs Forum (SEF), and the Computer Game Developers Association (CGDA)." *Id.* Although RSAC has primarily been used to rate computer software, this system and others have been integrated into Internet Explorer and other Web browsers for the purpose of filtering out unwanted Web sites. *See* Brian C. Nadel & Edward J. Mendelson, *Microsoft Takes the Offensive in the Browser Battle With Netscape*, PC MAG., Sept. 10, 1996, at 39 (referring to the implementation of the PICS format and RSAC system in the Internet Explorer Software).

[56] FEDERMAN, *supra* note 12, at 39. RSAC employs a system of checks and balances to ensure publisher accountability. The council uses a highly specific questionnaire, randomly selects software for review, and provides a consumer hotline. Publishers seeking less stringent ratings may appeal RSAC decisions before RSAC's Appeals Committee. *Id.* at 95. When publishers misrepresent their products during or subsequent to the review process, RSAC may "take appropriate action, including, but not limited to corrective labeling, consumer and press advisories, product recalls, and/or monetary fines." *Id.*

[57] *See* Gribble, *supra* note 50, at R32.

[58] CONFERENCE SOURCE BOOK, *supra* note 33, at 35.

[59] Ms. Martin is also a Professor of Computer Science at George Washington University.

[60] *See* Ratings Conference, *supra* note 2, tape one, at 744-48.

C. *SPA*

The third system, developed by the Software Publishers Association ("SPA") has been applied to computer games.[61] Under the SPA system, game-makers complete a questionnaire recording "each act of violence, nudity, sex, or profanity."[62] The content is rated from one (least severe) to four (most severe) based on the nature of the acts. Ratings are conveyed through product icons, "[b]ut the labels offer . . . no judgments about who ought to play or buy the game."[63] According to Glenn Ochsenreiter of SPA, "[s]omething acceptable for one person might not be for another."[64]

VI. SEMIOTICS

Computer software ratings systems and other media technologies use semiotics. According to Professor Martin, semiotics is the theory and practice of signs. These "signs" are "symbols," representing ideas, which are transmitted, received, and interpreted.[65] The transmission may cause some behavioral outcome, such as avoidance of viewing certain information. Martin suggests that raters ask themselves three questions when incorporating semiotics into their systems: "1) what is the concept that you are trying to represent; 2) what is the actual symbol being used to represent the idea or object; and 3) how does the individual interpret it?"[66] Martin also notes that there are three different ways of representing information: 1) an icon (for example, a bomb to represent violence); 2) an index (providing an indirect reference); or 3) a symbol (an agreed-upon symbolic representation).[67] Semiotics has wide-ranging implications not only for the software rating industry,

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61 Video game companies, such as Sega and Dormark Software, Inc., have developed their own age-based ratings systems. *See* Jeanette S. Keton, *The Rating Game; Video-Game Violence Has Stirred Calls for Regulation*, DALLAS MORNING NEWS, Dec. 18, 1993, at C1 (referring to Sega's Video Ratings Commission ("VRC") system).

62 *See* Gribble, *supra* note 50, at R32.

63 *Id.*

64 *Id.*

65 Martin stated that "[i]n terms of our rating system, we are talking about transmitting, for example, symbols that represent particular ideas. These symbols are then received, they are interpreted, and perhaps they even may cause some behavioral outcome, for example, the setting of a filter." Ratings Conference, *supra* note 2, tape two, at 50-60.

66 *Id.* at 61-67.

67 *See id.* at 73-100. According to Charles Suhor, Deputy Executive Director of the National Conference of Teachers of English ("NCTE"), icons are "signs resembling that for which they stand (*e.g.*, a painting of an apple looks like the fruit it represents). . . . [I]ndexes are signs that are indicators of a fact or condition (*e.g.*, a chest pain can indicate heartburn; smoke usually indicates fire)." Charles Suhor, *Semiotics and the English Language Arts, ERIC Digest* (visited Nov. 11, 1996) <http://gopher.inidana/edu:2002/eric_rec/gopher/ericdigs/olddigsd59>. "[S]ymbols are signs that bear an arbitrary relationship to

but for all media.[68]

Semiotics, however, is a study in contradictions. Professor Monroe Price of the Benjamin N. Cardozo School of Law poses the question, "[h]ow do the companies try to adapt to the system, but not alienate consumers? What is it that is in that exclamation point? What is it that is in that peeping Tom symbol?"[69] "[The ratings system categories] are perceived by both the audience and the advertiser as conveying information but without an automatic, pejorative label being attached."[70] According to Betsy Frank, Executive Vice-President and Director of Strategic Media Resources for Zenith Media Services, "[t]he assumption behind semiotics is that there is a cultural system—a common set of assumptions and beliefs that semioticians call codes—that marks all the products of the culture. . . . But these codes are so taken for granted and are so embedded in our behavior that they are invisible to us."[71]

Even if known to the semiotics expert, these symbols may remain invisible to the viewer. Simple labels, like those developed by the Recording Industry Association of America ("RIAA") may require parental awareness programs, so that rating labels have the appropriate impact. Similarly, "[a] system which combines evaluations of various content categories (sex, violence, language, etc.) into a single set of ratings, without attaching adequate descriptors, runs the risk of confusing customers."[72]

VII. Labeling in the Recording Industry

As a result of increasing concerns over rap music and other genres which carry explicit lyrics, the RIAA developed a labeling system. Labels are distinct from ratings in that they do not have the legally prohibitive effect of systems imposed by merchandisers and public interest groups. According to Paul Russianoff, the RIAA oversees ninety percent of the recorded music in the United States.[73] Five to ten percent of all records contain RIAA labels.[74] The recording companies institute advisories, assessing the explicitness of the lyrics "in terms of sexuality, substance abuse, or

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that which stand for (*e.g.*, the word 'apple' by conventions stands for the fruit we identify with the word." *Id.*

68 Ratings Conference, *supra* note 2, tape two, at 73-100.

69 *Id.* at 1123-34.

70 *Id.* at 1455-59.

71 Jay Mathews, *Catching a Code to Catch the Next TV Hits; Analyst Uses an Obscure Academic Approach Called Semiotics to Guide Advertisers*, Wash. Post, Aug. 1, 1995, at D3.

72 Federman, *supra* note 12, at 25.

73 *See* Ratings Conference, *supra* note 2, tape one, at 322-27.

74 *Id.* at 447.

violence."[75]

These labels are "intended to provide information for parents."[76] According to RIAA President Hilary Rosen, "[r]ecord labels, distributors, retailers and wholesalers across the country are joining forces to implement a campaign that will ensure the correct use of the existing logo and foster greater awareness of the logo and its meaning."[77] Unfortunately, labeling, like rating, has the potential to chill speech. Furthermore, record companies may be deterred from producing certain songs or may be reluctant to provide an album with the appropriate label for fear of losing commercial sales.

VIII. CONTROL FILTERS

A. *Parental Control Filters*

In contrast to labeling, companies such as Microsoft, Net Nanny, and Solid Oak Software, have developed parental control filters to screen the Internet. These filters block unwanted material, provide audit trails, and contain personal security systems. To suit their requirements, many users customize these filters. Control filters may be easily accessed on various on-line services through the Platform for Internet Content Selection ("PICS") format, "an easy to use Internet content labeling and selection platform that empowers people worldwide to selectively control online content they receive through personal computers."[78] PICS is an "open labeling platform"[79] that "establishes Internet conventions for labeled formats and distribution methods, [without] dictating . . . a labeling vocabulary [or] who should pay attention to which labels. It is analogous to specifying where on a package a label should appear, and in what font it should be printed, without specifying what it should say."[80]

The advantage of PICS is that it provides voluntary control of material accessed over the Internet.[81] According to Paul Resnick, AT&T's Co-Chairman for the Technical Commission for PICS, the

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75 *Id.* at 429-34.

76 *Id.* at 480-83.

77 National Association of Recording Merchandisers, Recording Industry Responds to Concerns About Music Lyrics Announces Enhanced Parental Advisory Program, Press Release (Oct. 24, 1995).

78 *15 Organizations From Around the World Pledge Support For PICS Platform*, BUS. WIRE, Oct. 30, 1995, at 2.

79 *PICS Statement of Principles* (visited Nov. 13, 1996) <http://www.w3.org/pub/WWW/PICS/principles.html>.

80 *PICS: Internet Access Controls Without Censorship* (visited Nov. 10, 1996) <http://www.w3.org/pub/WWW/PICS/iacwc.htm>.

81 *Id.*

technology has been designed "to read any service label . . . that follow[s] the PICS format."[82] Daniel Weitzner, PICS Policy Co-Chairman notes, "PICS was designed to enable . . . multiple ratings systems . . . [so that] any given piece of content on the Internet can be rated essentially an infinite number of different ways by an infinite number of different parties."[83] Weitzner says that multiple ratings systems are "inherent in the architecture of the Internet. . . . [T]here are many opportunities for many ratings systems and very few opportunities for a single rating system to establish itself and to establish a monopoly foothold."[84] Parents do not want someone "dictating which rating system they should use."[85]

Among the parental control filters available are Cyber Patrol, Net Nanny, Cybersitter, and Internet Filter. Cyber Patrol contains twelve category restrictions: violence/profanity, partial nudity and art, full nudity, sexual acts/text, gross descriptions/text, racist/ethnic impropriety, satanic/cult, drugs and drug culture, militant/extremist, gambling/betting, questionable/illegal, and alcohol, beer, wine, and tobacco.[86] The system blocks access to the World Wide Web, to newsgroups, and to other on-line services, as well as to games and to other computer applications. In addition, the parent may prohibit access on particular days of the week and at particular times of the day.[87]

Similarly, Net Nanny screens for sexually explicit material, hate literature, bomb making, and drugs as depicted through language and images as conveyed through incoming communications, e-mail, and newsgroups.[88] Net Nanny contains dictionaries that can be edited, provides a full audit trail, and restricts access to personal information.[89] Like Cyber Patrol and Net Nanny, Cybersitter[90] and Internet Filter block offensive language and unedited

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82 Ratings Conference, *supra* note 2, tape one, at 534-39.

83 *Id.* at 587-94.

84 *Id.*

85 *Id.*

86 *See Overview: The CyberNOT Block List* (visited Nov. 13, 1996) <http://www.microsys.com/cyber/cp_.block.htm>; *PICS: Internet Access Controls Without Censorship* (visited Nov. 10, 1996) <http://www.w3.org/pub/wwwpics/iacwc.htm>.

87 *See Cyber Patrol: The Facts* (visited Nov. 13, 1996) <http://www.microsys.com/cyber/cp_info.htm#Overview>.

88 *See* Trove Investment Corp., *Net Nanny Product Page* (visited Nov. 11, 1996) <http://www.netnanny.com/netnanny/product.html#rating.>

89 *See* Trove Investment Corp., *NetNanny Product Page* (visited Nov. 11, 1996) <http://www.netnanny.com/netnanny/product.html#rating>.

90 Cybersitter has incorporated an age-based Voluntary Content Rating System ("VCR"). This system "allows publishers of Web pages designed for adult and mature audiences to add one simple line to their web page code that will enable Cybersitter and other filtering programs to recognize and block these pages from access by underage users."

Web pages, newsgroups, and chatrooms.[91]

B. *Employee Control Filters*

Other control filters, such as SurfWatch, were designed not only to block offensive material from children, but also from employees.[92] Employee control filters are useful in deterring personnel from using company equipment for personal purposes.[93] Webtrack, another personal control filter, was designed principally for employees. With the filters, various sites (the Web, Gopher, and FTP sites) may be restricted on the basis of fifteen categories (including sexually explicit material, games, gambling, job search information, drugs, on-line merchandising, sports, and humor). Most parental control filters cost from $30 to $50. On the high end, Webtrack costs $7500 plus $1500 annually for service, but the software is free to students from kindergarden through high school.[94] Although Webtrack and many other employee control filters may be helpful to employers (for example, by limiting the amount of non-business time used on-line), the system may seem overly restrictive and invasive for employees.[95]

C. *The Adverse Effect of Control Filters*

When overly-vigilant restrictions are imposed, these filters may have deleterious effects. Teenagers may be prevented from accessing information that may be helpful to them (for example, on sexuality and/or AIDS) and parents may invade their privacy by tracking their trail. This may compel young people to seek information elsewhere, in places less hospitable than the Internet. Censorship policies may also adversely affect adults, such as when America Online ("AOL") banned access to the word "breast," thereby terminating users' access to discussion groups on breast

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Voluntary Internet Rating System Promises Safer Surfing (visited Nov. 11, 1996) <http://www.solidoak.com/PR041796.txt>.

91 *See CYBERsitter 2.0* (visited Nov. 9, 1996) <http://www.pow-dist.co.uk/solidoak/cyber.html>; <http://www.xmission.com/~seer/jdsoftware/netfilt.html>.

92 *See Surfwatch Filtering Products from Spyglass* (visited Nov. 13, 1996) <http://www.surfwatch.com/>.

93 Many companies have policies restricting non-business on-line access. *See* ROBERT J. NOBILE, GUIDE TO HR POLICIES & PROCEDURES MANUAL § 7.07[2][e] (1996).

94 *See* Shabbir J. Sadfar & Steven Cherry, *Voters Telecommunications Watch, Internet Parental Control Frequently Asked Questions* (visited Nov. 9, 1996) <http://www.vtw.org/pubs/ipcfaq>.

95 The use of employee control filters raises privacy issues. To monitor workers, employers have used hidden video cameras and have screened voice mail. Employers' snooping behavior has survived constitutional challenges because of the prevalence of illegal, unethical, and unprofessional behavior in the workplace. *See* Jeffrey Rothfeder, *Invasion of Privacy*, PC WORLD, Nov. 1995, at 152.

cancer.[96]

IX. The Global Impact of Internet Censorship

As on-line services reach different parts of the globe, millions of people may be affected by censorship. In December 1995, CompuServe "cut off subscribers' access to some 200 sexually explicit databases in response to prosecutors in Germany, who claimed that the text and images in the so-called newsgroups violated German pornography laws."[97] The company renewed service, while maintaining a block on five newsgroups pending further investigation.[98] CompuServe eventually decided that "[i]nstead of barring all of its 4.3 million subscribers from access to the controversial sites, . . . it would provide subscribers with software that could be employed to selectively block any material the users [found] offensive."[99] The restriction, which occurred without prior notice,[100] raised some serious questions for on-line consumers. Not only had they lost many of the services that they paid for, but also their freedom of expression was compromised.

X. Internet Censorship Under the Telecommunications Act

A. *The Internet: A Misunderstood Medium*

According to Daniel Weitzner, "all of a sudden, the Exon bill appeared with very onerous content regulation of the Internet."[101] The bill, which later became the Telecommunications Act of 1996, "seemed awfully harsh number one, and, I think, substantially misguided. . . . It substantially misunderstood this medium [the Internet]."[102] Control filters, ratings, and parental advisories empower consumers with self-regulation, limiting the need for government intervention.

B. *The Convergence of Technologies*

With the convergence of technologies, there is a greater likelihood that the Internet will require similar restrictions to those imposed on other media. Richard Cotton, Executive Vice President

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96 *See* Amy Harmon, *On-Line Service Provider Draws Protest in Censor Flap; Computers: America Online Says Move to Delete Word Breast From Member Profiles Was a Mistake*, L.A. Times, Dec. 2, 1995, at D1.

97 Facts on File World News Digest, 1996 WL 8620350, at *1 (Mar. 7, 1996).

98 *Id.*

99 *See* Peter H. Lewis, *An On-Line Service Halts Restriction On Sex Material*, N.Y. Times, Feb. 14, 1996, at A1.

100 *See* S. B. Low, *Off the Record; The Net*, Scot. Daily Rec., Feb. 15, 1996, at 34.

101 Ratings Conference, *supra* note 2, tape one, at 554-70.

102 *Id.*

and General Counsel for NBC, believes that this convergence will have a significant impact on society.[103] Computers will (and to a certain extent do) transmit images and sounds in much the same way as television sets. Images and sounds become increasingly "real" with the development of new technologies. As television programming becomes more available, access to Internet information will continue to grow. Telephone lines will become an even more popular conduit for information. Broadcasters will transmit their programs over phone lines, just as Internet providers do. A conflict develops; this convergence calls for both a singularity and a plurality of ratings, creating a need for uniformity, while emphasizing the importance of choice.[104]

C. *On-Line Provider Liability*

The Telecommunications Act explicitly relieves on-line service providers from liability for the use of obscene language,[105] except when the provider knowingly permits obscene communications. In such instances, the on-line service provider may be held liable for transmission or display of:

> [A]ny interactive computer service to display in a manner available to a person under 18 years of age, any comment, request, suggestion, proposal, image, or other communication that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs, regardless of whether the user of such

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103 *Id.*

104 Convergence raises other telecommunications issues. With increased access to long-distance voice communications over the Internet, telephone companies demand additional regulation to forestall financial losses from Internet telephony. *See* John H. Cushman, Jr., *Calling Long Distance On A PC and the Internet: The Technology is Here, But it's Far From Perfect*, N.Y. TIMES, May 19, 1996, at 8.

105 47 U.S.C. § 230(c)(1) provides that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider" under 47 U.S.C. § 230(c)(2), which addresses civil liability:

> [N]o provider or user of an interactive computer service shall be held liable on account of:
> (A) any action voluntary taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or
> (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

47 U.S.C. § 223(f)(1) provides that no individual who makes a good faith effort to restrict the access of minors to offensive material shall be subject to civil or other liability. Section 230(c)(1) frees service providers from defamation claims by providing that interactive computer services are not republishers of information transmitted over computers.

service placed the call or initiated the communication.[106]

This "indecency" standard was drawn from *FCC v. Pacifica Foundation*,[107] in which the Supreme Court found that the FCC had the authority to impose sanctions on licensees who engage in "any obscene, indecent, or profane language by means of radio communications."[108] In *Pacifica*, Justice Stevens observed that because of the limited number of frequencies, broadcasting may be regulated more stringently than the press.[109] In *ACLU v. Reno*[110] the Government tried to apply stringent broadcast standards to the Internet. The Government did not prevail because it "assumed[d] that what [was] good for broadcasting [was] good for the Internet."[111]

Although there are recent cases supporting on-line service providers,[112] there is a strong enough body of case law[113] and a conservative enough Congress[114] to prompt on-line service provid-

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106 47 U.S.C. § 223(d)(1)(B).

107 438 U.S. 726, 738 (1978).

108 *Id.* at 731 (quoting 18 U.S.C. § 1464).

109 *Id.*

110 929 F. Supp. 824 (E.D. Pa. 1996).

111 *Id.* at 874.

112 In *Cubby, Inc. v. CompuServe, Inc.*, 776 F. Supp. 135 (S.D.N.Y. 1991), CompuServe was relieved of liability for libelous statements in its Journalism Forum when the court found that Cameron Communications, Inc., the management company hired by CompuServe, was an independent contractor. The court arrived at its decision, citing *Smith v. California*, 361 U.S. 137 (1959), in which a bookseller was not held responsible for the sale of obscene materials. In *Smith*, the Court reasoned that the bookseller could not be expected to know of the contents of every book in his or her store. Similarly, in *Cubby*, a service provider was not required to bear the "undue burden" of overseeing every piece of information that reached its database. In *Sega Enterprises Ltd. v. Maphia*, 857 F. Supp. 679 (N.D. Cal. 1994), the plaintiff, a computer game manufacturer, was unable to sustain a request for preliminary injunction for copyright infringement against an on-line service provider, because it could not prove the case on its merits or prove irreparable harm. In *Religious Technology Center v. Netcom On-Line Services, Inc.*, 907 F. Supp. 1361 (N.D. Cal. 1995), a preliminary injunction for copyright infringement against a computer bulletin board service was denied because the plaintiff (the Church of Scientology) could not demonstrate irreparable harm or vicarious liability. *Id.* at 1377, 1383. The vicarious liability defense is codified in the Telecommunications Act of 1996, Pub. L. No. 104-104, § 502, 110 Stat. 56, 134 (1996) (codified at 47 U.S.C. § 223(e)(4)).

113 In a settlement, CompuServe took responsibility for the downloading/copying of musical works by providing Frank Music and other music publishers with mechanical licenses. *See* Alan J. Hartnick, *The 1st Mechanical License in Cyberspace*, N.Y.L.J., Feb. 9, 1996. In *Playboy Enterprises, Inc. v. Frena*, 839 F. Supp. 1552, 1552 (M.D. Fla. 1993), the court found a bulletin board operator liable for copyright infringement based on the "unauthorized use of photographs" and of the magazine's trademark. Similarly, in *Stratton Oakmont, Inc. v. Prodigy Services Co.*, 1995 N.Y. Misc. LEXIS 229; 23 Media L. Rep. 1794 (May 24, 1995), Prodigy Services Company was found liable for libelous claims made on the service provider's "Money Talk" computer bulletin board. The court reasoned that Prodigy was liable, because it was the publisher of the bulletin board and the Board Leader was Prodigy's agent. *Stratton Oakmont* was later overruled by section 223(f)(1) of the Telecommunications Act of 1996.

114 On-line service provider liability is addressed in the INTELLECTUAL PROPERTY AND THE NATIONAL INFORMATION INFRASTRUCTURE: THE REPORT OF THE WORKING GROUP ON INTELLECTUAL PROPERTY RIGHTS (1995). The White Paper was overseen by Bruce A. Lehman, the

ers to impose their own standards to protect themselves from liability. Many service providers already have filters for explicit language built into their systems, thereby asserting community standards.

D. *The Community Standard Requirement*

While many feel that it is important to uphold community standards,[115] this may be problematic, because community standards vary from jurisdiction to jurisdiction. Also, an individual's standards may not be consistent with that of a given community. The Supreme Court affirmed the community standard requirement in *Roth v. United States*,[116] in which Roth was convicted for mailing an "obscene" publication, and Alberts was convicted for writing, printing, and selling an "obscene" writing.[117] In *Miller v. California*,[118] in which the defendants illegally mailed a catalog of

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Assistant Secretary of Commerce and Commissioner of Patents and Trademarks. It was a proposal to amend the Copyright Act, incorporating the concept of "transmission" and of new technologies. Although the White Paper did not establish a firm position regarding on-line service provider liability, it did raise the issue from a conservative viewpoint. According to the White Paper, "imposing liability only in those cases where infringement was willful and repeated or where it was proven that the service provider had both 'actual knowledge' of the infringing activity and the 'ability and authority' to terminate such activity . . . would result in a substantial derogation of the rights of copyright owners." *Id.* at 114.

115 *See* Ryan J. Brunner, *Why There is Nothing Wrong With the Communications Decency Act* (visited Apr. 8, 1996) <http://ic.corpnet.com/~garyd/decency.html>.

116 354 U.S. 476 (1957).

117 The *Roth* Court defined the obscenity standard as "whether, to the average person, applying contemporary community standards, the dominant theme of the material, taken as whole appeals to prurient interest." *Roth*, 354 U.S. at 488-89. Here the Court defined "prurient" as "material having a tendency to excite lustful thoughts." *Id.* at 487. The Court later excluded from the definition of "prurient" those materials which arouse "only normal, healthy sexual desires." *See* Brockett v. Spokane Arcades, Inc., 472 U.S. 491 (1985). Prior to *Roth*, many American courts relied on the English case *Regina v. Hicklin*, [1868] 3 Q.B. L.R. 360, 371, which defined obscenity as "whether the tendency of the matter [is] to deprave and corrupt those whose minds are open to such immoral influences." *Hicklin* differed from *Roth* in two respects: 1) *Hicklin* focused on persons especially susceptible to "immoral influences," whereas *Roth* focused on the "average person," and 2) *Hicklin* based obscene material on isolated passages, whereas *Roth* viewed the material "as a whole." *See* GEOFFREY R. STONE ET AL., CONSTITUTIONAL LAW 1203 (2d ed. 1991) (discussing *Hicklin* and related cases). After *Roth*, the Supreme Court continued to grapple with the meaning of obscenity, finding itself at a loss for words. *See* Jacobellis v. Ohio, 378 U.S. 184, 197 (1964) (Justice Stewart, describing hard core pornography, said, "I know it when I see it."). In *Memoirs v. Massachusetts*, 383 U.S. 413, 419 (1966), the Court arrived at a somewhat exasperating definition of obscenity when it determined that for a work to be obscene, it must be "*utterly* without redeeming social value" (emphasis added).

118 413 U.S. 15 (1973). In *Miller*, the Court established a three-part test for obscenity:

> A work may be subject to state regulation where that work, taken as a whole, [1] appeals to the prurient interest in sex; [2] portrays, in a patently offensive way sexual conduct specifically defined by the applicable state law; and [3] taken as a whole, does not have serious literary, artistic, political, or scientific value.

Id. at 38-39. To achieve greater clarity and to reduce the chilling of free expression the Court: 1) rejected the "utterly without value" standard established in *Memoirs*, 383 U.S. 413,

adult books, the Court reaffirmed *Roth*, holding that obscene material was not protected by the First Amendment.[119] The Court further asserted "that such material can be regulated by the States . . . [and] that obscenity is to be determined by applying 'contemporary community standards.'"[120]

The community standard requirement was later imposed on the Internet in *United States v. Thomas*,[121] where the defendants, operators of a computer bulletin board, were convicted under federal obscenity laws for transmitting obscene images from California to Tennessee. Under federal laws, the defendants were charged for transportation of obscene material through interstate commerce and for violating community standards.[122] The *Thomas* holding has tremendous implications, because it subjects materials transmitted over the computer to laws of interstate commerce and imposes community standards on such materials. Because a bulletin board operator or other information provider may not know where the receiver of the information is located, the highest community standard (for example, no obscenity) would have to be applied.

E. *The Scienter Requirement*[123]

The Telecommunications Act prosecutes those who initiate communications in which they knowingly transmit obscene information to minors.[124] Technically, only adults may establish on-line accounts, using adult billing methods, such as credit cards and checking accounts. Similarly, adults are familiar with particular passwords and may block matrial accessed through certain screen names (such as those used by children). Nevertheless, minors who have access to on-line services may engage in adult communications and gain entry to adult sites. Because of the risks of prosecution, Internet users and providers may be compelled to "chill" their speech by imposing a censorship system on the information they transmit. Furthermore, Internet service providers may "chill" inde-

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reasoning that under such a standard the prosecution would be unable to meet the burden of proof; 2) imposed a "'local' community standard requirement" (based on the state where the case is tried), finding "national" requirements to be "unreasonable;" and 3) limited state bans of obscene material to "hard core" sexual conduct to provide "fair notice" of such violations. *Miller*, 413 U.S. at 27.

119 *Miller*, 413 U.S. at 36-37.

120 *Id.*

121 74 F.3d 701 (6th Cir. 1996).

122 18 U.S.C. §§ 1462, 1465 (1994).

123 "Scienter" is the Latin word for "knowingly." The term is frequently used to signify a defendant's guilty knowledge. *See* BLACK'S LAW DICTIONARY 1345 (6th ed. 1990).

124 *See* The Telecommunications Act of 1996, Pub. L. No. 104-104, § 502, 110 Stat. 56, 133-36 (1996) (amending 47 U.S.C. § 223, which addresses the "obscene or harassing use of telecommunications facilities").

cent speech.[125]

F. *The FCC's Censorship of the Internet*

According to Margaret Blanchard, Professor of Journalism at the University of North Carolina at Chapel Hill:

> Americans are steeped in the belief that each person's home is a private castle and that the government's reach stops at the threshold. As much as Americans relish their privacy, however, many of them have become increasingly willing to allow the government to intrude into their leisure time activities in an effort to cleanse society from excessive sexuality and to protect children from the perverting influences of various media forms. No longer is the family considered able or, perhaps more accurately, willing to set standards of behavior for its members. Rather than simply forbidding young people to listen to certain forms of music, read certain books, or see certain movies, many families have abdicated this responsibility to civic action groups and the government. Such a relinquishment of authority over individual lives has led to denunciations of various media forms, calls for self-regulation of individual mediums, and attempts to ban completely some sexually explicit speech.[126]

Nevertheless, aside from battles in the courts, it is unlikely that the FCC will impose strong censorship standards over the Internet. Although the FCC "may describe measures which are reasonable, effective, and appropriate to restrict access to prohibited communications,"[127] the Commission does not have jurisdiction over "interactive computer networks."[128] Furthermore, strong government restrictions conflict with the federal government's aim "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."[129]

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125 *See* Pamela Mendels, *F.B.I. Says It Reviewed a Computer Service for Indecency*, N.Y. TIMES, May 11, 1996, at 20 (where the government commenced and later terminated a potentially speech-chilling investigation of indecency on CompuServe in lieu of the ACLU's challenge of the Telecommunications Act).

126 Margaret A. Blanchard, *The American Urge to Censor: Freedom of Expression Versus the Desire to Sanitize Society—From Anthony Comstock to 2 Live Crew*, 33 WM. & MARY L. REV. 741, 742 (1992).

127 47 U.S.C. § 609 note.

128 *Id.*

129 47 U.S.C. § 230(b)(2).

XI. A Constitutional Challenge to the Communications Decency Act

In response to the Communications Decency Act of 1996 ("Decency Act"),[130] the American Civil Liberties Union ("ACLU"), the Electronic Frontier Foundation ("EFF"), the Electronic Privacy Information Center ("EPIC"), Planned Parenthood, and others, filed suit in the federal district court for the Eastern District of Pennsylvania, seeking declarative and injunctive relief.[131] The ACLU claimed that the Decency Act violated the First, Fourth, Fifth, and Ninth Amendments, by criminalizing the "expression of constitutionally protected information and ideas over computer communications systems,"[132] including patently offensive e-mail correspondence, and distribution of abortion information.[133] The case hinged on two terms—"indecency" and "patently offensive"—that the ACLU claimed were "unconstitutionally vague and overbroad."[134]

On February 26, 1996, the Citizens Internet Empowerment Coalition ("CIEC")[135] coordinated by the Center for Democracy and Technology, America Online, the American Library Association, and others, filed suit in the Eastern District of Pennsylvania as well. The following day, the ACLU claim merged with CIEC's claim. The suit sought to overturn the Decency Act, arguing that Internet technology is entitled to at least as much First Amendment protection as that provided to print media. CIEC claimed that the Decency Act threatened "the very existence of the Internet as a viable medium for free expression, education, and commerce."[136] CIEC argued that:

- The Internet is a unique communications medium which deserves First Amendment protection at least as those afforded to print media
- Individual users and parents, not the federal government,

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130 The Communications Decency Act of 1996, Title V of the Telecommunications Act of 1996, Pub. L. No. 104-104, §§ 230, 501-504, 506-509, 640, 641, 110 Stat. 56, 133-139 (1996) (codified at 18 U.S.C. §§ 1462, 2422, and 47 U.S.C. §§ 223, 223 note, 230, 303, 303 note, 330, 531, 551, 559, 560, 561, 561 note, 609 note).

131 *See generally* Plaintiffs' Complaint, ACLU v. Reno, 929 F. Supp. 824 (E.D. Pa. 1996) (Nos. 96-936, 96-1458).

132 Brief for ACLU at 1, ACLU v. Reno (Nos. 96-936, 96-1458).

133 *See* Plaintiffs' Complaint ¶ 4, ACLU v. Reno (Nos. 96-936, 96-1458).

134 *Id.*

135 The Citizens Internet Empowerment Coalition ("CIEC") consists of 30 members, including libraries, book publishers, newspaper publishers, editors, advertisers, commercial on-line service providers, internet service providers, non-profit organizations, and civil liberties advocates. *See* <http://www.vic.com/_garyd/decency.html> (visited Nov. 13, 1996).

136 *Id.*

should determine for themselves and their children what material comes into their homes based on their tastes and values

- The Decency Act will be ineffective at protecting children from "indecent" or "patently" offensive material online.[137]

Judge Ronald L. Buckwalter of the Federal District Court in Philadelphia upheld that portion of the statute referring to Internet transmissions that are "patently offensive as measured by contemporary community standards, sexual or excretory activities or organs."[138] However, Judge Buckwalter characterized the term "indecent" as potentially overly broad.[139] According to journalist Peter Lewis, the ambiguity would "leave reasonable people 'perplexed' in evaluating what is or what is not prohibited by the statute."[140]

On June 11, 1996, the court affirmed its previous decision and granted a preliminary injunction.[141] With additional documentation available, Judge Buckwalter, looking beyond the word "indecent," did not apply the strict scrutiny standard used in *Sable Communications of California, Inc. v. FCC*,[142] and concluded that the Decency Act was overbroad. According to Judge Sloviter, Congress did not intend to "exclude material of serious value."[143] Judge Dalzell noted that "[a]s the most participatory form of mass speech yet developed, the Internet deserves the highest protection from government intrusion."[144] Thus, to block the enforcement of the overly restrictive Decency Act, the court found the Act unconstitutional.[145]

The Philadelphia ruling was followed by a similar decision in *Shea v. Reno*,[146] a New York case, challenging the provision of the Decency Act, which prohibits the dissemination of indecent material to minors over computer networks.[147] The *Shea* court did not

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137 *See "The Complaint"—CIEC-Current Lawsuit Information* (visited Feb. 27, 1996) <http://www.cdt.org/ciec/background on the lawsuit>.

138 ACLU v. Reno, 24 Media L. Rep. 1379 (E.D. Pa. 1996) (citing 47 U.S.C. § 223(d)(1)(B)).

139 *See* Richard Raysman & Peter Brown, *Liability of Internet Access Provider Under Decency Act*, N.Y.L.J., Mar. 12, 1996, at 3.

140 Peter H. Lewis, *Judge Blocks Law Intended to Regulate On-Line Smut*, N.Y. TIMES, Feb. 16, 1996, at D1.

141 ACLU v. Reno, 929 F. Supp. 824 (E.D. Pa. 1996).

142 492 U.S. 115 (1989). The *Sable* Court addressed the banning of commercial telephone messages ("dial-a-porn").

143 ACLU v. Reno, 929 F. Supp. at 855. Judge Sloviter's opinion is consistent with the reasoning in *Miller*, 413 U.S. 15, which places value on literary, artistic, political, and scientific material.

144 ACLU v. Reno, 929 F.Supp. at 883.

145 *Id.*

146 930 F. Supp. 916 (S.D.N.Y. 1996).

147 Pursuant to section 502 of the Decency Act (codified at 47 U.S.C. § 223) it is a felony,

find the definition of indecency to be "overly vague." This is because the indecency definition had been previously challenged and affirmed in other cases.[148] However, the *Shea* court did find the minority provision of the Decency Act to be "overly broad," because it would "ban constitutionally protected indecent communications between adults" while trying to shield minors.[149]

XII. Proposed Amendments Addressing the Indecency Standard

In response to those opposed to the "indecency" standard in the Telecommunications Act, legislators proposed amending the Act. Senator Leahy introduced Senate Bill 1567,[150] which, if passed, would strike section 502 of the Decency Act, eliminating the "indecency standard as it relates to the 'obscene and harassing use of telecommunications facilities.'"[151] Representative Anna Eshoo (D-CA), who introduced House Bill 3089, the Online Parental Control Act of 1996 ("OPCA"),[152] presented a more feasible solution. The purpose of OPCA was to "strengthen the control parents have over their children's access to on-line materials, eliminate the 'indecency' standard from the Communications Act of 1934, and provide additional defenses against liability for publishing on-line materials."[153]

If users of interactive computer services, content providers, and access software providers take actions to qualify for these defenses, then they are protected from civil or criminal liability under

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punishable by prison terms and large fines, to display to persons under eighteen "patently offensive" sexually explicit materials on computer networks. 47 U.S.C. § 223(d)(2).

148 *See* Deborah Pines, *Computer Indecency Law Declared Void: 3-Judge Panel Finds Constitutional Flaws*, N.Y.L.J., July 30, 1996, at 1. Pines notes that definitions established by courts and the FCC have prevailed over the years. *See* Fort Wayne Books, Inc. v. Indiana, 489 U.S. 46 (1989), *cited in* ACLU v. Reno, 929 F. Supp. 824; Hamling v. United States, 418 U.S. 87, 118-19 (1974). The FCC defines "indecent" as "the description or depiction of sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards for the telephone medium." Info. Provider's Coalition v. FCC, 928 F.2d 866, 874 (9th Cir. 1991). For the *Pacifica* Court, "the normal definition of indecent merely refers to conformance with accepted standards of morality." *Pacifica*, 438 U.S. at 740. Though definitions may vary, they have coexisted, while surviving constitutional challenges.

149 *Shea*, 930 F. Supp. at 940-42.

150 S. 1567, 104th Cong. (1996).

151 *See generally* 142 Cong. Rec. S1180-04 (daily ed. Feb. 9, 1996) (Statements of Sen. Leahy).

152 H.R. 3089, 104th Cong. (1996). The OPCA proposed to eliminate the indecency standard from 47 U.S.C. § 223(a)(1)(B) by replacing the word "obscene or indecent" with the words "harmful to minors."

153 *Rep. Eshoo Introduces Online Parental Control Act: Legislation Strengthens Parental Control of Online Materials, Eliminates "Indecency" Standard* (visited Nov. 9, 1996) <http://www-eshoo.house.gov/opca.html>.

state law for making available to minors materials that are indecent or harmful to minors.

The OPCA replaces the "indecency" standard with a statutorily defined "harmful to minors" standard.[154] It also maintains the 1934 Act's defenses for anyone who gives parents technology that blocks or restricts access to on-line materials deemed obscene or harmful to minors, or who restricts access to such materials through adult access codes or through a credit card number validation scheme.[155]

The OPCA provides two new affirmative defenses. Under these new defenses, providers or users of interactive computer services, information content providers, and access software can: 1) use a labeling or segregating system that restricts access to online materials (such as systems developed using the PICS system, or 2) use another system for serving the same function, provided this alternative system is as reasonable, effective, and appropriate as blocking systems, adult access codes, and labeling technologies, then the OPCA protects them from civil or criminal liability under state law for making available to minors materials that are indecent or harmful to minors.[156]

XIII. The Degree of Choice and Parental Control

Robert Corn-Revere, a partner at the law firm of Hogan & Hartson, specializing in First Amendment and communications law, asks, "[i]s more choice necessarily desirable? . . . People may have a hard enough time coming to grips with the MPAA system. . . . Do you think people will be able to cope with a range of choices?"[157] Canada reduced its ratings system down from a nine-level system to a six-level one, because parents found the original system to be too complicated. Now, twenty percent of all homes in Canada with children under twelve use the system.[158] Despite concerns that broadcasters may inappropriately assign ratings that may not match other viewers' tastes, Canadian broadcasters are confident that a system will be in place soon.[159]

Others, however, believe that there is a need for a pluralistic system and that the public is equipped to deal with it. Gail Markels, Senior Vice-President and General Counsel of the Interac-

154 H.R. 3089 § 2.
155 *Id.* § 3.
156 *Id.*
157 Ratings Conference, *supra* note 2, tape one, at 616-17.
158 *Id.*
159 *See Eshoo, supra* note 152.

tive Digital Software Association says, "[t]here were dozens of independent city and state ratings boards. I think each industry—the record industry, the film industry, the software industry, has different values and different histories, and I think the public is smart enough to pick up the fine points and can do that."[160] According to Professor Marci Hamilton of the Benjamin N. Cardozo School of Law, parents want to exercise their right to control what their children view through a pluralistic ratings system.[161] Professor Hamilton bases her belief not only on her personal experience as a parent, but also on her concept of constitutionality. As the framers saw it, Professor Hamilton says, "liberty was a notion of control in the midst of a lush variety of options."[162] Thus, parents should be able to exercise their control through a variety of choices.

Some parents believe that the governmental restrictions imposed by the Telecommunications Act are not enough and that parental control is necessary to keep their children safe on the Internet.[163] Others, however, believe that the "censor of the Net" approach is "morally misguided" and that parents are better off putting energies into educating their children about the dangers of the world and about boundaries.[164] To a certain degree, exposure to disturbing material better equips the young person to cope with reality. Parents are not always doing their child a favor by protecting them from unsavory information. Uninformed children may rebel and/or fall victim to the world from which their parents are trying to protect them.[165]

Censorship also deprives young people of their cultural heritage. Some young people grow up in environments where rock and other forms of popular music are banned. This may occur when parents believe that such music would influence their children to engage in sex and/or take drugs. Young people who want to be musicians may find themselves at somewhat of a disadvantage, having had limited exposure to popular music. Similar cultural deprivations have occurred through the censorship of literature, art, and film. It is not uncommon for culturally enriching works never to see the light of day. In our society, most of the

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160 Ratings Conference, *supra* note 2, tape one, at 679-83.

161 *See* Ratings Conference, *supra* note 2, tape two, at 1808-16.

162 *Id.* at 1804-06.

163 *See* Sadfar & Cherry, *supra* note 94.

164 *See* Howard Rheingold, *Tomorrow: Why Censoring Cyberspace is Dangerous & Futile* (visited Nov. 11, 1996) <http://www.well.com/user/hlr/tomorrow/tomorrowcensor.html>.

165 *Id.*

censorship control lies in the hands of parents. It is important that this control be exercised wisely and assertively, yet not too heavily.

XIV. Ratings in the Motion Picture Industry

As with other media industries, the recording industry has also expressed concerns about the content of its products. With increasing control comes the risk of censorship, whether it be by parents, by ratings systems, or by the government. According to Richard Mosk, Chairman of the Motion Picture Association of America's Classification and Rating Administration ("CARA")[166] "[e]very country in the world . . . has some form of censorship/ratings . . . and most of them, with the exception of one or two, including our own, have government censors."[167]

In Great Britain, the British Board of Film Classification ("BBFC"), an independent, non-governmental body, classifies films and videos.[168] Although the BBFC is not an official government body, "its decisions are usually followed by local film censors, who have statutory authority over the distribution in their jurisdictions."[169] Under British law, the BBFC is required to classify and label video recordings. The BBFC system contains the following categories:

"U" for universal.

"UC" for universal; particularly suitable for children (this classification is for videos only).

"PG" for parental guidance; some scenes may be unsuitable for children.

"12" for suitable for person of twelve years or older (this classification is for films only).

"15" for suitable only for persons fifteen years and over.

"18" for suitable only for persons eighteen years and over.

"R18" for restricted distribution only, through cinemas and sex shops.[170]

In the United States, the Motion Picture Association of America ("MPAA") has developed five classifications:

"G" for "General audiences—all ages admitted."

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166 The Motion Picture Association of America Classification and Rating Administration ("CARA") is the oldest media ratings system in the United States. *See* Federman, *supra* note 12, at 6.

167 *See* Ratings Conference, *supra* note 2, tape one, at 844-51.

168 Conference Source Book, *supra* note 33, at 34.

169 *Id.*

170 *Id.* at 57.

"PG" for "Parental guidance suggested; some material may not be suitable for children."
"PG-13" for "Parents strongly cautioned. Some material may be inappropriate for children under 13."
"R" for "Restricted, under 17 requires accompanying parent or adult guardian."
"NC-17" for "No children under 17 admitted."[171]

According to Mosk, when the MPAA rates a film, it does not determine whether the movie is "good" or "bad" for children. Rather, the rating is intended "to inform the parent . . . [to] give them a signal . . . [while parents must] exercise their parental responsibility to determine whether it is good or bad [for] children."[172]

XV. Ratings Versus Values

Mosk's statement raises an important question. How can an industry place a rating on a product without conveying, implicitly or explicitly, a value judgment? According to Richard Cotton, "rating labels" play "two potential roles."[173] They provide "value-neutral information" and "non-value-neutral information" by conveying approval or disapproval.[174] Also, ratings have a tremendous impact upon which programs make their way into the marketplace. According to Cotton, broadcasting is particularly vulnerable because it is an advertiser-supported medium.[175] Mosk believes that restrictive ratings have a "chilling effect" in the film industry.[176] "Movie makers do tailor their movies to get a certain rating."[177] NC-17 movies are commercially limited,[178] while "the most successful pictures are 'G' pictures."[179]

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171 *See generally* Jack Valenti, The Voluntary Movie Rating System: How it Began, Its Purpose, The Public Reaction (1991). Home Box Office and the Showtime Network have used content-based ratings. These are: "RP" for rape; "GL" for graphic language; "BN" for brief nudity; "AC" for adult content; "SC" for strong sexual content; "V" for violence; "N" for nudity; "MV" for mild violence; "AL" for adult language; and "GV" for graphic violence. *See* Federman, *supra* note 12, at 118.

172 Ratings Conference, *supra* note 2, tape one, at 863-64.

173 *Id.* at 1034-35.

174 As an example, Cotton notes that "[t]he Scarlet letter 'A' was not intended simply to convey value neutral information that a person had sexual intercourse outside of marriage; it was to convey the Government's or society's view of that and it was intended to discourage that activity." *Id.* at 1034-36.

175 *Id.* at 1046-50.

176 *Id.* at 863-64.

177 *Id.* at 1567.

178 *Id.* at 1569-70.

179 *Id.* at 1586.

XVI. DO RATINGS WORK?

The question arises as to whether ratings systems actually work.[180] The concept of ratings "working," however, means different things to different people.[181] For consumers, ratings are guideposts for making informed decisions about the use of media technologies. Consumers may choose movies with ratings to suit their moods, to satisfy their interests, and, most importantly, to accommodate their families. For parents, ratings are intended to function as deterrents against material which may be harmful to children. Children's television producer Haim Saban observes that because ratings often do not serve this last function, they do not work.[182] Stephen Brenner, Executive Vice-President of Business Affairs and Operations and General Counsel for USA Networks, holds a similar view. He notes that when given the choice of seeing an R-rated movie or a non-R-rated movie, seventeen year old boys will choose the former.[183] Says Brenner, "I wonder whether we are doing any service to anybody or perhaps only industry people to watch things that we think they shouldn't watch."[184] Similarly,

> Violence is a very nice political phrase, but the reality is that there is violence that is used to good dramatic effect to make very important social points and there is violence which is totally gratuitous and which no one would defend. But if you're dealing with a rating system which doesn't distinguish, you will have . . . that kind of chilling effect [a system which impacts program content] in classic First Amendment terms.[185]

Also, a single rating, such as "R" or a descriptive word, such as "violence," is not an accurate indicator of the content of the program.

According to Valee, however, a ratings system should function the same way as a nutrition label which indicates the sodium content of a food.[186] The label should be informative rather than judgmental. All too often, however, the viewer, like the prescrip-

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180 The abundance of ratings may undermine their effectiveness.

181 A related question is: "[d]o blocking devices, such as the V-chip, work?" Professor Balkin of Yale University Law School states: "[t]here are two standard objections to blocking filters like the V-chip. The first is that parents will be unable to use the blocking device. The second is that, even if they do, children will be able to break through and watch the program anyway." Balkin, *supra* note 25, at 1153. According to Senator Pressler, however, "the ultimate V-chip already exists on every television in America—the on/off switch." 142 CONG. REC. S2207 (daily ed. Mar. 15, 1996) (statement of Senator Pressler).

182 *See* Landler, *supra* note 30, at 1.

183 *See* Ratings Conference, *supra* note 2, tape one, at 813-17; *see also* FEDERMAN, *supra* note 12, at 9-17 (discussing the "impact of ratings on audiences").

184 Ratings Conference, *supra* note 2, tape one, at 824-26.

185 *Id.*

186 *Id.*

tion drug taker, is ill-informed, says Benjamin N. Cardozo School of Law Professor John McGinnis.[187] Adults, too, want to know what they may be seeing. However, the chemical components found in food and drugs are objectively quantifiable, whereas ratings are subjectively measured. Based on this observation, one may assume that ratings are not as reliable as the measurements found on certain food and drug labels.

Nevertheless, consumers rely on ratings for content-related information. People want to know what they may be seeing. For example, *E.T.*, which was touted as a fun filled children's movie, contains a harrowing cardiac resuscitation scene which may be quite unpleasant to some viewers. This brings back the question of how informative a ratings system should be. Should a system contain information about any possible problems that may arise from a work's content, and if so, will the day come when a rater may be held liable for inadequately representing the material that it rates? While such issues are unlikely to be tried in a court of law, they will be tried in the eyes of the public. Thus, raters must be wary as they develop and implement ratings systems.

XVII. Conclusion

For society, ratings systems raise questions of efficacy and pose important dilemmas: government regulation versus parental power, free expression versus censorship, and values versus judgments.

The need for gatekeeping increases with the growing availability of various media technologies. There is a greater burden upon parents to become active decision-makers in the material viewed by their children. To assist parents in this endeavor, raters have been developing systems of blocking unwanted information. These systems, however, have become increasingly complex and more difficult to understand. Ideally, society should have media awareness initiatives to educate consumers about the use and management of media technologies. This will provide consumers with the power to choose and the ability to interpret when faced with the plurality of ratings.

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187 *Id.*