

TESTIMONY



The film industry's voluntary movie rating system and why it has endured

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the FTC's First and Second Reports, and how the movie industry responded to the First and how it was treated by the Second

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Why the proposed Media Marketing Accountability Act treads heavily on the spine of the U.S. Constitution.

*A factual catalogue offered to  
the Governmental Affairs Committee  
of the United States Senate*

by

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**The film industry's voluntary movie rating  
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Of the current members of the United States Senate, only five resided in that chamber when the film industry's voluntary movie rating system was born. The date was November 1, 1968. In the ensuing thirty-two years and eight months, movie ratings have become part of the daily life of the nation, with a 98% 'recognition' factor among American families.

In a marketplace usually brooding over the fragility and the brutishly short lives of products and enterprises, the rating system has endured, buoyed by an ascending curve of parental approval. Nothing lasts almost thirty-three years in such a volatile marketplace unless it is providing a visible benefit to the people it was designed to serve -- in this case, the parents of America.

Is it perfect? Of course not. Perfection is nowhere to be found in anything made by mortals. But since 1969 in annual national surveys conducted by the Opinion Research Corporation of Princeton, New Jersey, parents have given the movie ratings an ever-rising level of approval. Last year in September, 2000, the latest poll revealed that 81% of parents with children under 13 found the ratings Very Useful to Fairly Useful in helping them make decisions about the movie going of their young children. That is a parental authority that must be invulnerable against outside interference.

The Federal Trade Commission, in the summer of 2000, undertook its own separate, independent survey and reported that 80% of parents were "satisfied" with movie ratings.

These are massive parental endorsements. The settled fact is that over these almost thirty-three years the vast majority of parents have come to know the movie rating system. They use it. They find it helpful.

During those long years, as of this date, the rating board has rated 16,892 films. While there is criticism about the 'accuracy' of the ratings of individual films, never once have there been accusations faulting the integrity of the system. There will always be disagreements about the rating of a specific film. Frankly, sometimes I privately take issue with a particular movie's rating. But if there are errors in some ratings, it is a matter of a judgment call, not an exile of integrity.

Let's discuss "accuracy." In rating movies, we are not dealing with the purity of Euclid's geometric equations where the answers are always clean-shaped and final. Vexing though it may be to social scientists, Wall Street forecasters -- and movie raters -- they are all equally confronted with the ghostly form of "subjectivity," barren of Euclidean precision. Finality and proof always lie beyond their grasp. The reason why is simple. None of them is divinely inspired enough to see clearly what is not clearly seen.

Where does one find accuracy in anything 'subjective?' How will a six year old boy behave when he becomes twenty and under what circumstances would he turn "bad?" What is too

much violence? Where is the line to be drawn? How does one predict the future years of that six year old boy who becomes briefly aggressive (as laboratory experiments reveal) after watching action visuals? When he becomes twenty is there sufficient connective and causal evidence from the experiments that he will pick up a Glock Nine and blow someone's head off?

Plainly, when there is no sublime absolute, when you walk down ill-lit corridors, what do social scientists, Wall Street forecasters and movie raters do? They draw smudged lines. They estimate. They surmise. They leap into a good faith of judgments, without any conclusive and reassuring proof that they are right. For example, social scientists make fragile estimates which emerge from a laboratory experiment.

But they cannot begin to fathom nor can they measure with any precision how a 'human being' will act and react in the real, hurly burly world beyond the confined landscape of the lab. To put it bluntly, the computer, a magical piece of technology, can do everything except one thing: It cannot predict human behavior. Neither can anything or anyone else.

So, how does the Rating Board deal with subjectivity and accuracy? All the members of the Rating Board are parents. They look at each film through the lens of a parent's eye. And before the Board comes to a final decision, each rater tries to answer this question: "Is the rating I am about to apply to this movie one that most parents in America would agree is the correct rating?" To go beyond that is to reach for immaculate finality which, alas, is not available.

Consider this: in 2000, the Surgeon General of the United States conducted the largest excavation of

extant research into what incites violence in young people. The Surgeon General's final report put "media watching" near the bottom of "risk factors" which contribute to anti-social behavior. This report ought to be required reading for anyone perplexed about the origins of the source-bed from which violent youngsters emerge.

What about violence among juveniles? The latest FBI crime data reveals that of the some 70 million juveniles in the nation (under 17 years old), only 1/16<sup>th</sup> of one percent of them have been arrested for a serious crime (though not necessarily convicted). This means that 99.84% of all juveniles have never been involved in serious crime. Moreover, juvenile crime, according to the FBI, has declined some 28% in the last five years.

The National Safety Council has reported that the safest place for children today is the school and the schoolyard. The great majority of the deaths of children occurs in automobile accidents.

We do not point accusatory fingers at anyone. We do know that parents are being bombarded in this cyberspace age with literally an avalanche of information, entertainment, facts, data, chat rooms, and the tide rolls on. It is not easy being a parent in these times when so much is available to so many and when so few of us can sort it all out. Parents with young children deserve a never-ending compassion from the general public.

It is a fact that all parents are not the same, all children are not alike, and that only parents know the emotional, maturity and intellectual level of their children. Which is why parental decisions are best left to individual parents.

**The First and Second Reports of the Federal  
Trade Commission  
and  
How the movie industry responded to the  
First Report, and how it was treated  
in the Second Report**

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The First Report of the Federal Trade Commission was made public on September 11, 2000. In that Report the FTC pointed some accusatory fingers at a number of films whose marketing plans were, in the FTC's judgment, flawed. Some of these plans involved marketing R-rated films to young children.

My own response was that some of the criticisms by the FTC were not off the mark. Some of the marketing actions were indefensible, as I publicly conceded.

On September 27, within sixteen days of the publication of the FTC's First Report, the member companies of the Motion Picture Association of America conveyed to the Commerce Committee of the Senate a 12-Point Set of Initiatives which confronted the FTC's criticisms and vowed to revise movie marketing designs to coincide with the Initiatives.

Those Initiatives are in place and working. They include the creation of Compliance Committees within each company whose mandate it is to monitor the marketing plan of every film released by that company. Moreover, each Compliance Committee would report to the Chief Executive Officer of the MPAA on a frequent basis as to how they were carrying out its responsibilities.

Additionally, we pledged we would offer expanded information to parents about "the reasons for the rating of a specific film." Those reasons are now resident in all newspaper ads of reasonable size, are available on web-sites of the MPAA and each individual company. We believe it is right and useful to make sure that parents can determine the "why" of a rating, before they decide whether or not they want their children to see that movie.

The Second Report of the FTC was made public in April, 2001. The Commission commended the movie industry in seventeen separate citations for improving the marketing of movies and the industry's commitment to continue its marketing scrutiny. Is there room for more improvement? Yes, there is. We are doing our dead level best to make sure that we redeem the public pledges we made.

But more importantly, the Federal Trade Commission in both its First and Second Report, and in its testimony before the House Commerce's subcommittee on Telecommunications on July 20, 2001, made clear its firm conviction that "because of First Amendment protections afforded these products, the Commission continues to believe that vigilant (voluntary) self-regulation is the best approach to ensuring that parents are provided with adequate information....."

Bear that sober admonition in mind as we move now to proposed Senate legislation entitled:

### **The Media Marketing**

#### **Accountability Act of 2001**

**And**  
**why it treads heavily on**  
**the spine of the United States Constitution**

The first question to be asked is: Why does this proposed legislation turn a blind eye to the FTC Reports' clear and readily absorbed statement that the best approach is self-regulation which insures that parents are provided with adequate information on which to base their decisions about their children's movie going?

This legislative proposal sanctions the intrusion of the FTC into a voluntary rating system. The bill specifically and baldly states: "The Federal Trade Commission shall prescribe rules that define with specificity the acts or practices that are deceptive acts or practices under Section 101." Whatever its sponsors may declare, this FTC empowerment clearly trespasses on the 'content' of First Amendment protected films which is a frontal attack on the Constitution.

Moreover, the bill **immunizes** those producers who **do not** rate their films, and **penalizes** those producers who do voluntarily rate their films and give information to parents. This would infect, fatally, the movie rating system. Why would sane producers continue to submit their films for voluntary rating when they could be subjected to fines of \$11,000 per day per violation of necessarily broad subjective rules set down by a government regulatory agency? The bill would inevitably cause abandonment of the voluntary MPAA ratings system, which has worked so well for so long.

The bill also suffers from the prospect of a stern scrutiny by the Supreme Court of the United States.



In *Lorillard v. Reilly*, a recent decision several weeks ago revolving on the right of a company to advertise, the High Court said that retailers and manufacturers have a strong First Amendment interest in "conveying truthful information about their products to adults." The Court further said that the governmental interest in protecting children from harmful material doesn't justify suppressing speech to adults, citing the decision in *Reno v. American Civil Liberties Union* as well as citing *Butler v. Michigan*, which said...."incidence of this enactment is to reduce the adult population...to reading only what is fit for children."

Also keep in mind that the recent *Lorillard* case cited above did not involve products protected by the First Amendment. Creative material, movies, etc. are **fully protected by the First Amendment** which certifies that this bill, if passed, would be 'dead on arrival' in the first federal court to hear the case. Moreover, if the Supreme Court decisions cited above mean anything, they mean that under the canopy of the First Amendment, creative material will be more securely protected by the High Court from assaults by the federal government and its regulatory agencies.

### **A Summary of the movie industry's commitment to Parents:**

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For almost thirty-three years, the movie industry has been offering advance cautionary warnings to parents. The voluntary movie rating system has endured for over a third of a century for one simple reason: It is provisioning parents with information which parents count as valuable in helping them make their own parental decisions about the films they want their children to see or not to see. If the movie rating

system was not suitable to parents, if it was laggard in redeeming its obligations in aiding parents with their movie-going decisions, it would not be alive today.

What the movie rating system does is what the Federal Trade Commission urges the Congress to understand, that robust and vigilant voluntary industry self-regulation of First Amendment protected creative material is the best way to help parents. The FTC has repeatedly, in respectful language, cautioned the Congress not to over-run the free speech barricades of the Constitution. It's a joyous fact that the First Amendment is the one clause which guarantees all others in the greatest document ever struck off by the hand and brain of man.

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