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SENATE

{ REPORT
104-234 }TELEVISION VIOLENCE REPORT CARD ACT
OF 1995

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATIONtogether with
MINORITY VIEWS

on

S. 772



FEBRUARY 9 (legislative day, FEBRUARY 7), 1996.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

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TELEVISION VIOLENCE REPORT CARD ACT OF 1995

FEBRUARY 9 (legislative day, FEBRUARY 7), 1996.—Ordered to be printed

Mr. PRESSLER, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 772]

The Committee on Commerce, Science, and Transportation to which was referred the bill to provide for an assessment of the violence broadcast on television, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

S. 772, the “Television Violence Report Card Act of 1995”, provides for an assessment of violence on television. Under the legislation, the Secretary of Commerce would award grants to a private, not for profit entity to conduct assessments of violence on television and make the assessments available to the public. The legislation would require that assessments be done periodically and made available to the public at least once every 90 days.

S. 772 would impose no regulation nor penalties on the television industry. Rather, the legislation takes the approach of providing consumers with information necessary to monitor television viewing in their homes. S. 772 achieves the goal of protecting children through empowering consumers with information as opposed to other approaches that use regulation or government mandates such as requiring television set manufacturers to build sets containing a “V-Chip.”

BACKGROUND AND NEEDS

Congressional concern over the amount of violence on television extends back over forty years. As early as the 1950's, researchers believed that the spread of television was partly to blame for the significant increase in violent crime in the early part of that decade. Congress first began to examine the link between television and violence with hearings in the 1950s, holding hearings concerning violence in radio and television and its impact on children and youth in 1952 and 1954.

Concern arose again in the late 1960s and early 1970s after the wave of urban unrest caused some to question the effect of television on violent behavior. Since the early 1960's, the Committee has held eighteen hearings on the subject of television violence.¹ However, no legislation was reported out of the Committee.

In response to public concern over the urban riots of the 1960's, President Lyndon B. Johnson established the National Commission on the Causes and Prevention of Violence. The Commission's Mass Media Task Force looked at the impact of violence contained in entertainment programs aired on television and concluded that (1) television violence does have a negative impact on behavior and (2) television violence encourages subsequent violent behavior and "fosters moral and social values about violence in daily life which are unacceptable in a civilized society."²

In 1969, Senator John Pastore, Chairman of the Senate Subcommittee on Communications of the Committee on Commerce, petitioned the Surgeon General to investigate the effects of TV violence. In 1972, Surgeon General Jessie Steinfeld released a study³ demonstrating a correlation between television violence and violent behavior and called for Congressional action. The five-volume report concluded that there was a causal effect from TV violence, but primarily on children presupposed to be aggressive. The then-FCC Chairman, Dean Burch, declined to regulate violence, saying that the FCC should not "make fundamental programming judgments."

Several more hearings were held after the release of the Surgeon General's report in the 1970's. Despite studies showing an increase in violent programming, little regulatory or Congressional action was taken. Discussions continued regarding the relationship between violence in society and what was shown on television. The continued concerns prompted Congress to request the FCC to study possible solutions to the problems of television violence and sexually-oriented materials.

On February 20, 1975, under the direction of then-Chairman Wiley, the FCC issued its Report on the Broadcast of Violent and Obscene Material. The report recommended statutory clarification regarding the Commission's authority to prohibit certain broad-

¹S.Hrng. 91-6 (March 12, 19, and 20, 1969); S.Hrng. 92-32 (September 28, 1971); S.Hrng. 92-52 (March 21, 22, 23, and 24, 1972); S.Hrng. 93-76 (April 3, 4, and 5, 1974); S.Hrng. 94-62 (February 13, 1976); S.Hrng. 95-60 (May 9, 10 and 11, 1977); S.Hrng. 101-221 (June 12, 1989); S.Hrng. 103-852 (October 20, 1993); and S.Hrng. 104— (July 12, 1995).

²U.S. National Commission on the Causes and Prevention of Violence. *To Establish Justice, To Insure Domestic Tranquility. Final Report of the National Commission on the Causes and Prevention of Violence.* Washington, U.S. Govt. Print. Off., December 1969, p. 199.

³U.S. Dept. of Health, Education, and Welfare. *The Surgeon General's Scientific Advisory Committee on Television and Social Behavior. Television and Growing Up: The Impact of Televised Violence.* Report to the Surgeon General. U.S. Public Health Service. Washington, U.S. Govt. Print. Off., 1972, p. 279.

casts of obscene and indecent materials. However, with regard to the issue of television violence, the FCC did not recommend any congressional action because the industry had recently adopted a voluntary "family viewing" period.⁴ The Television Code, however, fell out of use in the 1980's.

The growth of violence in our society has prompted Congress to look for as many solutions as possible to reduce the extent of this problem. Each year, over 20,000 people are murdered in the U.S.—one person is killed every 22 minutes. While France has a murder rate of two homicides per 100,000 people; the U.S. has 9.4. The U.S. murder rate is four times the rate of Europe and 11 times higher than that of Japan. The U.S. homicide rate is rising 6 times faster than the population. Violence is the second leading cause of death for Americans between the ages of 15 and 24, and is the leading cause of death for African-Americans of that age group.

Each time the issue was raised in Congress, however, the industry continually promised to regulate itself while at the same time urging against Congressional action. In 1975, Richard Wiley, Chairman of the FCC, announced that he had reached an agreement with the broadcasters that made Congressional action unnecessary. This agreement provided that the television industry would voluntarily restrict the showing of violent shows during the "family hour."

RESEARCH ON TV VIOLENCE

During the 1980s, the amount of violence on television increased substantially. One study found up to 32 acts of violence on television on children's programming. Another study found that the amount of violence on television tripled in the 1980's. The increase in violence coincides with an increase in the amount of time children spend watching television. Children spend, on average, 28 hours per week watching television, which is more time than they spend in school. The average child watches 8,000 murders and 100,000 acts of violence on television before finishing elementary school.

A 1982 study observed that in a sample of 81 hours of television programs, there were approximately 1,500 acts of aggression and that 69% of these aggressive actions were judged unnecessary to the plot.⁵ A comparison between crime portrayals on television and the FBI's crime statistics found that since 1955, television characters have been murdered at a rate of 1000 times higher than real world victims. Television crime not only presents a higher rate of violent crime than in the real world, it portrays a different type of crime. Guns are more pervasive on television and violent crime is more often calculated and felony in nature on television than in real life.⁶

Between 200 and 3000 independent research studies have now been conducted that demonstrate a causal link between viewing

⁴On February 4, 1975, the National Association of Broadcasters (NAB) Television Code Review Board adopted a code implementing a family viewing period between 7 and 9 p.m., viewer advisories, and warnings to publishers of the advisories.

⁵Williams, T., Zabrack, M. & Joy, L., The Portrayal of Aggression on North American Television, *Journal of Applied Social Psychology*, 12, 1982, pp. 360-380.

⁶S. Robert Licther, Linda S. Licther and Stanley Rothman, *Prime Time: How TV Portrays American Culture*, (Regnery Publishing, Inc., Washington, D.C., 1994).

violent programming and aggressive behavior. Several national organizations, including the National Institutes for Mental Health, the American Psychological Association, and the National Parent-Teacher Association, believe that legislation is necessary to help parents protect their children and to protect unsupervised children from the negative effects of television violence.

Research has consistently shown a link between viewing violence on television and violent behavior. In 1956, one of the first studies of television violence reported that 4-year-olds who watched the "Woody Woodpecker" cartoon were more likely to display aggressive behavior than children who watched the "Little Red Hen." Following the Surgeon General's 1972 report, significant research was conducted detailing the correlation between viewing violent television and later aggressive behavior. Several of the leading medical associations published similar conclusions, including the American Medical Association, the American Psychological Association, the American Pediatric Association, and the American Academy of Pediatrics.⁷

For instance, a study by Tanis Williams supports the conclusion that there is a direct correlation between television violence and aggressive behavior in children. Williams, a researcher at the University of British Columbia, studied the impact of television on a small rural community in Canada that received television signals for the first time in 1973. The researchers observed forty-five first and second graders for signs of inappropriate aggressive behavior. Two years later, the same group was observed and it was found that the aggressive behavior in the children increased by 160 percent as compared to a control group that saw no noticeable increase in aggressive behavior.⁸

A survey of over 800 children in 1972 found that frequent viewers of television violence expressed a greater willingness to resort to violence to resolve conflict situations than did infrequent viewers.⁹ A survey of 3,500 students (ages 9 to 18) linked high amounts of television viewing and preference for violent programs and juvenile delinquency¹⁰ and another 1984 study demonstrated that childhood television viewing habits are related to adult criminal behavior.¹¹

In 1982, the National Institute of Mental Health (NIMH) produced a new report entitled *Television and Behavior: Ten Years of Scientific Progress and Implications for the Eighties*. In contrast to the Surgeon General's 1972 report, the NIMH concluded that TV violence affects all children, not just those predisposed to aggression. The 1982 report reaffirmed the conclusions of the earlier studies stating:

After 10 more years of research, the consensus among most of the research community is that violence on tele-

⁷ Centerwall, Brandon S., *Television and Violence: The Scale of the Problem and Where to Go From Here*. JAMA, v. 267, no. 22, June 10, 1992, p.3059.

⁸ Centerwall, Brandon. *Television and Violent Crime*, Public Interest, No.111, Spring 1993, p.56.

⁹ G. Comstock & E. Rubenstein (Eds.), *Television and Social Behavior: Vol. 3. Television and Adolescent Aggressiveness*, (Government Printing Office, Washington, D.C., 1972), pp. 314-335.

¹⁰ Thornton, W., & Voigt, L., *Youth & Society*, vol. 15, n. 4, 1984, pp. 445-468.

¹¹ Huesman, L., Eron, L., Lefkowitz, M., & Walder, L., *Developmental Psychology*, 1984, vol. 20, pp. 1120-1134.

vision does lead to aggressive behavior by children and teenagers who watch the programs. This conclusion is based on laboratory experiments and on field studies. Not all children become aggressive, of course, but the correlations between violence and aggression are positive. In magnitude, television violence is as strongly correlated with aggressive behavior as any other behavioral variable that has been measured. The research question has moved from asking whether or not there is an effect to seeking explanations for the effect.¹²

Not all research, though, supported this conclusion. In 1982, NBC sponsored a study of the issue and reported there was no correlation. In addition, a 1984 analysis of all the available studies by Jonathan L. Freedman, of the Department of Psychology at the University of Toronto, concluded that the published studies did not support the hypothesis that viewing habits of children resulted in subsequent changes in behavior in children. The Congressional Research Service (CRS) reports that both the NBC study and the Freedman studies have been discounted by additional research. In fact, a re-analysis of the NBC study revealed a direct correlation between viewing violence and harmful behavioral changes in children.

More recent research adds credibility to the findings of the NIMH. Two of the most widely publicized empirical studies adopt two different methodologies, but arrive at the same result. In one of the studies, Dr. Leonard Eron followed a group of children in up-state New York State and examined them at ages 8, 19 and 30. The study found that the more the participants watched TV at age 8, the more serious were the crimes of which they were convicted by age 30, the more aggressive was their behavior when drinking, and the harsher was the punishment which they inflicted on their own children. Similar experiments were conducted in Australia, Finland, Israel, and Poland, and the outcome was the same in each experiment.

Another study was conducted by Dr. Brandon Centerwall, a Professor of Epidemiology at the University of Washington. He studied the homicide rates in South Africa, Canada and the United States in relation to the introduction of television. In all three countries, Dr. Centerwall found that the homicide rate doubled about 10 or 15 years after the introduction of television. According to Dr. Centerwall, the lag time in each country reflects the fact that television exerts its behavior-modifying effects primarily on children, whereas violent activity is primarily an adult activity. Dr. Centerwall concludes that "long-term childhood exposure to television is a causal factor behind approximately one-half of the homicides committed in the United States." This report¹³ concerning the harmful impact of viewing television violence on preadolescent children found that extensive exposure to television violence could lead to chronic effects extending into later adolescence and adulthood.

¹²The NIMH Report, p. 6.

¹³Centerwall, p. 3059-3063.

These studies explore the link between violent television and violent behavior. However, violent behavior may not be the only harm caused by television violence. The American Psychological Association believes that the harm caused by violent television is broader and includes fearfulness and callousness:

Viewing violence increases fear of becoming a victim of violence, with a resultant increase in self-protective behaviors and increased mistrust of others;

Viewing violence increases desensitization to violence, resulting in calloused attitudes toward violence directed at others and a decreased likelihood to take action on behalf of the victim when violence occurs (behavioral apathy); and

Viewing violence increases viewers' appetites for becoming involved with violence or exposing themselves to violence.

ANECDOTAL EVIDENCE OF THE EFFECT OF TV VIOLENCE

In addition to the research, there are several compelling examples of the effects of television on children. In May 1979, Johnny Carson used a professional stuntman to "hang" Carson on stage. After a "noose" was placed around Carson's neck, he was dropped through a trap door and emerged unharmed. The next day, a young boy, Nicholas DeFilippo, was found dead with a rope around his neck in front of a TV set tuned to NBC. The parents of the child sued NBC for negligence, but lost their suit. Twenty-six people died from self-inflicted gunshot wounds to the head after watching the Russian Roulette scene in the movie "The Deer Hunter" when it was shown on national TV.

U.S. courts heard 15 cases in which youths were victims of violent incidents triggered by the media between 1977 and 1987. In nine of these cases, children or teenagers were injured or killed themselves while imitating something they had read about or seen on television.¹⁴

THE GROWTH OF TV VIOLENCE

According to several studies, television violence increased during the 1980s both during prime-time and during children's television hours. Children between the ages of 2 and 11 watch television an average of 28 hours per week. According to a University of Pennsylvania study, in 1992 a record 32 violent acts per hour were recorded during children's shows. The American Psychological Association estimates that a typical child will watch 8,000 murders and 100,000 acts of violence before finishing elementary school.

A similar story exists for prime-time programming. The National Coalition on Television Violence (NCTV), a monitoring and advocacy group, found that 25 percent of the prime-time shows in the 1992 fall season contained "very violent" material.

In August 1994, the Center for Media and Public Affairs released the results of a new survey showing an increase in the amount of violence on a single day of television in Washington, D.C. As it did in 1992, the Center monitored 10 channels of programming (six

¹⁴Lee, J., *Journal of Communication*, vol. 37, v. 2, 1987, pp. 106-138.

broadcast channels and 4 cable programs) on a single day in April. The Center found a 41% increase in television violence over the findings of its 1992 study. The Center counted 2605 violent scenes in that day, an average of almost 15 scenes of violence per channel per hour. Life-threatening violence increased by 67% and incidents involving gun play rose 45%. The Center found that the greatest sources of violence on television came from “promos” for upcoming shows and movies, which were up 69% from 1992. Only toy commercials saw a reduction in violence; violence in toy commercials dropped 85%.

Sponsors of these studies believe that there are several reasons for this increased TV violence. One cause is the increase in “reality shows”, such as *Top Cops*, *Hard Copy*, and *A Current Affair*. These shows describe or provide tape footage from actual police activity, including efforts to subdue suspects resisting arrest. Another reason is the increase in violence shown on the nightly news programs, which may in part result from the increase in violent acts in society. A very significant factor is the increase in cable programming that seeks smaller, niche audiences. According to one study, 3 of the top 4 most violent channels were cable channels, while the three major network affiliates and the public broadcasting affiliate were at the bottom of the list—the 144 music videos on MTV included almost as much violence as the three network affiliates combined.

Some believe that the most violent programs are cartoons. The inclusion of fantasy or animated characters in the compilation of violent programming is controversial. Some observers believe that cartoon violence should be distinguished from “real-life” violence that may glamorize violence. Many child psychologists, however, believe that young children are especially vulnerable to violent programs because they are unable to distinguish between fantasy and reality.

An example of this problem involved MTV’s cartoon, “*Beavis and Butt-head*”, which used to air every day at 7:00 p.m. The cartoon is a parody of two young teenagers and their view of daily life. The two characters engage in what some observers view as irresponsible activity, including cruelty to animals. In particular, the show occasionally has the two characters suggesting that setting objects on fire is “cool”. It has been alleged that the cartoon’s depiction of unsafe fireplay led one 5-year-old in Ohio to set his family’s mobile home on fire, causing the death of his 2-year-old sister in 1993. Although MTV denies any connection, it has removed all references to fire for future episodes, and has rescheduled the program to 10:00 p.m.

RESPONSE BY THE TELEVISION COMMUNITY

Although the broadcast community now admits that there is some link between violent television and violent behavior, the broadcasters join with the other sectors of the industry in believing that these findings exaggerate the importance of television violence. They argue, for instance, that the Eron and Centerwall studies contain methodological problems because they fail to take into account other factors that may contribute to the violent behavior. They argue that income level, socioeconomic status, and especially

the amount of supervision by parents have a greater impact on violent behavior than television. One study noted that an increase in violent behavior by children also was found after children watched Sesame Street, perhaps the most successful educational television show. They note that the homicide rate for white males in the U.S. and Canada stabilized 15 years after the introduction of television and did not increase in the 1980s despite the increase in the amount of television violence.

Other efforts being undertaken include a series of public service announcements (PSAs). For example, in November 1993, NBC launched a campaign called "The More You Know" focusing on teenage violence and conflict resolution.

In an effort to address the increase of television violence during the 1980s, Congress passed legislation proposed by Senator Simon providing the television industry a three-year exemption from the antitrust laws to give it an opportunity to develop common standards to reduce violent programming. In December 1992, three networks (ABC, NBC, and CBS) adopted a common set of "Standards for the Depiction of Violence in Television Programs." Some observers have criticized these efforts because the standards adopted by the networks appear weaker than the networks' own standards.

In June 1993, the networks also decided voluntarily to place "warning" labels before any show which the networks believed to contain violent material. The three networks committed that, before and during the broadcasting of various series, movies, made-for-TV movies, mini-series and specials that might contain excessive violence, the following announcement would be made: "Due to some violent content, parental discretion is advised." The warning label has been tested for the past two years. The warning is also included in advertising and promotional material for certain programs and is offered to newspapers and magazines that print television viewing schedules.

A similar advisory program was adopted by the Independent Television Association (INTV—the trade group representing many of the 350 television stations not affiliated with one of the three networks). All the station members of INTV have adopted this voluntary code.

In January 1994, both broadcast network and cable television executives announced that they would hire independent monitors to assess the amount of violence on television. The cable television industry chose Mediascope, a non-profit California-based group, to monitor its programming for violent content and provide a report for the public that is expected in the spring of 1996. On June 29, 1994, the four broadcast networks (ABC, NBC, CBS, and Fox) selected the University of California at Los Angeles (UCLA) Communication Policy Center to analyze, assess, and report on television violence.

In February 1994, the National Cable Television Association (NCTA) adopted an industry policy called "Voices Against Violence." The cable industry agreed to reduce and eliminate the gratuitous use of violence, implement a parental advisory system, and develop, in cooperation with broadcasters, a violence ratings system that endorses viewer discretion technology.

ACTIONS IN OTHER COUNTRIES

In 1994, the Canadian broadcasters, under pressure from the Canadian Government, instituted a new voluntary Code Against Violence for television that took effect this year. The code bans shows with gratuitous violence and limits those shows that include scenes of violence suitable for adults only to the hours after 9 p.m. The code places limits on children's shows by requiring that violence not be a central theme. Also, it stipulates that, in children's programs, violence not be shown as a preferred way of solving problems and that the consequences of violence be demonstrated. Similar measures have also been adopted by the United Kingdom, France, Belgium, New Zealand, Australia, and Colombia.

CONSTITUTIONAL ANALYSIS

While S. 772 does not impose any limitation on speech protected under the First Amendment, the Committee recognizes that there is a clear governmental interest in protecting children and society in general from the harmful affects of television violence.

The Government has several compelling interests in protecting children from the harmful effects of viewing violence: an interest in protecting children from harm, an interest in protecting society in general, an interest in helping parents raise their children, and an interest in the privacy of the home. Each of these are discussed below.

Government has a compelling interest in protecting children from the harm caused by television violence. As several witnesses testified, there is little doubt that children's viewing of violence on television encourages them to engage in violent and anti-social behavior, either as children or later as adults. Somewhere between 200 and 3000 independent studies demonstrate a causal connection between viewing violence and violent behavior.¹⁵ These studies have included "field" studies of the effect of television on persons in real life and laboratory studies. While the studies concluded in 1972 by the National Institute of Mental Health concluded that there was a causal relationship between viewing violence and behavior primarily among those children predisposed to violence, more recent research demonstrates that violent television affects almost all children. Dr. Eron stated in his testimony before the Committee as follows:

One of the places violence is learned is on television. Over 35 years of laboratory and real-life studies provide evidence that televised violence is a cause of aggression among children, both contemporaneously, and over time. Television violence affects youngsters of all ages, both genders, at all socio-economic levels, and all levels of intelligence. The effect is not limited to children who are al-

¹⁵Only one researcher has called into question the conclusions of these studies. See, Testimony of Jonathan Freedman, Professor of Psychology, Department of Psychology, University of Toronto, Ontario, Canada, Hearing on Television Violence before the Senate Committee on Commerce, Science and Transportation, July 12, 1995. While Prof. Freedman questions the conclusions drawn by these studies, Prof. Freedman admits that he has not performed any research of his own on this topic. The Committee is not aware of any study finding no linkage between viewing television violence and violent behavior. As noted earlier, the Congressional Research Service found that Prof. Freedman's criticisms were answered by further research.

ready disposed to being aggressive, and it is not restricted to the United States.¹⁶

While it is perhaps axiomatic that children who become violent because of television suffer harm, it is worth noting that such children suffer harm in many ways. For example, they can become anti-social, distant from others, and unproductive members of society, especially if their actions arouse fear in other people. They can suffer from imprisonment or other forms of criminal punishment if their violence leads to illegal behavior.

Violent behavior may not be the only harm caused by viewing violent television. According to the American Psychological Association, viewing violence can cause fearfulness, desensitization, or an increased appetite for more violence.¹⁷ In other words, as with "obscenity" and "indecentcy", the harm from television violence may result simply from viewing violent material, even if no violent behavior follows such viewing.

A related compelling Governmental interest is the need to protect society as a whole from the harmful results of television-induced violent behavior. A child who views excessive amounts of television violence is not the only person who suffers harm. As Dr. Eron testified, children who watch excessive amounts of television when they are young are more "prone to be convicted for more serious crimes by age 30; more aggressive while under the influence of alcohol; and, harsher in the punishment they administered to their own children."¹⁸

The Government's interest in protecting the privacy of the home from intrusion by violent programming may provide a fourth compelling Governmental interest. The Supreme Court has recognized that "in the privacy of the home * * * the individual's right to be left alone plainly outweighs the First Amendment rights of an intruder".¹⁹ The right to privacy in one's home was recently used to uphold legislation limiting persons from making automated telephone calls to residences and small businesses.²⁰ Just as subscribers to telephones do not give permission to telemarketers to place automated telephone calls, the ownership of a television does not give programmers permission to broadcast material that is an intrusion into the privacy of the home.

Some in the broadcast industry, for instance, argue that the industry should be trusted to regulate itself to reduce the amount of violence. Parents should bear the primary responsibility for protecting their children, according to some observers. Others say that the warnings and advisories that many programmers now add to certain shows are a lesser restrictive means of protecting children. Finally, some believe that parental control technologies, such as

¹⁶Oral Testimony of Dr. Leonard Eron on behalf of the American Psychological Association, Institute for Social Research, University of Michigan, before the Senate Committee on Commerce, Science, and Transportation, Communications Subcommittee, July 12, 1995.

¹⁷See, Testimony of Shirley Igo.

¹⁸Written Testimony of Dr. Eron, p. 2. Dr. Eron further warns that ". . . like secondary smoke effects, . . . don't think that just because you have protected your child from the effects of television violence that your child is not affected. You and your child might be the victims of violence perpetrated by someone who as a youngster, did learn the motivation for and the techniques of violence from television."

¹⁹FCC v. Pacifica Foundation, 438 U.S. 726, 748 (1978).

²⁰See, Moser v. FCC, 46 F. 3d 970 (9th Cir. 1995), cert. denied by Supreme Court on June 26, 1995.

the so-called "V-chip" technology, would protect children without imposing as much of a burden on the First Amendment rights of the television industry.

S. 772 provides a non-regulatory and unintrusive approach to addressing the problem of television violence. The legislation imposes no limit on the television community's right to free speech.

As discussed earlier, the television industry has been told to improve its programming by Congress for over 40 years. The first Congressional hearings on television violence were held in 1952. Hearings were held in the Senate in 1954 and again in the 1960's, the 1970's, and 1980's. At each hearing, representatives of the television industry testified that they were committed to ensuring that their programming was safe and appropriate for children. In 1972, the Surgeon General called for Congressional action, but this call was ignored after the broadcast industry reached an agreement with the FCC to restrict violent programs and programs unsuitable for children during the "family hour".

There is substantial evidence, however, that despite the promises of the television industry, the amount of violence on television is far greater than the amount of violence in society and continues to increase. According to one study, "[s]ince 1955, television characters have been murdered at a rate one thousand times higher than real-world victims. Indeed, television violence has far outstripped reality since the 1950s."²¹ As noted earlier, the American Academy of Pediatrics recorded a threefold increase in the amount of violence on television during the 1980's. The most recent survey of television in one city found a 41% increase in two years.

As Shirley Igo noted in her testimony before the Committee on behalf of the National Parent-Teachers Association, the broadcast networks have drastically reduced the amount of educational programming for children:

* * * it was found that in 1980, the three major networks combined were showing 11 hours of educational shows per week, but by 1990 such programming had diminished to less than two hours per week. Yet, there was more non-educational programming targeted at children than ever before. * * * It is clear to the National PTA and should be clear to members of this Committee that if our collective goal is to reduce violence on television, voluntary efforts by the industry will not get our nation to achieving that goal.²²

The incentives of the television industry can be illustrated by a quote from a memo giving directions to the writers of the program "Man Against Crime" on CBS in 1953:

It has been found that we retain audience interest best when our stories are concerned with murder. Therefore, although other crimes may be introduced, somebody must be

²¹ S. Robert Lichter, Linda S. Lichter and Stanley Rothman, *Prime Time: How TV portrays American Culture*, (Regnery Publishing, Inc., Washington, D.C., 1994), p. 275.

²² Testimony of Shirley Igo, National PTA Vice-President for Legislation, before the Senate Committee on Commerce, Science, and Transportation, July 12, 1995.

murdered, preferably early, with the threat of more violence to come.²³

The latest attempt to allow the industry to regulate itself came in 1990, when Sen. Paul Simon authored legislation to give the television industry a three-year exemption from the antitrust laws to develop a common code to limit television violence. In December 1992, the four broadcast networks released a common code of conduct that many criticized for being weaker than the networks' own code of practices. In any case, the code appears to have had little effect on the amount of violence on television.

Some observers argue that a requirement to put warnings or parental advisories before certain violent programs would be a less restrictive means of satisfying the Government's interest in protecting children. The Committee has received no evidence, however, that such warnings accomplish the purpose of protecting children.²⁴ Indeed, there is some reason to believe that advisories may increase the amount of violence on television, if the television industry believes that it has provided notice to parents to protect itself from criticism. Some observers believe that programmers may want a warning label to be placed on a program in order to attract viewers.²⁵

Some observers believe that a variety of technologies that are now available to television consumers can assist parents in controlling the programs that their children watch. The Committee received testimony from a number of manufacturers during which they demonstrated how these technologies could be used. The television industry believes that there is no need for government action because parents can purchase technologies on the market that will allow them to screen out undesirable programs. In addition, the Committee also received testimony in favor of mandating that certain of these technologies be placed in every television set manufactured after a certain date (the so-called V-chip legislation).

For several reasons, it is not clear that any of these approaches will be effective.

First, each of these alternatives requires that parents spend money to purchase either a box, a service, a new television set, or software programs to conduct the screening. In other words, these alternatives place the burden on the parent, rather than on the industry that is generating the violent programming. Often, parents either cannot afford or choose not to spend the money to purchase these technologies. The developer of the Telecommander technology, for instance, received a patent for his television screening device in 1978, but has not been able to obtain capital to bring the product to market, presumably because of the uncertain demand for the product.

²³ Quoted in Eric Barnouw, *Image Empire: A History of Broadcast in the United States*, Vol. III, p. 23.

²⁴ The Committee notes that it has received no evidence indicating that the warning labels on music records and compact discs has reduced the exposure of children to inappropriate lyrics.

²⁵ For example, Ms. Lindsay Wagner, a television actress, testified in 1993 that filmmakers sometimes lobby to get an "R" rating. "We now have a couple of generations that have been reared on violence for fun and many flock to the films with warnings." Testimony of Ms. Lindsay Wagner, Hearing on S. 1383, the Children's Protection from Violent Programming Act of 1993, before the Committee on Commerce, Science, and Transportation, p. 81.

For the V-chip approach to be effective, parents would need to purchase new television sets with the chip before the parents could block out objectionable programs. According to the Electronics Industries Association, television sets are replaced every 8 to 12 years. For those families that have not yet replaced their televisions, and for those that retain old televisions even after they purchase a new television set, the V-chip may approach may not have much impact.

Second, there are significant questions about the ability of parents to program the technologies effectively. Any such technological approach must be easy enough for parents to use, but must be difficult enough to prevent the children from unblocking the program. In many households, however, the children often are more comfortable with the technologies than the parents.²⁶

Third, the V-chip legislation already adopted by the Senate and House in the comprehensive telecommunications bills passed by each body (S. 652 and H.R. 1555) would not require programmers to encode each signal. Without such a requirement, however, it is uncertain whether programmers would rate the programs voluntarily and, if not, whether the legislation would be effective.

The "report card" approach, by comparison, would not require the programmers to rate each and every program, but would simply provide consumers with information with which to make their own choices about what should be viewed in their homes.

LEGISLATIVE HISTORY

In October 1993, the Senate Commerce Committee held a hearing on television violence to consider a variety of legislative proposals. Attorney General Janet Reno testified that the legislation currently pending before the Committee, including S.973, the "Television Violence Report Card Act of 1993", would be constitutional. The broadcast networks and other industry representatives argued that the amount of violent programming was less than in previous years. The industry also testified that the industry should be given more time to implement its warning labels before legislation should be considered.

On July 12, 1995, the Committee held its second hearing on television violence to consider pending measures, including S.772 (104th Congress), a measure similar to S. 973 (103rd Congress). In open executive session on August 10, 1995, the Committee ordered reported S.772, without amendment, by a recorded vote of 13 yeas and 4 nays, with two Senators not voting.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

²⁶It is worth noting that one of the witnesses at the July 12 hearing before the Committee had difficulty operating the technology that his company had developed. See, Oral Testimony of Mr. Wayne C. Luplow, Vice President, Zenith Electronics Corporation, Hearing on Television Violence before the Committee on Commerce, Science, and Transportation, July 12, 1995.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 25, 1995.

Hon. LARRY PRESSLER,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 772, the Television Violence Report Card Act of 1995, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on August 10, 1995. CBO estimates that enacting S. 772 would not result in any significant cost to the federal government. Because enactment of S. 772 would not affect direct spending or receipts, pay-as-you-go procedures would not apply to the bill. The bill also would not affect the budgets of state or local governments.

S. 772 would direct the Department of Commerce to award grants to one or more not-for-profit organizations for the purpose of evaluating and reporting on the violence contained in television programs at least once every 90 days during fiscal years 1996 and 1997. The bill would authorize the appropriation of such sums as necessary to award the required grants. CBO expects that the Domestic Policy Division of the National Telecommunications and Information Administration (NTIA) would award and monitor the grants. We estimate that the costs to NTIA to administer the grants and the amounts awarded would total less than \$500,000 per year, subject to the availability of appropriated funds.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Rachel Forward.

Sincerely,

JUNE E. O'NEILL, *Director.*

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

This legislation will have little, if any, impact on the television and cable industries. The legislation simply authorizes the Department of Commerce to make grants to not-for-profit entities to assess the level of violence in television programming. The legislation does not require or suggest any action to be taken by the FCC in regulating these industries and does not impose any obligation on the industries themselves. The purpose of the legislation is to provide viewers with information that they may use in deciding what programs to watch.

The legislation will have no impact on the personal privacy of consumers or the industries. The recipients of grant money will assess television programs made available to the public and will not scrutinize business records or proprietary information of the companies involved in airing these programs.

The legislation will not affect any persons in the television and cable industries. The employees of the Department of Commerce will face the added responsibility of administering the grant program. This burden is likely to be small because the Department al-

ready conducts several grant programs involving much greater amounts of money than is involved in this legislation. The Department of Commerce is expected to receive applications by interested not-for-profit entities to receive the grants, which will result in a slight increase in the amount of paperwork at the Department of Commerce.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section states the short title of the bill as the Television Violence Report Card Act of 1995.

Section 2. Findings

Section 2 of the bill states Congressional findings.

Section 3. Television violence report cards

Section 3 requires that the Secretary of Commerce make grants during fiscal years 1996 and 1997 to not-for-profit entities for the purpose of assessing the nature and extent of television violence.

The guidelines for carrying out an assessment are set forth in subsection (b) of section 3. An entity receiving a grant is required to (1) review current broadcast and cable television programs to determine the nature and extent of violence depicted in each program, (2) prepare an assessment that describes and categorizes that violence, and (3) make its assessment available to the public. The program review shall be carried out at least once every 90 days. When publicizing the assessment, the entity must identify the sponsor or sponsors of each television program covered.

Subsection (c) directs the Secretary of Commerce to use competitive procedures to determine which entities will be awarded grants under this section.

Subsection (d) authorizes the appropriation of such sums as may be necessary to make the grants.

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following description of the record votes during its consideration of S. 772:

At the close of debate on S. 772, the Chairman announced a rollcall vote on the bill. On a rollcall vote of 13 yeas and 4 nays as follows, the bill was ordered reported:

YEAS—13	NAYS—4
Mr. Hollings	Mr. Pressler
Mr. McCain ¹	Mr. Stevens ¹
Mr. Gorton	Mr. Ashcroft ¹
Mr. Lott	Mr. Breaux
Mrs. Hutchison	
Ms. Snowe	
Mr. Inouye ¹	
Mr. Ford	
Mr. Exon ¹	
Mr. Rockefeller	
Mr. Kerry ¹	
Mr. Bryan ¹	
Mr. Dorgan	

¹By proxy

MINORITY VIEWS OF SENATOR PRESSLER

S. 772 would institute government-sponsored “report cards” on television programming. By categorizing programming on the basis of its content, the government would establish what is tantamount to a “black list” of programming it does not like, and as such, violates the First Amendment under established U.S. Supreme Court precedent.

The bill also authorizes the Commerce Department to provide grants to one or more nonprofit organizations sufficient to fund a review of current television programs to determine the nature and extent of violence depicted in each program, describe and categorize those determinations, and make that information, as well as the identity of the programs advertising sponsors, publicly available. Such review, the legislation mandates, should take place at least every ninety days.

Under S. 772, the government, through the grant program, would categorize some programming unfavorably on the basis of its content. By publicizing the advertisers of disfavored programming in an attempt to bring down the public’s wrath upon them, the legislation intentionally pastes a “scarlet letter” on those who would dare sponsor “violent” programming. This government-sponsored black-listing of programmers and advertisers will chill—if not freeze—the broadcast of “disfavored” programming. The constitutional infirmities of such a proposal are substantial and well established.

Putting content labels on television programs through government-sponsored report cards is not the same as requiring Food and Drug Administration labels on food products, as proponents have argued. Television programs qualify as speech protected by the first amendment, food products do not.

As recently as last summer in *Rosenberger v. University of Virginia*,²⁷ the Supreme Court recognized that “the first danger to liberty lies in granting the State the power to examine publications to determine whether or not they are based on some ultimate idea and if so for the State to classify them.” The “second, and corollary, danger” to free speech comes from “the chilling of individual thought and expression.” S. 772’s proposal to categorize programming according to violent content, and then disclose the advertisers of such programming, directly implicates the “[v]ital First Amendment speech principles” that concerned the Court in *Rosenberger*.

One certain result from S. 772—indeed, it is the hope and intention of the sponsors—is that advertisers will be discouraged from sponsoring programs deemed high in violent content. The Supreme Court in *Simon & Schuster, Inc. v. Members of the N.Y. State*

²⁷ *Rosenberger v. University of Virginia*, 115 S.Ct.2510 (1995) *This case has not yet been published in the official Supreme Court Reporter.

Crime Bd.²⁸ found such a result places a financial burden on programming that is presumptively unconstitutional. Simply put, the legislation, by design, would have a chilling effect on speech sufficient to render it “censorship effectuated by extralegal sanctions.” *Bantam Books, Inc. v. Sullivan* (1963).²⁹ As the Supreme Court recognized in its 1976 *Buckley v. Valeo* ruling, such impermissible sanctions are cognizable “even if any deterrent effect on the exercise of First Amendment rights arises, not through direct government action, but indirectly as an unintended but inevitable result of the government’s conduct requiring [the report cards.]”³⁰

While S. 772 poses as a First Amendment-friendly proposal that, unlike other proposals, does not ban any programming or mandate the transmission of government ratings, the offenses to the First Amendment are equally offensive. In order to survive judicial scrutiny, the reporting system established must be unrelated to any desire to suppress free speech. S. 772, which is clearly intended to suppress free speech, albeit indirectly, obviously fails that test.

Moreover, the fact that non-profit organizations, rather than the government, would classify the programs does not save this legislation from violating the First Amendment. Under S. 772, the Commerce Department will award grants to groups based on their ability to meet criteria for classification set by the government. This is clearly the government speaking through federally funded private entities. The Commerce Department, through its grant decision-making, will in effect define the kind of violent expression that will be targeted, the type of programming that is deemed inappropriately or deleteriously violent, and the fundamental nature of the report card. This control over the nature and extent of the report, as well as the means of carrying it out, makes this whole approach one of state action, rather than private activity.

Of course, there is no First Amendment violation if private organizations wish to take the tack of this legislation, i.e., categorize television programming and urge boycotts against the sponsors of violent programming. However, such efforts are not to be led, encouraged or paid for by the government, as S. 772 explicitly would do.

In fact, a variety of organizations currently publish ratings, reviews and content summaries of television programming. Congress should not squander taxpayer money on new studies to generate information about the content of television programming that the private sector already is generating on its own in a competitive market.

As the committee hearings demonstrated, the inherent subjectivity of defining violence is inescapable when applied to analysis of actual programming. The Concordia College study, which was put forth as a demonstration of how a report card study would work, yielded incredulous results. For instance, the Helen Keller film, the “Miracle Worker” was rated on par with “Beavis and Butthead,” while an Arts and Entertainment channel documentary ranked nearly five times worse in terms of violent content.

²⁸ *Simon & Shuster, Inc. v. Members of the N.Y. State Crime Victims Bd.* 502 U.S. 105 (1991).

²⁹ *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 72 (1963).

³⁰ *Buckley v. Valeo*, 424 U.S. 1, 65 (1976).

The task of categorizing violence is fraught with unintended consequences. One clear result will be a black-listing of programmers and advertisers who sponsor programming the government does not favor. The American public utterly rejected black-listing when it was used against individuals in the entertainment industry decades ago. We in the Senate must not begin to go down this path again. Congress would do well to leave viewing decisions where they belong, in the hands of parents, and avoid transgressing the First Amendment of the Constitution.

