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IMAGES KIDS SEE ON THE SCREEN

HEARING

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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IMAGES KIDS SEE ON THE SCREEN

FRIDAY, JUNE 23, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TELECOMMUNICATIONS
AND THE INTERNET,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:12 a.m., in room 2123, Rayburn House Office Building, Hon. Edward J. Markey (chairman) presiding.

Present: Representatives Inslee, Harman, Capps, Solis, Upton, Deal, Pickering, and Walden.

Staff present: Maureen Flood, Colin Crowell, Kyle Chapman, Phil Murphy, Neil Fried, Courtney Reinhard, and Matthew Johnson.

OPENING STATEMENT OF HON. EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF MASSACHUSETTS

Mr. MARKEY. Good morning, and we welcome you to the Subcommittee on Telecommunications and the Internet.

Kids watch about 2 to 4 hours of TV every day, and one-third to two-thirds of kids have TVs in their bedrooms. As for the big screen, in 2004, children age 12 to 17 accounted for almost 20 percent of all box office revenues. Given these statistics, it is no surprise that parents are disturbed by certain images children see on the screen, as these images can influence kids' behavior in ways that harm their health. This is something of a rerun for Congress. Back in 1996, Congress enacted the v-chip legislation for which I was the prime House sponsor. That law spurred the television industry to develop a voluntary TV rating system in response to media violence. It also required all TV sets manufactured after 2000 to include a v-chip, allowing parents to block programs they deemed inappropriate based upon the rating system. I believe big mother and big father are better able to decide what is appropriate for their kids to watch rather than big brother, but we needed the law to ensure parents had the tools to effectuate those choices.

There is good news and bad news about how this is working. The good news is that for the parents who are aware of and use these tools, the v-chip and the ratings system get high marks and have been a success. The bad news is that far too many parents still don't know about them or they don't know how to use them. I urge the industry to look at ways to make the technological tools parents already possess more useful and to better advertise their availability. However, we must also recognize that there is poten-

tially harmful content on children's television that parents today cannot use the v-chip to block, such as advertisements. The high prevalence of ads during children's programming for fast food, junk food, sugared cereals and other foods wholly lacking in nutritional value is deeply concerning, given that these ads have been found so negatively to influence children's dietary choices.

Moreover, we must reflect on the fact that childhood obesity rates have skyrocketed by more than 300 percent over the past three decades, and the Surgeon General has characterized obesity as the fastest-growing cause of disease and death in the United States. Parents and families have an undeniable responsibility to steer their children to healthy choices, but it is hard for parents to compete with popular kids TV characters pushing sugary cereal or Ronald McDonald hocking Happy Meals. There is, after all, no means for parents to block junk food ads. The v-chip only applies to programs, not for the advertising on those programs. And there is a terrible inconsistency in policies that require broadcasters to air 3 hours a week of educationally nutritious programming for kids and then to have this programming and other children's shows surrounded by a barrage of junk food ads.

As the House sponsor of the Children's Television Act, I believe that parents and children deserve better. And that act already grants the FCC authority to address many of these issues if the industry does not respond to this problem on its own swiftly and concretely. I commend the Kellogg company for voluntarily adopting nutrition standards for the foods it markets to children. Kellogg's recent initiative demonstrates that companies can market their products to children in a socially responsible way. I urge other food and beverage companies to commit at a minimum to the same restrictions that Kellogg has assumed. I also urge the television industry to develop its own robust set of commitments to refrain from overwhelming kids with the sheer volume of junk food ads on many children's shows today.

Parents also have expressed concerns about the proverbial big screen, too, and the prevalence of smoking in the movies. Roughly 80 percent of all smokers begin smoking before their 18th birthday. This suggests that if a child makes it to age 18 without smoking, there is a vastly reduced chance that she will ever start. At the same time, the Institute of Medicine found that the presence of smoking in a movie significantly influences a child's decision to start. And statistics show that smoking in the movies is pervasive; 65 percent of all major movies produced in 2006 included smoking when only 20 percent of Americans smoke.

The Motion Picture Association of America recently announced that smoking would be a new factor in a movie's rating. This is a very welcomed development. So it is important for us, and we are glad that Dan Glickman is here today to hear how that is going to be implemented.

And at this point, because of the press of time, I am going to stop my opening statement and turn and recognize the gentlelady from California, Mrs. Capps, if she would like to make an opening statement.

OPENING STATEMENT OF HON. LOIS CAPPS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mrs. CAPPS. Thank you, Chairman Markey. I thank you also for holding this hearing.

I appreciate the witnesses who have come today. It is an important discussion that will happen. As a public health nurse, I know that the media plays an extremely important role in the lives of children. You know it, too. Unfortunately, sometimes images on the screen and in the page can exacerbate the problems, as we are going to discuss today, of violence, childhood obesity and teen smoking.

Recently, my colleague, Congresswoman Solis, and I led a group of Members of Congress, we wrote a letter to the editors of 11 women's magazines asking them to reject advertisements for a new cigarette, Camel No. 9, that is aimed at young women. Now what is the word Camel No. 9 reminds you of, especially if it is accompanied by the words "light and luscious"? So, today, I know we will hear about the effects that smoking in the movies has on young people. We must find a way to balance artistic freedom with the need to prevent young people, teenagers, from starting to smoke.

One of the other major issues of this hearing is childhood obesity, one of the fastest-growing epidemics in our land today, huge cost to lives and to society. Recent studies have shown that more than 30 percent of children are either obese or very overweight. And there are many reasons for this, of course, including physical inactivity and demands on parents' time. But the evidence also points to a role for unhealthy food that is heavily advertised on television.

I want to commend, as my colleague has done, some of the companies that have been leading the way on changing this. Disney has restricted the use of its characters to nutritious foods and incorporated messages about healthy living in much of its popular programs. And as Mr. Markey just said, Kellogg recently announced that it would restrict the advertising of its products that didn't meet nutritional guidelines. I hope there is a lot of positive reinforcement for this kind of action, and I hope that other media and food companies will join these companies to reform their advertising practices.

We also must address the issue of product placement and integration even though these practices are illegal in designated children's programing. At an earlier subcommittee hearing, we saw clear product integration for Oreo cookies during the show 7th Heaven, very popular among children. Potential restrictions on advertising could be undermined by similar practices. So, Mr. Chairman, I thank you again for holding this hearing. And I look forward to speaking with our witnesses.

Mr. MARKEY. The gentlelady's time has expired. To our panelists, with the exception of former Congressman and Cabinet Secretary Glickman, you should understand that we Members of Congress, don't really control our time, which is why I think Dan Glickman is happier with the job he has now. We have a roll call on the floor. We have 5 minutes to make, Congresswoman Capps and I. And then there will be a brief roll call after that. So, in approximately 10 minutes, we will reconvene the hearing. And at that point, Ranking Member Upton from Michigan will return, and I will rec-

ognize him, and then we will go right to the panel for your opening statements. So this committee stands in recess.

[Recess.]

Mr. MARKEY. The subcommittee will reassemble, and I will now turn to recognize the gentleman from Michigan, the ranking member of the subcommittee, Mr. Upton.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Well, thank you, Mr. Chairman, and I am sorry that I was not here when the gavel fell. I was actually outside, but when votes were called, I had to go to the floor, and sadly, I am going to give my opening statement. I have an amendment on the House floor, so we will do that; it is going to allegedly pass by voice. And I will be immediately back in my chair. But good morning.

Today's hearing is entitled, Images Kids See on the Screen, and it seems that, as a society, we are much quicker to lay blame for our ills rather than acknowledging our own foibles. We have drifted away from personal responsibility. And as the parent of two teenagers, I firmly believe that the primary responsibility for the health and well-being of all of our kids lies with the parents, not necessarily with the media. Kids get fat from what they eat, not what they see. They stay fit by what they do or, rather, do not do. Additional Government regulation cannot cure childhood obesity or keep children from smoking. Parents have a role there, too.

Television is unequivocally the most common source of information available to children growing up in our country. Children are not only being entertained, but they are also being educated by TV. Nearly all children, 99 percent, live in a home with a TV. Half have three or more TVs, and over one-third have a television in their own bedroom. It is estimated that children today watch 3 to 4 hours of TV every single day. And in light of the growing amount of time that kids find themselves in front of a TV, the issue of what they are watching becomes increasingly important.

However, let's not forget who is ultimately responsible for what kids watch and for how long. That is for parents. The master of the clicker must be the adult, not the child, in the household. In terms of children's programming, I would particularly want to commend the Kellogg company and Kraft foods for their leadership on voluntarily restricting marketing practices to kids. Kellogg's and Kraft continue to be a leader on so many fronts, and I am proud to represent a number of their great employees in my district.

It should be noted that the industry as a whole is involved in a large collaborative effort, the Children's Food and Beverage Advertising Initiative. It is a voluntary program funded in November 2006 by 10 food companies, representing over two-thirds of the advertising devoted to kids. It is administered and monitored by a Council of Better Business Bureaus, which also oversees CARA, the self-regulatory children's advertising program, for all children's advertising, not just food. Kellogg's child nutrition and advertising initiative is their pledge under this program. And I expect that when all the pledges from the participating companies are in later

this summer, we will benefit greatly from viewing the collective impact of the voluntary initiative as a whole.

The quest for solutions concerning kids programs has led some down the wrong path. Some have mistakenly suggested that choosing channels a la carte is a solution. That is wrong; a la parents is the answer. For example, with their Control Your TV and TV Boss, along with other technologies, the cable industry has made great leaps in educating parents on the technology available to block any content that they deem inappropriate. Parents can block a whole channel or block by content ratings. Chairman Markey's v-chip works the same way for broadcast TV. That way, parents are empowered to decide what is best for their family to view. Cable operators and programmers should be commended for the work that they have done in that area. Our broadcasters should be commended as well.

Since my bill increasing the fines that the FCC can levy against broadcasters for indecency was signed into law, the race to the bottom has ended. And there has been a reduction in some of the stuff that was permeating the public airwaves. Broadcasters across the country got the message, and they now think twice about pushing that envelope. Violating the decency standards is no longer merely viewed as the cost of doing business. The law provides parents a little more comfort when their kids turn on the TV or radio during the hours of 6 a.m. until 10 p.m.

Now I don't understand why some folks think this is an arena for regulation, particularly as the private sector continues to make meaningful progress, not because they are forced to but as a matter of good policy. The best remedy comes from the industries that are self-regulating. Let's look at one example. A leader in kids programming, Viacom's Nickelodeon has licensed its characters for use on packages of fruits and vegetables to encourage healthy eating habits since 2005. Nickelodeon also licenses its characters for sports equipment and has committed more than $30 million and 10 percent of its air time to Let's Just Go Play Healthy Challenge, a multimedia campaign that focuses on health and wellness messaging for kids. The network also goes dark once a year for its Worldwide Day of Play, putting a message on the screen suggesting that kids go out and play. In addition, Nickelodeon continues to play an active role in the media and childhood obesity task force. The goal of that is to provide a forum for the public and private sectors to examine the impact the media has on childhood obesity rates and to collaborate on voluntary recommendations to address the issue.

I look forward to hearing from our panel this morning, especially my good friend and actually my former boss, Mary Sophos, on this important topic. I appreciate them being here to help us understand and examine the issues before us.

I will return after the amendment is adopted. Thank you, Mr. Chairman.

Mr. MARKEY. The gentleman's time has expired. The Chair recognizes the gentlelady from California, Ms. Solis.

OPENING STATEMENT OF HON. HILDA L. SOLIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. SOLIS. Thank you, Chairman Markey and Ranking Member Upton, for having this very important hearing this morning.

Today we have an opportunity to examine the effects of media on one of the most important constituencies, our children. As chair of the Congressional Hispanic Caucus task force, I have long advocated for the health and well-being of Latino children. Latino children are more likely to be obese than any other group. In fact, recent statistics by the National Council of La Raza show that 24 percent of Mexican-American children are overweight. African-American children also face problems. They represent 20 percent of children that are overweight. And Anglo children represent 12 percent that are overweight. Any problems we identify today or solutions we may consider will have a disproportionate impact on the health of minority children.

I look forward to hearing from our witnesses about the advertising that targets children and the ideas they might have to lower rates of childhood obesity. I also look forward to hearing from witnesses about ways to better educate parents and consumers on the tools they already have to limit objectionable content in their homes. We have often heard from FCC Chairman Martin that the solution is a la carte cable programming. As many on this committee know, a la carte presents serious issues since it would increase costs for consumers and limit programming by a per-channel instead of per-program basis. I look forward to hearing from our witnesses today to help us provide better information for our children and for our parents. And I yield back the balance of my time.

Mr. MARKEY. The gentlelady's time has expired.

The Chair recognizes the gentleman from Georgia, Mr. Deal.

OPENING STATEMENT OF HON. NATHAN DEAL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. DEAL. Thank you, Mr. Chairman. I want to thank our witnesses for being here today. I have long been concerned about the level of violence and sexual content which has come to hold a prominent place in movies, commercials and television programming. There are those who would argue that children are not necessarily harmed by what they see on television. Such arguments I think fail to pass the test of common sense. Common sense tells us that when our media glorifies violence, promiscuous sex and other forms of questionable behavior, as a society, we are undermining the very principles that we seek to uphold. If we care about the future of our children, then, as a society, we should be taking the steps necessary to reform the images that they see on television. Part of the problem, I believe, is lack of consumer choice in television programming and the underlying issue of retransmission consent which prevents it. We have not given enough control to parents, communities and local cable operators in order to protect and support what comes into their homes and neighborhoods.

A perfect example of this is the fact that there are no cable or satellite companies which allow their customers to pick and pay for the programming they actually want to watch. Rather, consumers

are left with only a small range of packages which often leaves them paying for hundreds of channels, the vast majority of which they would never voluntarily pay for. I have been told before by cable and satellite providers that they would like to offer more choice to consumers but are prohibited due to forced bundling and packaging practices. Due to rapid media consolidation, we have a limited number of media companies controlling the vast array of video programming. As a result, they can force a take-it-or-leave-it approach for all of their programming, the good and the bad, the uplifting and the degrading. That, in my opinion, is why we have much of the offensive programming on our TVs. Until we fix these broken and outdated regulations which govern video programming, we will always have a system with no free market which does not allow parents to choose the programming they want to watch. We need a system which is free-market based and allows for true choice. I will end by emphasizing that I realize and don't believe that this can be resolved by a forced mandatory Government-regulated regime. That, in my opinion, is not the answer. I yield back.

Mr. MARKEY. The gentleman's time has expired.

The Chair recognizes the gentleman from Washington State, Mr. Inslee.

OPENING STATEMENT OF HON. JAY INSLEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. INSLEE. Thank you. We start out with some pretty terrifying statistics. One in three of all children born in the United States in the year 2000 will develop diabetes during their lifetime. And having just lost my mom a few months ago to the ravages of diabetes, I can tell you that is a very, very stunning and threatening statistic. It really is a national epidemic that we are going to experience if we don't turn around our kids and their eating and activity behavior. And maybe it is one of our principle challenges of the country. So I am glad we are having this hearing today.

I will just talk about two issues. One is the bombardment of our children of advertising for certain types of food, and the other is our lack of physical activity of our children. I just want to address them briefly. American children ages 2 to 7 see an average of 12 food ads a day or 4,400 ads a year. Kids 8 to 12 see an average of 21 food ads a day; they will see 7,600 ads a year for food. Fifty percent of all ad time on children's shows are for food. The interesting thing about those ads is the kind of food that those ads portray. They see 8.8 food ads per hour; 34 percent of those ads are for candy and snacks; 28 percent are for cereal; 10 percent are for fast food. And this is kind of interesting to me, 1 percent are for fruit juices, and zero are for fruits and vegetables. And I think that is interesting.

If you look at the book "Omnivore's Dilemma," it is a very interesting book about the food industry and what we eat in this country. And it basically says processed foods are what we sell because our industry, basically the only profit they found is in processed foods, which are high in sugar and concentrated fats. Somehow we have got to figure out how to get real food. Our kids need real food. So I appreciate this group is going to talk about that.

Second, on education, Representative Wamp and I and others have introduced a Strengthening Physical Education Act of 2007, with 19 cosponsors. It will require that our schools start getting our kids involved in physical education, and we as parents have a responsibility in that as well. There are two parts of this equation, parents and activity, and the industry and bombardment of kids with sugar, and I think all of us have to get real serious about this diabetes epidemic. Thank you.

Mr. MARKEY. The gentleman's time has expired. The Chair recognizes the gentleman from Oregon.

Mr. WALDEN. Thank you, Mr. Chairman. I am actually going to wave an opening statement because I know we have votes—they say as soon as 11:45—so I want to make sure we hear from our witness panel, so I will wave.

Mr. MARKEY. That is great. And all time for opening statements by the members has expired. We will now turn to our panel. And it is an extremely distinguished panel indeed.

STATEMENT OF HON. DAN GLICKMAN, CHAIRMAN AND CEO, MOTION PICTURE ASSOCIATION OF AMERICA

Mr. GLICKMAN. Thank you very much, Chairman Markey and members. It is a pleasure to be back home here in the House. I served with many of you. I am delighted to be here.

The American film community has long been committed to empowering parents by helping them make informed decisions about what is appropriate for their kids. This is in fact the core mission of the movie rating system which we jointly manage with the National Association of Theater Owners; that is to inform parents and, in doing so, to maintain, uphold creative freedom and artistic freedom in this country.

It is no secret that the ratings system gets its share of heat from all sides, and that is expected, even healthy, in our society. Some people say, that movie should have been rated this way and that movie should have been rated that way. And the process is an art, not a science. But it should be noted that the rating system continues to enjoy an overwhelming approval among the folks for whom it was created, parents of young children. To maintain the rating system as a useful and relevant tool, we work hard to make sure it evolves alongside modern parental concerns.

In recent years, if you have noticed, we have added more detailed rating descriptions, so that gives specificity to parents about why a movie is rated a certain way. We focused as well on advertising and marketing materials in movies, both the content and making sure our products are marketed to age-appropriate audiences. We have added a stern warning to R-rated films, making it clear that even in the presence of a parent or guardian, some of these films are not suitable for young children. And we have added new tools, such as red carpet ratings, which delivers ratings on the Internet about current films in an e-mail account to people all over the country.

As you know, we have recently made all smoking a factor in the rating of films. In the past, we focused only on teen smoking. Now our analysis also encompasses depictions that glamorize smoking or films that feature pervasive smoking outside of a mitigating his-

torical, public health or other context. That decision has been strongly supported by major public health groups like the American Cancer Society, and we work closely with the Harvard School of Public Health and Dean Barry Bloom to proceed along with this. In fact, Mr. Chairman, I have the latest dean's message from the Harvard School of Public Health, which I would like to ask be part of the record, which talks about their role with us in working on the program as we have done it.

Mr. MARKEY. Without objection, it will be included in the record.

[The material follows:]

HOLLYWOOD SMOKE-OUT

HSPH TAKES ON TOBACCO ON SCREEN

Responding to mounting pressure from anti-smoking activists and researchers, including those at the Harvard School of Public Health (HSPH), the Motion Picture Association of America (MPAA) announced on May 10 that, from this point forward, the "pervasive" or "glamorized" depiction of smoking in films outside the context of "historic or other mitigating contexts" would join sex, violence, and adult language as a factor in determining movie ratings.

The addition of smoking as a determinant of a movie's rating marks an important step by the film industry towards protecting children and adolescents from addiction to tobacco and the devastating health consequences that derive from it. To combat the glamorization—and even normalization—of tobacco use inundating young people in this country and abroad, HSPH researchers have spent many years learning how to reduce smoking in public places and change individual behaviors.

In February, at the invitation of new MPAA Chairman and Chief Executive Officer Dan Glickman, I brought experts from HSPH and the Johns Hopkins Bloomberg School of Public Health to make a presentation to film industry leaders in Hollywood of scientific evidence establishing smoking's harmful impact upon young people, in real life and on screen. In the context of increased media attention and public pressure generated by a host of organizations—including states' attorneys general, the American Medical Association, the U.S. Centers for Disease Control and Prevention (CDC), the World Health Organization (WHO), nongovernmental organizations, and religious and parents groups—we believe that our presentation helped to spur this change.

Left to right: ©Superstock; ©Corbis

BOTH FILMS AND TOBACCO INDUSTRIES TARGET YOUTH

29 percent of U.S. moviegoers are between ages 12 and 24

The average age of first smoking is 13

If an individual does not start to smoke between ages 12 and 24, he or she runs only a 5 to 10 percent lifetime risk of ever smoking

"There is broad awareness of smoking as a unique public health concern due to nicotine's highly addictive nature, and no parent wants their child to take up the habit," Glickman said in announcing MPAA's new policy. The appropriate response of the rating system, he said, is to "give parents more information on this issue."

SMOKE GETS IN THEIR EYES

Tobacco is the largest single preventable cause of death and disease in the world. About 4.8 million people die of tobacco-related illness each year, according to WHO. In the United States, the CDC currently estimates that number to be 438,000 needless annual deaths.

At HSPH, we have long recognized that tobacco dwarfs other challenges to preserving the health of the world's citizens, not least because, although toxic, it is a legal, intensely marketed and glamorized product in the United States and globally. Most offensively, this lethal product is sold on street corners, in supermarkets, and even in drugstores, and can be accessed by the most vulnerable of populations: our children and adolescents. Surveys reveal that the average age in the United States for initiating smoking is 13 and, tragically, that smokers who find themselves addicted in their teens are, in the long run, the least able to quit.

The year 1998 signaled change for the future health of our young people, even despite the failure of Congress to enact federal legislation curtailing the tobacco industry. In that year, a Master Settlement Agreement (MSA) was signed between 46 U.S. states' attorneys general and the five biggest tobacco companies, establishing the largest monetary settlement ever awarded—estimated to be about $245 billion within the first 25 years. While many hoped that the settlement would create resources in perpetuity for anti-smoking education, regrettably the funds thus far have gone mostly into states' general revenues for every purpose other than the one intended.

What the MSA largely did accomplish, however, was to ban tobacco advertising from media outlets broadly accessible to children and teenagers, including outdoor billboards, youth-oriented magazines, radio, and television. The agreement also prohibited paid product placements in the movies. Tobacco companies, no longer able to pay film studios to put their branded products on the silver screen, would now in theory be less able to reach young potential smokers, the most promising source of future profits. In reality, film studios have continued to depict tobacco use, unwittingly supplying the tobacco industry with free advertising. Meanwhile, celebrity actors—idolized by today's youth—perpetuate an image of smoking as appealing, cool, even glamorous.

And so, despite smoking's precipitous decline in the United States, from 52 percent in men and 34 percent in women in 1965 to 21 percent overall today, according to CDC figures, the incidence of smoking in films produced by the six major studios has actually doubled over the past two decades. This has been an ominous trend for the public's health, given that Hollywood continues to exert an extraordinary degree of influence on trends and norms of behavior. Just as Hollywood may have a positive impact

continued

SMOKING ON SCREEN 2004–2005

66 percent of the top-50 grossing films contained depictions of smoking

68 percent of PG-13 movies depicted smoking. The average frequency of depictions was 12.8 incidents per hour of running time, the highest incidence in 10 years

PG-13 films averaged 14.2 depictions per hour, the highest since 1994–95

R-rated films averaged 20.4 depictions per hour

Source: American Lung Association chapter in Sacramento, California, 2004-2005

on health, as by depicting racial integration instead of violence, for example, or by helping curb drunk driving by embedding into programming the "designated driver" originally initiated by HSPH—Hollywood can equally exert a powerful negative influence, as when smoking is normalized in films and on television. It is for this irresponsible approach to young audiences that industry leaders increasingly have been censured by health-advocacy and anti-smoking groups.

OVERWHELMING EVIDENCE

Fortunately, the MPAA's Dan Glickman appears to have a fresh attitude. A former congressman, later secretary of Agriculture, Glickman is a former director of the Institute of Politics at Harvard's Kennedy School of Government. As MPAA's new leader, Glickman asked me to make a considered recommendation to the MPAA on smoking in the movies, with no preconditions. I was privileged in February to be able to bring two experts to present our views to senior representatives of the MPAA, the Guild of Directors, the Screen Actors Guild, and the National Organization of Theater Owners. These experts were HSPH's Jay Winsten, associate dean for Public and Community Affairs, the Frank Stanton Director of the Center for Health Communication, and leader of the highly successful "Designated Driver" campaign; and Professor Jonathan Samet, chair of Epidemiology at the Johns Hopkins Bloomberg School of Public Health, an author of the last five reports on smoking from U.S. surgeons general, and a national and international expert on smoking's health effects. For the full transcripts of our presentations, visit the HSPH website at www.hsph.harvard.edu/MPAA.

Together we reviewed for film industry representatives the science demonstrating that nicotine is among the most addictive substances known—comparable to heroin and crack cocaine—and that smoking is harmful to the health of children, youths, and adults. Most significant, we pointed out that the mean age for initiating smoking in the United States is just 13 years, and that population studies indicate that if an individual does not start to smoke between ages 12 and 24, he or she runs only about a five to ten percent lifetime risk of ever smoking. Tellingly, about a third of all movie viewers are between the ages of 12 and 24. Thus the industry, and popular film stars who smoke, have the attention of young people at precisely the most crucial time in their lives for resisting tobacco initiation.

We reviewed, as well, the compelling body of evidence underlying our assertion that young people are influenced by television and movie images of smoking, and we explained the social-behavior theory behind changes in social norms. When industry spokespersons stated that directors' depictions of smoking in the movies merely reflects "reality," we responded that, in fact, widespread smoking expressly does not mirror reality. We pointed out that only about 21 percent of the U.S. population smokes, and that the highest proportion of smokers is among minority and disadvantaged socioeconomic groups. By contrast, in the movies, more than half of lead actors are depicted smoking, and the majority are white and well-off.

NO SLIPPERY SLOPE

We presented one final and, we believe, pivotal argument to urge the MPAA to take substantive action, by addressing the position held by some filmmakers that curtailing smoking in movies would compromise their artistic freedom or signal the beginning of a "slippery slope" toward censorship. Our argument regarding freedom of expression comes from experience: As a graduate faculty of Harvard University, we are acutely sensitive to potential infringements of academic freedom, the freedom to pursue our own ideas and scholarly inquiry into how to preserve and protect human life. But nearly a decade ago, the HSPH faculty began to recognize that accepting money from tobacco companies to do our scientific studies, no matter how worthy, would be antithetical to the mission of public health. The HSPH faculty debated intensively the implications of forswearing support from tobacco-related industries and their subsidiaries, and out of responsibility to our shared goals voted unanimously to forgo funding from them. Because tobacco, aside from guns, is the only product that, when used as directed, kills, no "slippery slope" issues have

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PROPOSALS TO LIMIT SMOKING IN MOVIES

A coalition of health organizations seeking to reduce the depiction of smoking in films seen by children and youths recommends that the MPAA:

Rate as "R" all new movies that include smoking, except when they aim to portray historical figures or reflect the clear dangers of tobacco use.

Stop identifying specific tobacco brands.

Certify films as having received neither payoffs nor product placements from the tobacco industry.

Provide strong anti-smoking ads in any film depicting smoking.

For details, visit http://www.smokefreemovies.ucsf.edu/ourads/ad_sfm42_variety.htm

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TOBACCO WARRIORS

The Harvard School of Public Health faculty includes these extraordinary leaders in the global battle to curb smoking:

Julius Richmond, AM '70, SD '02, professor of Health Policy in the Faculty of Public Health, Professor of Health Policy, *Emeritus*, and former U.S. Surgeon General, produced the critical report in 1979 providing incontrovertible evidence that smoking causes cancer and heart disease, among other medical ills.

Dimitrios Trichopoulos, the Vincent L. Gregory Professor of Cancer Prevention in the Department of Epidemiology, provided the first epidemiologic documentation, in 1981, that secondhand exposure to tobacco smoke puts everyone, even people who choose

not to smoke, at significant risk of cancer. This was the key scientific pillar that justified public efforts to eliminate smoking in public places, thus paving the way for the campaign to make smoking socially unacceptable.

Dr. Howard Koh, director of HSPH's Division of Public Health Practice and former commissioner of the Department of Public Health for the Commonwealth of Massachusetts, has teamed

with **Gregory Connolly**, professor of the practice of public health, in a decades-long quest to snuff out tobacco use. Regulatory and health promotion efforts by the pair helped reduce smoking by 48 percent in the Commonwealth over the first decade of the Massachusetts Tobacco Control Program (see the *Review* cover story on their efforts to curb tobacco use around the world, pages 8 to 13).

Jay Winsten, associate dean for Public and Community Affairs and the Frank Stanton Director of the Center for Health Communication, and Susan Moses, the center's deputy director, have been working since 1999 to persuade Hollywood to reduce smoking in films accessible to children. Winsten previously spearheaded the Designated Driver campaign in the United States through a collaboration with the leading TV networks and Hollywood studios; over a ten-year period the campaign helped to save an estimated 50,000 lives.

Kent Dayton/HSPH

emerged since relating to any other products. HSPH was among the very first academic research institution in the nation to make such a formal policy. Many other schools have followed suit.

As deeply committed to academic freedom as our faculty researchers were, they believed that the higher value of taking responsibility for preventing the largest cause of death and disease in the world was sufficient for them to constrain that freedom, to say nothing of support for their research, even their ability to make a living. The film industry needs to take responsibility for the consequences of its actions, and to be creative in doing so.

With the greatest respect for the complexity and expense of making films, and for the creativity of the artists in all aspects of the industry, we made the following recommendation to Dan Glickman and the MPAA:

"Take substantive and effective action to eliminate the depiction of tobacco smoking from films accessible to children and youths, and take leadership and credit for doing so." For industry leadership to have real impact, we said, we hoped the MPAA's message would be clear, simple, and publicly accountable. And we asked all the major studios and guilds to use their leadership to make it a policy.

The May 10 announcement by the MPAA and Ratings Board, we believe, represents an historic and important step in the right direction by the leadership of the industry to recognize the dangers of smoking in movies. We hope it will be but one step of many undertaken by the motion picture and television industries toward a still more significant and impactful public health goal: eliminating the depiction of tobacco use from all youth-accessible films.

Barry R. Bloom, Dean
Joan L. and Julius H. Jacobson II Professor of Public Health
Harvard School of Public Health

Rick Friedman

Mr. GLICKMAN. And I would add that many, many State attorneys general have indicated strong support of what we have done. In the real world, this change will translate in two ways. First, films that glamorize smoking or feature pervasive smoking may well receive a higher rating and/or a specific note of caution to parents, such as, quote, glamorizes smoking.

The second and most likely the far-reaching impact is greater self-restraint. Given this new higher bar set by the ratings board, if the objective is a G, PG or PG–13 film, there is likely to be even more careful consideration at the studio and filmmaker level of any scenes of smoking. It is still a creative decision on the part of the filmmaker, but the knowledge is there that if there are certain types of smoking described in the situation, it could affect the rating.

I would say that we spent a lot of time on thinking about "thou shalt not" in this debate. We talked about obesity and smoking; both are very important. And as you know, ironically, in my former position as the Secretary of Agriculture, I was very much involved in issues like teen nutrition, dietary guidelines, and it is just ironic that I find myself engaged in a debate that I never expected to be in in this particular job.

But I do think, if you look at films overall, for example, two films come to mind, "An Inconvenient Truth," the film about climate change, or whether it is the movie that is coming out today, "A Mighty Heart," a film about how a journalist relates in the war on terrorism, the fact of the matter is, this industry has a long and proud legacy of shining a spotlight on issues of great importance and having an often game-changing impact. In the area of public health, we have had a partnership that began in the 1980s between our industry and the medical community on drunk driving. Experts came in and talked to everyone in the industry. What came out of it voluntarily was the depictions of designated drivers and helped bartenders call cabs because it became the norm on both film and our society.

We have now joined at MPAA with the Entertainment Industry Foundation, the Directors Guild of America and others in a similar voluntary industry-led effort called "Hollywood Unfiltered." Again, the aim, like the designated driver aim—this does not relate to ratings. This is more an operational issue, but the aim is to raise awareness of the many voluntary creative choices, in this case to help further reduce the glamorization of smoking in film. And lest we dismiss these efforts, it is worth noting that the drunk-driving campaign, not based on censorship, has been credited with saving more than 50,000 American lives. So I want to make sure that we make the point here that ratings are not the sole solution of the problem. But it gives parents the information that they need to make choices for their kids. And the voluntary effort is one that we think will ultimately have a bigger role.

Now in the area of obesity, which I just thought I would mention today, this is an important precedent, and this is a complex problem. I took this up as Agriculture Secretary. We developed teen nutrition. We provided the 2000 dietary guidelines. This is a tough issue because the idea of fresh fruits and vegetables added to our diet, the idea of a more balanced diet is one that is absolutely criti-

cal, as Congressman Inslee talked about, in terms of—my blood sugar is often a little bit at the upper level, and I understand this. There is no panacea in all of this. What do we do? Do we ban depictions of unhealthy foods? Who defines unhealthy? But we each have to do our part, individuals, government, society at large.

It has been mentioned about the Walt Disney company introducing more healthful options, Nickelodeon, Universal Studios. And the list goes on; that helps. Children's programming and even the advertising are stepping up big time to encourage a more healthy lifestyle. And it also helps when we parents and grandparents set an example, look at our own habits and think about our responsibilities as well. Government edicts alone won't solve the problem. We have to work together, which is what we are trying to do today. I think we can make real progress on all of these issues. I think we can ask, what are the messages we are sending to our kids? Can there be more positive messages? Can we enlist the ingenuity of the creative community to help address these broader societal challenges? Can we do so in a manner that celebrates rather than inhibits creative freedom? For our kids, for the public health and for our democratic society, I hope the answer is yes. And I thank you very much Mr. Chairman.

[The prepared statement of Mr. Glickman follows:]

STATEMENT OF HON. DAN GLICKMAN

Good morning. Chairman Markey, Ranking Member Upton, members of the subcommittee, on behalf of the Motion Picture Association of America (MPAA) and its six member companies, I thank you for the opportunity to address this important set of topics relating to media and children.[1]

As a parent and grandparent, I fully appreciate that the prevalence of media and the rapid development of the technology that delivers it are a challenge to parents. We must work together to ensure that parents have the tools they need to make sound, informed decisions on behalf of their children because in the end, it is parents—not industry, not interest groups, and not the government—that should make those decisions.

Technology and the availability of media are not bad things. In fact they are two of our country's great equalizers and reflect the bedrock freedoms and opportunities for advancement upon which the country was founded. Technology enables a child in rural Kentucky to access online the same research as a child in the wealthiest suburbs of Los Angeles or New York or Washington.

For example Mr. Chairman, you are acutely aware of the complexities and challenges of global warming, and you would probably agree that nothing has done more to raise awareness to that complex issue than the documentary film, "An Inconvenient Truth." This is just one example of how media, and movies in particular, can educate and elevate socially important issues.

Our industry has provided tremendous leadership over the last few decades to make sure movies are being viewed by appropriate audiences by providing information to parents, through the establishment of the movie ratings system. This system is the gold standard of parental informational tools, and parents consistently report that it is useful.

As the market and consumer expectations are constantly evolving, our rating system is constantly being reevaluated to make sure that it is keeping pace with that transformation. In recent years we have introduced several refinements, adding more detailed ratings descriptions, expanding ratings factors, improving advertising and marketing regulations and establishing new delivery systems for ratings information.

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1 The Motion Picture Association of America is the voice and advocate of the American motion picture, home video, and television industries. Its members include: Buena Vista Pictures Distribution; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal City Studios LLP and Warner Bros. Entertainment, Inc.

We all share the goal of shielding children from inappropriate images. We must face this problem keeping in mind that in our country, motion pictures and television programs are forms of expression protected by the first amdendment and that any governmental effort to regulate that speech must comport with our proud Constitutional history. Efforts to regulate speech that violate that basic principle, no matter how well intentioned, do not protect a single child.

Rather than throwing up our collective hands and feeling overwhelmed, we must continue working aggressively and creatively to empower parents so they can take advantage of what's good and set limits for what they do not want their children to be exposed.

My industry has been a leader in providing parents with the resources they need to make the right choices for their families. I would like to highlight just a few of our efforts for you here today.

For nearly 40 years, MPAA has led the way with a workable voluntary ratings system that has stood the test of time and continues to have widespread support among American parents.

Established in 1968, the Classification and Ratings Administration (CARA) is the gold standard of parental informational tools by which all others are measured. Using the now familiar and easy-to-understand G, PG, PG–13, R and NC–17 motion picture ratings, the ratings system provides parents with guidance about a movie's content so that they can determine what motion pictures are suitable for their children. Parents make the decision, the ratings system provides them with tools to do so.

According to annual outside surveys, parents have consistently found it extremely useful in helping them make the right decisions about their children's moviegoing. Last year's survey, released on the 38th anniversary of the establishment of CARA, showed that 80 percent of parents found the rating system to be fairly to very useful in helping them make decisions about what movies their children see.

The success of the ratings system lies in its straightforward simplicity. It provides an overall familiar framework while still allowing for adjustments as circumstances warrant. We have worked extremely hard to make sure that in addition to being easy to understand and use, the ratings are accessible to parents in an increasingly busy and complicated world.

Our ratings Web site *www.filmratings.com* is highly trafficked by parents who visit it to look up the rating of a motion picture and its rating reason. They can also access the various descriptions of the ratings and see a list of the most frequently asked questions about ratings.

All official movie sites must link directly to the film ratings site and to *www.parentalguide.org*, a comprehensive central site which provides parents with information about CARA and each of the other ratings systems other industries have developed. If a film has not yet been rated, the television and online advertising for that film must note that and reference the ratings Web site for up-to-date information.

To provide this information in the most convenient way, MPAA last year launched a free email alert service called Red Carpet Ratings which automatically sends parents ratings and ratings reasons for the most recently released movies. Parents can sign up for the service at the MPAA Web site at *www.mpaa.org* or on the film rating Web site.

Aside from parents looking up the ratings of a film on one of these Web sites or obtaining the ratings information by other means, the most basic way we can provide that ratings information as guidance is ensuring that the ratings information and descriptors are provided in all of the advertising and marketing material for a rated movie, no matter in what medium, and that the movies are marketed to age appropriate audiences.

Movie advertising, whether in print, on television, or online is required to include rating information and descriptors highlighting the reasons—such as violence—that caused the film to receive its rating.

The FTC recognized the importance of these steps in its recent report on marketing to children, noting that the industry has made steady progress in disclosing ratings and rating reasons clearly and prominently in advertising since 2000. Specifically, we have now included ratings reasons for all films in newspaper ads, Web sites, and posters.

As part of the requirements to receive a film rating, all advertising and publicity, including Internet sites, must be submitted to the Advertising Administration for review and approval prior to being released to the public. The Advertising Administration reviews over 50,000 pieces of advertising a year. Its comprehensive rules were just updated last year to ensure the guidelines are keeping pace with new de-

velopments in content distribution, and we plan to continue to update them as needed.

Movie advertising shown on network and cable television can only be placed during programming of compatible content and at appropriate hours. In reviewing a television spot for approval, the Advertising Administration will take into consideration appropriate placement and audience demographics.

Similarly, movie trailers shown in theaters must be compatible with the feature so that inappropriate content is not advertised to younger viewers. For example, PG-rated features must not be preceded by trailers advertising R- rated films.

Online advertising, including Internet sites, banner ads and video clips, must also be reviewed and approved. Distribution of movies and movie advertising on the Internet pose a whole host of new challenges as well as opportunities. MPAA and its member companies continue to explore and implement technological solutions to help block inappropriate movie advertising from being accessed by younger Internet users, and MPAA staff continually review sites for inappropriate content.

Failure to comply with any of the advertising guidelines can result in significant penalties for distributors. This includes the revocation or suspension of their movie's rating.

Non-MPAA member companies are not bound to have their films rated; however, once they submit their film for a rating, they are bound by our rules requiring review and approval of their materials.

The ratings system is constantly evolving to meet the changing needs of parents. Recently we have taken several steps to make the system more user friendly and transparent for families. First, we have made improvements to ensure parents are informed about "depictions of violence" in our motion pictures and marketing materials. The "depictions of violence" category is one that can trigger a stricter rating. To help parents better understand the severity of violence, over time we have added additional descriptors to better describe the type of violent content contained in a movie.

Second, we added an additional warning to parents that R-rated movies are not appropriate for young children. Earlier this year, responding to concerns from people who frequented R rated movies to which parents were taking their children, MPAA decided to add an additional warning to the definition of R-rated movies: "Generally, it is not appropriate for parents to bring their young children with them to R-rated motion pictures."

Third, we are constantly looking at potential new factors to determine what additional information the ratings system may need to include. It was through this process that we recently made the decision to add "depictions of smoking" as a ratings factor.

Last month, MPAA announced that depictions of smoking will be considered as a ratings factor. Depictions that glamorize smoking or that feature pervasive smoking outside of an historic or other mitigating context may receive a higher rating or the inclusion of smoking may be included in the rating descriptors for the movie such as "glamorized smoking" or "pervasive smoking."

In the past, illegal teen smoking had been considered as a factor in the rating of films. We have now extended that ratings factor to encompass adult depictions of smoking.

Smoking is a unique public health concern that we believe, when depicted in a motion picture, warrants giving parents additional information. Our change will do just that. Three questions will have particular weight for our rating board when considering smoking in a film and its effect on the rating: One, is the smoking pervasive; tTwo, does the film glamorize smoking; and three, is there an historic or other mitigating context for the smoking?—

Beyond enhancing our ratings to account for smoking, we have also joined with the Entertainment Industry Foundation and the Alliance of Motion Picture and Television Producers to work on a project called Hollywood Unfiltered. This entertainment industry-led initiative is dedicated to educate and raise awareness within the industry of the public health consequences of depicting smoking in movies and television.

Hollywood Unfiltered is a voluntary effort aimed at educating members of the entertainment industry about how on-screen smoking impacts young people, while encouraging the industry to take action to reduce the glamorization of smoking in their creative work.

Fortunately, the trend seems to be moving in the right direction. Statistics show that there is a declining prevalence of smoking in the movies in general. From July 2004 to July 2006, the percentage of films that included even a fleeting glimpse of smoking dropped from 60 percent to 52 percent. Of those films 75 percent received

an R rating for other factors. In other words, three out of every four films that contained any smoking at all over the past few years are already rated R.

Finally, let me address the issue of childhood obesity and food marketing, an issue with which I'm very familiar and about which I care deeply from my work in the House and as Secretary of Agriculture under President Clinton.

During my tenure at the U.S. Department of Agriculture, we revised and modernized the dietary nutrition guidelines and the familiar food pyramid. This was no small feat. For the very first time, the guidelines emphasized the importance of exercise—and suggested that people moderate the amount of sugar, fat, salt, alcohol and cholesterol they eat. And we made significant progress with improvements in teen nutrition as well.

As part of that initiative, we undertook a comprehensive program to educate children about nutrition and healthful eating habits. Through our Team Nutrition program, we reached into elementary schools all across the country with educational materials and instruction in clear, easy to understand, and kid-friendly terms.

Also, I shepherded the organic food program into existence. It had languished in the bureaucracy for years, and I undertook to make it a reality, and today, for adults as well as children, the program provides healthy alternative food choices.

Given my background with these issues, I was heartened to find that much progress has been made in this area in the media industry.

MPAA member companies take their responsibility in the marketing of their entertainment seriously and have engaged in several recent efforts in the area of food marketing and children.

At the end of last year, The Walt Disney Company introduced new food guidelines aimed at giving parents and children healthier eating options. The guidelines for licensed foods and promotions aimed at children—which are based on The Dietary Guidelines for Americans and developed in cooperation with two top child health and wellness experts—will govern Disney's business partnerships and activities in the U.S. on a going-forward basis and will be adapted for international use over the next several years.

Under the new policy, Disney will use its name and characters only on kid-focused products that meet specific guidelines, including limits on calories, fat, saturated fat and sugar. In addition, Disney announced nutritionally-beneficial changes in the meals served to children at all Disney-operated restaurants in its Parks and Resorts and unveiled a company-wide plan to eliminate trans fats from food served at its Parks by the end of 2007 and from its licensed and promotional products by the end of 2008.

Similarly, at the end of last year, Universal Studios theme parks also cut transfats from use in the foods at its parks and now offers healthier menus.

There have been great strides in children's programming also. For instance, this year marks the fifth year of Nickelodeon's award-winning, Let's Just Play Go Healthy Challenge program, a multi-media campaign to which Nickelodeon has committed more than $30 million and 10 percent of its airtime. The campaign empowers kids to recapture the spirit and benefits of active play. More than 70 PSAs on health and wellness have aired featuring prominent figures such as former President Bill Clinton, Gov. Mike Huckabee and Tiki Barber.

Throughout the summer, Nickelodeon will air the Let's Just Play Go Healthy Challenge half hour television series that follows four children as they take the healthy challenge to eat better and exercise. In 2006, 6 million viewers tuned in to follow the Challenge, and since the launch of the Let's Just Play Go Healthy Challenge in 2006, 221,000 kids have registered at *Nick.com* to make healthy choices.

In addition to programming, Nickelodeon has adopted an approach to licensing characters to help encourage healthier diets and lifestyle choices for children. SpongeBob, Dora the Explorer and other popular characters are now licensed on a wide variety of healthy food from broccoli, green beans, and spinach to cherries, apples, pears, and grapes.

At the end of the day, the focus of our collective efforts should be solely on the question of have we provided parents with the information they need—whether that is the nutrition and diet information of a product so that parents can decide what their kids should eat or information about a movie's content so that they can decide what their kids can watch. Government should not and indeed cannot make those choices. Only parents can.

In the recent FCC report on television violence that the full Committee requested three years ago, Commissioner Adelstein stated "that parents are the first, last and best line of defense against all forms of objectionable content" before highlighting the extent to which DVDs, digital video recorders and online offerings give parents more control than ever.

As I am sure you will hear from Adam shortly, parents have more technological tools at their disposal than ever before to help filter what their children see and hear. The V-Chip is already built into television sets to allow programming blocking. Additional parental controls are often just one click away on remote controls as every digital set top box includes parental screening tools with password options. These parental controls are far less restrictive methods of protecting children from inappropriate content than government imposed content controls.

Unfortunately, the FCC Report's findings both glossed over the entertainment industry's recent efforts with respect to parental controls and virtually ignored the serious constitutional implications of government attempts to regulate violent content on television.

That is why, after noting that "the Report does not even discuss the full menu of parental assistance tools that are available to millions of families" thereby resulting in incomplete analysis and resulting in a skewed set of recommendations to help parents, Commissioner Adelstein admonished his colleagues for such dismissive treatment of the fundamental constitutional issues involved. The depiction of violence in entertainment "is a protected constitutional right under the First Amendment that we are recommending Congress to curtail without any thoughtful legal analysis."

The first amendment is clear. Government cannot regulate speech without first finding a compelling government interest and then narrowly tailoring a solution that furthers that interest and is the least restrictive alternative. The attempted government regulation of "depictions of violence" suggested by the FCC in its report fails to meet that constitutional threshold. As you know, the FCC did not even attempt to define "inappropriate violence" as it was asked to do given the challenge of such a definition. I submit that such a definition cannot be crafted in this context to meet constitutional muster, and similar government mandated content restrictions would certainly result in the same unconstitutionality.

Instead of pursuing a government solution, Commissioner Adelstein recommended that there be a close look at the significant industry efforts on ratings awareness and parental controls. We agree.

MPAA has already been actively working with groups like Pause Parent Play and others to provide parents with the information they need to make those decisions and with the parental controls to then help them limit their children's access to only what they have deemed appropriate.

In 2006, we partnered with the fellow entertainment industry groups and the Consumer Electronics Association in establishing *TheTvBoss.org* multi-million dollar ad campaign which was created by media companies in partnership with the Ad Council to raise awareness of V-chip technology which allows parents to control television programming.

We have also worked closely with a number of private entities like Pause Parent Play to streamline the provision of ratings information and get it into the hands of parents. For instance, with Pause Parent Play, the MPAA and its member companies partnered with entities such as the YMCA, Girl Scouts of America and Wal-Mart, among others, to sponsor a one-stop Web site *www.PauseParentPlay.org* for ratings information about all forms of media—movies, music, television and video games. The aim of the site is to compile tools and information so parents can make more informed choices about their kids' entertainment.

Indeed, the key to all of the issues before this Committee today is how to best empower parents to make the decisions as to what their kids see. Only they can best judge what is and what is not appropriate for their own children. And that is what we hear time and time again from parents.

Parents are very clear with us in indicating that they—not the industry and certainly not the government—should determine what is appropriate for viewing by their kids. What they want is information that is accurate and timely.

The movie ratings system is an evolving system, and we are constantly evaluating what additional information should be provided to make it even more useful. That is why we took the steps we did with respect to smoking, and that is why we will continue to look at potential additional improvements.

Chairman Markey, Ranking Member Upton, members of the subcommittee, I appreciate the chance to discuss these issues of importance to our industry, and I look forward to answering any questions you may have regarding what I have just discussed. Thank you.

Mr. MARKEY. We thank you, Mr. Glickman, very much.

Now we are going to hear from Cheryl Healton, who is the president and chief executive officer of the American Legacy Foundation. Welcome.

STATEMENT OF CHERYL G. HEALTON, PRESIDENT AND CHIEF EXECUTIVE OFFICER, THE AMERICAN LEGACY FOUNDATION

Ms. HEALTON. Thank you. Good morning. I am Dr. Cheryl Healton, president and CEO of the American Legacy Foundation, the national public health foundation dedicated to building a world where young people reject tobacco and anyone can quit. I commend the subcommittee on holding this important hearing, and I very much appreciate the invitation to testify.

The media images children and teenagers are exposed to exert a powerful and too often negative impact on their health. I will address the devastating impact that the pervasive images of smoking in the media has on adolescent smoking and the steps that must be taken to protect our children. I will start with a short reel of images of smoking in recent PG–13 as well as images of smoking in movie trailers that are aired on TV to advertise films.

[Video shown.]

Ms. HEALTON. Tobacco is one of the most significant public health challenges facing the United States. It is the largest preventable cause of death, with over 400,000 Americans dying every year from smoking, and fully 63 percent of all cancer deaths are tobacco attributable. Most astounding is that this is 100 percent preventable in theory. One of the most pernicious aspects of the epidemic is that over 80 percent of smokers start before their 18th birthday. The tobacco industry has chillingly referred to teenagers as replacement smokers for their customers who die or manage to quit. It is therefore critically important to take action to prevent teens from starting to smoke.

The Truth campaign, the only non-tobacco-industry-sponsored national tobacco countermarketing campaign, does just this. Edgy and hard-hitting, Truth communicates with teens in their own voice about the toll of tobacco and the marketing practices of the tobacco industry. Peer-reviewed research found, in the first years, Truth was responsible for about 300,000 fewer smokers in 2002 alone. But Truth cannot do it alone, even when fully funded, which is no longer the case.

Due to declining resources, our media buys have been drastically cut. At the same time, reports suggest that the historic decade-long decline in youth smoking reduction has begun to end, and youth smoking rates may be trending back up. We truly face a national crisis. Research establishes that smoking on screen recruits about 390,000 new smokers every year, accounting for between one-third and one-half of all adolescent smoking initiation.

In 2004, tobacco was depicted in three-fourths of youth-rated movies and 90 percent of R-rated movies. Because teens are less likely to see R-rated movies, about 60 percent of youth exposure comes from youth-rated movies. Smoking is also pervasive in TV. And many movie trailers, you just saw some, that are shown on TV contain images of smoking, which is ironic since most movies have only a few minutes of smoking, that they seem to appear in so

many televised movie trailers. The foundation research found that, for a 1-year period, 14 percent of these ads for movies included images of tobacco use and that nearly all youth between age 12 and 17 years of age saw at least one of these movie trailers, with 89 percent seeing at least one of them three or more times.

What then should we do? One, get smoking out of the movies and television shows that are produced for and marketed to teens and children. And two, to the extent that smoking images remain in these media, counteract their effects. Along with other leading public health organizations, we support the guidelines that limit smoking in movies. If put into practice, this will significantly reduce the movies' influence on adolescent smoking. I think the committee is familiar with these principles:

Rate new smoking movies with an R. A recent nationally representative sample of adult Americans found that 70 percent of adults support the R rating.

Certifying no payoffs. There is a long and well-documented history of paid tobacco placement in the movies. Steps that have been taken to stop this through the master settlement agreement and the FTC tobacco marketing expenditure report are far from air tight. It is extremely important to continue to shine a bright light on tobacco product placement which the industry voluntarily agreed not to do under the settlement.

Require anti-smoking ads. Research shows that strong anti-smoking advertisements shown immediately before a movie can help counteract the impact of smoking images. We have worked closely with the State AGs to make available without charge our Truth ads to be included before movies, DVDs released and other home-viewing formats. While I know they would be effective, our declining budgets make it almost impossible for us to otherwise show Truth ads before movies with smoking.

Stop identifying tobacco brands. Seventy-five percent of teens smoke three most heavily used brands: Marlboro, Camel and Newport. Given this, images of nonbranded smoking are already a powerful influence on youth smoking initiation.

Finally, I recognize that after years of urging, the MPAA has taken a hesitant step forward. We will watch very carefully the result of this, and we end by finally, once again, thanking the committee for taking up this topic.

[The prepared statement of Ms. Healton follows:]

SUMMARY
STATEMENT OF CHERYL G. HEALTON, DR. P.H.
PRESIDENT AND CEO, AMERICAN LEGACY FOUNDATION
"IMAGES KIDS SEE ON THE SCREEN"

Smoking is the largest preventable cause of death in the U.S. with over 400,000 Americans dying every year from tobacco. Approximately 8.6 million Americans suffer from tobacco-related disease. One of the most pernicious aspects of the smoking epidemic is its reliance on teen-agers. Over 80% of all smokers start before their eighteenth birthdays and 90% start before they are twenty. The tobacco industry has chillingly referred to teen-agers as "replacement smokers" for its older customers who die or manage to quit.

Widespread images of smoking in the media are a major cause of youth smoking. Peer-reviewed research establishes that movie depictions of smoking recruit about 390,000 new youth smokers every year. Smoking appears in approximately 75% of all movies and a clear majority of youth-rated movies. Because youth-rated movies have much larger audiences than R-rated films, most smoking impressions come from G, PG and PG-13 movies. Movie smoking also reaches adolescents through smoking on trailers shown on television. In addition, television shows popular with teens routinely depict smoking.

Along with other leading public health organizations including the World Health Organization, the American Medical Association and the American Academy of Pediatrics, the Foundation supports the following four principles to reduce the number of adolescents who begin smoking because of smoking in the movies:

- *Rate new smoking movies "R".* Because adolescents see significantly fewer R-rated movies, this will dramatically limit their exposure to movie smoking.
- *Certify no pay-offs.* There is a long, well-documented history of tobacco product placement in the movies. Current provisions addressing this practice, including the FTC's tobacco marketing survey and provisions in the Master Settlement Agreement, are far from airtight and bear close examination.
- *Require strong anti-smoking ads.* Research shows that strong anti-smoking advertisements shown immediately before a movie help counteract the effect of smoking images in the movie.
- *Stop identifying tobacco brands.* While unbranded images of smoking are a powerful influence, branded images are nothing but a brand advertisement.

The American Legacy Foundation is on the front lines of the effort to prevent youth smoking. Our award-winning and proven effective youth tobacco countermarketing campaign, **truth®**, communicates with teens in their own voice about the health effects, social costs and addictiveness of tobacco. But with the continuing prevalence of smoking in the media, other trends in youth smoking, and our own declining budgets, we face major challenges in sustaining our past successes in saving young people's lives.

Good morning. I am Dr. Cheryl Healton, President and CEO of the American Legacy Foundation. The Foundation, created as a result of the Master Settlement Agreement (MSA) between forty-six states and the tobacco companies, is the national public health foundation dedicated to building a world where young people reject tobacco and anyone can quit. I commend the Telecommunications and Internet Subcommittee for holding this important hearing and I very much appreciate the invitation to testify.

The media images children and teen-agers are exposed to exert a powerful, and all too often deeply negative, impact on their health. My testimony today will address the devastating impact that the pervasive images of smoking in the media have on adolescent smoking initiation and the steps that must be taken to protect our children. I will start by showing a short reel of images of smoking in recent PG-13 movies as well as images of smoking in movie trailers that have been shown on television.

Tobacco is one of the most significant public health challenges facing the United States and, indeed, the world. It is the largest preventable cause of death in the U.S. with over 400,000 Americans dying every year from smoking.[1] Another 50,000 die as a result of second hand smoke.[2] Fully 63% of cancer deaths in the U.S. are attributable to tobacco.[3] Approximately 8.6 million Americans suffer from tobacco-related diseases.[4] Among many other diseases, smoking causes heart disease, cardiovascular disease, lung cancer and lung ailments, bronchitis, and asthma.[5] Smoking increases the risk of low birth weight babies, pre-term delivery and sudden infant death syndrome.[6] The Centers

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[1] CDC. Annual Smoking-Attributable Mortality, Years of Potential Life Lost, and Economic Costs—United States, 1997-2001. MMWR 2005; 54(25): 625-628.
[2] Glantz SA, Parmley WW. Passive Smoking and Heart Disease. JAMA 995; 273(13) 1047-1053.
[3] Center for Disease Control and Prevention. Annual Smoking-Attributable Mortality, Years of Potential Life Lost, and Productivity Losses —United States, 1997-2001. MMWR 2005;54:625-628.
[4] CDC. Cigarette Smoking Attributable Morbidity—United States, 2000. MMWR 2003; 52(35) 842-844.
[5] CDC. Annual Smoking-Attributable Mortality, Years of Potential Life Lost, and Economic Costs—United States, 1997-2001. MMWR 2005; 54(25): 625-628.
[6] U.S. Department of Health and Human Services. The Health Consequences of Smoking. A report of the Surgeon General. Rockville, MD. U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2004.

for Disease Control estimates that smoking costs the nation $75 billion in direct medical expenses[7] and $92 billion in lost productivity every year.[8]

One of the most pernicious aspects of the smoking epidemic is that it depends on teen-agers; without teen-age smoking, it would soon run its course. Over 80% of smokers start before their eighteenth birthday and 90% start before they turn twenty.[9] Every day, about 4,000 youth between the ages of twelve and seventeen try their first cigarette.[10] Every day, over 1,500 youth become daily smokers.[11] One in three teen smokers will die prematurely from tobacco-related disease.[12] The tobacco industry knows full well that teens are an essential element of its long term business plan; it has chillingly referred to teen-agers as "replacement smokers" for their older customers who die or manage to quit.[13]

Because the vast majority of smokers start as teens, it is critically important to take action to prevent teens from starting to smoke in the first place. The Foundation is probably best known for **truth®**, the only non-tobacco industry sponsored national advertising, grassroots, and online countermarketing campaign designed to do just this: prevent youth smoking. Edgy, hard-hitting and unapologetic – and effective –, **truth®** communicates with teens in their own voice about the health effects, addictiveness and social costs of tobacco. It does not preach and never tells teens not to smoke. Instead, with a special emphasis on exposing the marketing practices of the tobacco industry as revealed in the now-public tobacco documents, **truth®** strives to make teens wary and

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[7] CDC. Annual Smoking – Attributable mortality, years of potential life lost, and productivity losses – United States, 1997—2001. MMWR. 2005. 54(25): 625-628.
[8] CDC. Annual Smoking – Attributable mortality, years of potential life lost, and productivity losses – United States, 1997—2001. MMWR. 2005. 54(25): 625-628.
[9] Mowery PD, Brick PD, Farrelly MC. Legacy First Look Report 3. Pathways to Established Smoking; Results from the 1999 National Youth Tobacco Survey. Washington DC: American Legacy Foundation. October 2000.
[10] Substance Abuse and Mental Health Services Administration (2005). Results from the National Survey on Drug Use and Health; National Findings (Office of Applied Studies, NSDUH Series H-28, DHHS Publication No. SMA 05-4062). Rockville, MD.
[11] Substance Abuse and Mental Health Services Administration (2005). Results from the National Survey on Drug Use and Health; National Findings (Office of Applied Studies, NSDUH Series H-28, DHHS Publication No. SMA 05-4062). Rockville, MD.
[12] CDC. Projected Smoking-Related Deaths Among Youth—United States. MMWR 1996: 45(44).
[13] Burrows DS. Strategic Research Report. Younger Adult Smokers: Strategies and Opportunities. Legacy Tobacco Documents Library. RJ Reynolds. February 29, 1984. Bates No: 508783540.

educated consumers. And it works. Peer-reviewed research published in the *American Journal of Public Health* in 2005 found that in its first two years, from 2000 to 2002, **truth®** was responsible for 22% of the overall decline in youth smoking, amounting to approximately 300,000 fewer youth smokers in 2002 because of **truth®**.[14]

But **truth®** cannot do it alone, even when fully funded. And that is no longer the case. The Foundation's major payments under the MSA ended in 2003 and will end altogether next year. Due to declining resources, we have already had to substantially cut back on our media buy for **truth®.** After another year or two the Foundation will no longer be able to continue **truth®** on television without a major infusion of funds. At the same time, recent reports suggest that the historic decade long decline in youth smoking that began in 1997 may be ending and youth smoking rates may even be trending back up.[15] We truly face a national crisis in the effort to prevent youth smoking. It is more important than ever to address the known causes of youth smoking.

Peer-reviewed research establishes that one of the major causes of youth smoking is exposure to the widespread depiction of smoking in the movies. Just last month, the Institute of Medicine of the National Academy of Sciences issued a major report including the conclusion that "Exposure to smoking in movies increases the risk for smoking initiation. . . . Furthermore, even after controlling for other factors known to be associated with adolescent smoking intention and tobacco use, studies show a clear dose effect, whereby greater exposure to smoking in the movies is associated with a greater chance of smoking."[16]

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[14] Farrelly MC, Davis KC, Haviland ML, Messeri P, Healton CG. Evidence of a dose-response relationship between "truth" antismoking ads and youth smoking prevalence. Am J Public Health. 2005 Mar;95(3):425-31.

[15] Johnston, L. D., O'Malley, P. M., Bachman, J. G., & Schulenberg, J. E. (2006, December 21). National press release, "Decline in daily smoking by younger teens has ended." University of Michigan News Service, Ann Arbor; CDC. Tobacco Use, Access, and Exposure to Tobacco in Media Among Middle and High School Students – United States, 2004. MMWR 2005; 54(12) 297-301.

[16] IOM (Institute of Medicine). 2007. *Ending the tobacco problem: A blueprint for the nation.* 6-42. Washington, DC: The National Academies Press.

In particular, the research demonstrates that smoking on screen recruits about 390,000 new youth smokers every year[17]. Two ground-breaking studies, published in *Lancet* [18]and *Pediatrics*[19], have found that youth exposure to movie smoking explains between one-third and one-half of all adolescent smoking initiation. A third study published just this past May in *Pediatrics* sets out the extraordinary number of smoking images to which our children are exposed. The 534 contemporary box-office hits analyzed in the study delivered, on average, 665 smoking impressions to each U.S. adolescent aged 10 to 14 years old[20].

Some of the additional key research findings from these studies include the following:

- Smoking in the movies has the greatest impact on youth who are normally the least likely to start smoking – those with non-smoking parents.[21]
- Youth have a higher risk of trying cigarettes as their exposure to smoking in movies increases. This is without regard to race/ethnicity or place of residence.[22]
- Young people with the highest exposure to smoking in movies are nearly three times more likely to start smoking than those with the least exposure.[23]

The Foundation's published research shows that in 2004, tobacco was depicted in three quarters of youth-rated movies (G, PG and PG-13) and 90% of R-rated movies.[24]

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[17] Glantz SA. Smoking in movies: A major problem and a real solution. *Lancet*. 2003;362 (9380):281-285. Erratum published on January 17, 2004.
[18] Dalton MA, Sargent JD, et. al. Effect of viewing smoking in movies on adolescent smoking initiation: A cohort study. *Lancet*. 2003;362(9380):281-285.
[19] Sargent JD, Beach ML, Adachi-Mejia AM, Gibson JJ, Titus-Ernstoff L, Carusi C, Swain S, Heatherton TF, Dalton MA. Exposure to movie smoking: Its relation to smoking initiation among U.S. adolescents. *Pediatrics* 2005;116(5):1183-1191.
[20] Sargent JD, Tanski SE, Gibson J. Exposure to movie smoking among US adolescents aged 10 to 14 years: a population estimate. Pediatrics. 2007 May;119(5):e1167-76 at e1169.
[21] Dalton MA, Sargent JD, et. al. Effect of viewing smoking in movies on adolescent smoking initiation: A cohort study. *Lancet*. 2003;362(9380):281-285.
[22] Dalton MA, Sargent JD, et. al. Effect of viewing smoking in movies on adolescent smoking initiation: A cohort study. *Lancet*. 2003;362(9380):281-285.
[23] Dalton MA, Sargent JD, et. al. Effect of viewing smoking in movies on adolescent smoking initiation: A cohort study. *Lancet*. 2003;362(9380):281-285.

Because teens are less likely to see R-rated movies, about 60% of youth exposure comes from youth-rated movies.[25,26] A study analyzing tobacco use in movies from 1999 through 2006 found very similar results: 75% of all U.S. produced live action movies featured tobacco use, including 88% of R-rated movies, 75% of PG-13 movies and 36% PG and G-rated movies.[27] These percentages persist in the most recent movies. According to data from the University of California-San Francisco's Center for Tobacco Control Research, 72 % of all U.S. produced live action films that grossed at least $500,000 from 2004 to 2006 depicted smoking. Of these movies, 58% were youth-rated.[28]

There is less research regarding the incidence of smoking on television; the Foundation is currently undertaking an analysis of the top ten network and cable television series viewed by youth to document the presence of tobacco use and brand imagery in these shows. However, even a quick look at shows that are popular among teens, for example, *Sex in the City*, *The Simpsons*, *Family Guy* and *The OC*, demonstrates that there is also a great deal of smoking on television. Shows no longer shown on television continue to be widely available through DVDs. In addition, feature movies, many with smoking, are also shown on television.

To further highlight the cross-over between movie smoking and smoking on television, many movie trailers shown on television contain images of smoking. The Foundation published research on this precise problem in *The Archives of Pediatric Adolescent Medicine* in 2006. We analyzed all movie trailers shown on television from August 1, 2001 through July 31, 2002. We found that 14.4% of these trailers included

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[24] Worth K, Tanski S, Sargent J. Legacy First Look Report 16. Trends in Top Box Office Movie Tobacco Use 1996-2004. Washington DC: American Legacy Foundation. July 2006..

[25] The 2004-2005 Thumbs Up! Thumbs Down! Analysis of Tobacco Use in Movies. American Lung Association of Sacramento-Emigrant-Trails. http://www.saclung.org/thumbs/TUTDreports.htm.

[26] Niederdeppe J, Lindsey D. Exposure to pro-tobacco messages among teens and young adults: Results from three national surveys. *Legacy First Look Report 12*. November 2003. Washington DC: American Legacy Foundation.

[27] Polansky JR, Glantz SA "First-Run Smoking Presentations in U.S. Movies 1999-2006" (April 1, 2007). *Center for Tobacco Control Research and Education. Tobacco Control Policy Making: United States*. Paper MOVIES2006. http://repositories.cdlib.org/ctcre/tcpmus.

[28] Polansky JR, Glantz SA "First-Run Smoking Presentations in U.S. Movies 1999-2006" (April 1, 2007). *Center for Tobacco Control Research and Education. Tobacco Control Policy Making: United States*. Paper MOVIES2006. http://repositories.cdlib.org/ctcre/tcpmus.

images of tobacco use and that nearly all U.S. youth between 12 and 17 years old saw at least one of these movie trailers during the study period, with 88.8% seeing at least one of these trailers three or more times.[29] Because television delivers images to young viewers just as movies do and portrays characters that are similarly aspirational to teens, there is no reason to think that the influence that depictions of smoking on television have on teens is any less than that of the movies.

The question, then, is what steps should be taken (1) to get smoking out of movies and television shows that are produced for and marketed to teens and children and (2) to the extent that smoking images remain in these media, counteract their effect on teens and children.

The Foundation, along with leading public health organizations including the World Health Organization, the American Academy of Pediatrics, the American Medical Association, the American Lung Association and the American Heart Association, supports the following principles which, if put into practice, will significantly reduce the number of adolescents who begin smoking because of smoking in the movies:

- **Rate new smoking movies "R".**
  Any film that shows or implies tobacco should be rated "R." The only exceptions should be when the presentation of tobacco clearly and unambiguously reflects the dangers and consequences of tobacco use or is necessary to represent the smoking of a real historical figure.
- **Certify no pay-offs.**
  The producers should post a certificate in the closing credits declaring that nobody on the production received anything of value (cash money, free cigarettes or other gifts, free publicity, interest-free loans or anything else) from anyone in exchange for using or displaying tobacco.

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[29] Healton C, Watson-Stryker E, Allen J, Vallone D, et al., "Televised Movie Trailers: Undermining Restrictions on Advertising Tobacco to Youth", 160 *Arch Pediatric Adolesc. Med.*, 885 (2006).

- **Require strong anti-smoking ads.**
  Studios and theaters should require a genuinely strong anti-smoking ad (not one produced by a tobacco company) to run before any film with any tobacco presence, in any distribution channel, regardless of its MPAA rating.
- **Stop identifying tobacco brands.**
  There should be no tobacco brand identification or the presence of tobacco brand imagery (such as billboards) in the background of any movie scene.

In its just-released report, *Ending the Tobacco Problem: A Blueprint for the Nation*, the Institute of Medicine made similar policy recommendations:[30]

- The Motion Picture Association of America (MPAA) should encourage and facilitate the showing of anti-smoking advertisements before any film in which smoking is depicted in more than an incidental manner. The film rating board of the MPAA should consider the use of tobacco in the movies as a factor in assigning mature film ratings (e.g., an R-rating indicating Restricted: no one under age 17 admitted without parent or guardian) to films that depict tobacco use. (Recommendation 37).

- Congress should appropriate the necessary funds to enable the U.S. Department of Health and Human Services to conduct a periodic review of a representative sample of movies, television programs, and videos that are offered at times or in venues in which there is likely to be a significant youth audience (e.g., 15 percent) in order to ascertain the nature of and frequency of images portraying tobacco use. The results of these reviews should be reported to Congress and to the public. (Recommendation 38)

Let me address a few key points in these recommendations in more detail.

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[30] Among the many other recommendations which form the *Blueprint*, the IOM also recommended that a national, youth-oriented media campaign should be permanently funded as a component of the strategy to reduce tobacco use. (Recommendation 15).

First, the R-rating is a necessary part of the solution. As I have already discussed, most adolescent exposure to movie smoking is in youth-rated, not R-rated, movies. Because adolescents see significantly fewer R-rated movies, their exposure to movie smoking will be dramatically decreased by instituting the R-rating requirement. If movie producers want adolescents to be part of their audience, they only need remove depictions of smoking from their films.

In 2003, the Foundation conducted a series of surveys to measure public attitudes about the Smoke Free Movies Principles. According to our data, in 2003, 46% of adults backed the R-rating for movies with smoking[31]. Because of the increased understanding of what is at stake, there has been a dramatic increase in awareness and concern about smoking in the movies in the last few years. The results of a second national survey, released in February of 2007, shows that now 70% of adults support an R-rating for future movies that show smoking.[32]

Second, the recommendation that movies must certify that there have been no pay-offs in return for showing tobacco images recognizes that there is a long and well-documented history of paid tobacco placement in the movies. This history surely accounts for much of the tobacco imagery we see today in movies. The best source of information is the tobacco company's own documents which were made public as a result of the Master Settlement Agreement and related state settlements with the tobacco industry.[33] Let me highlight just a few examples. In 1979, Philip Morris Europe reached an agreement with Pinewood Studios for the "exposure of the Marlboro brand name" in a "major [specified] scene" in *Superman II* in exchange for £20,000. In that same year Philip Morris paid to have its product appear in the G-rated *Muppet Movie*. In 1990 the American Tobacco Company signed an $89,000 "Advertising and Selling Authorization" for product placement in connection with its Carlton, Lucky Strike, Pall Mall and Malibu

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[31] Healton C, Watson-Stryker E, Duke J, et al. Legacy Policy Report 3. Public Opinion on Strategies to Reduce Youth Exposure to Smoking in the Movies: Results from the American Smoking and Health Survey. Washington DC: American Legacy Foundation. May 2005.

[32] McMillen R, Tanski S, Winickoff J, Valentine N. Attitudes about Smoking in the Movies. Mississippi State University Social Science Research Center, American Academy of Pediatrics. 2006.

[33] See generally, Mekemson and Glantz, "How the tobacco industry built is relationship with Hollywood", *Tobacco Control* 11 (suppl 1) at i81 (2002).

brands. In 1988, Philip Morris supplied its products for films including *Who Framed Roger Rabbit*, *Field of Dreams* and *Dream Team*.

Since that time, certain steps have been taken in an effort to stop tobacco product placement. In 1998 the Master Settlement Agreement included a provision barring the exchange of anything of value for the placement of tobacco brand imagery. Since the 1990's, the tobacco companies have consistently stated that they pay no funds for product placement in response to the Federal Trade Commission's periodic survey of their marketing expenditures. And, to be sure, the trail of documents ends in the early 1990's.[34] However, none of this conclusively demonstrates that product placement is no longer a problem. To begin with, the MSA only binds the parties to it. In the case of the Altria companies, for example, only Philip Morris USA is a party. Its corporate parent, Altria, is not bound by the MSA; nor are Kraft, Philip Morris International, or any other Altria subsidiaries. I would note, for example, in the *Superman II* example I refer to earlier in my testimony, the dealmaker was Philip Morris Europe. Moreover, the FTC's report does not require tobacco companies to report on the activities of their affiliates if the affiliate's sale of cigarettes products and related merchandise constitutes less than 25% of its total retail sales.[35] This exception would apply, for example, to Kraft which is a non-tobacco subsidiary of Altria. The Foundation believes that it is very important to continue to shine a bright light on tobacco product placement.

Third, published research shows that strong anti-smoking advertisements shown immediately before a movie, with an emphasis on "strong", can help counteract the impact of smoking images in the movie.[36] The Foundation, with its library of award-winning and effective **truth®** ads, has endeavored to play a role in implementing this

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[34] Smoke Free Movies website, http://www.smokefreemovies.ucsf.edu/problem/bigtobacco.html, note 2.
[35] Federal Trade Commission's "Order to File Special Report", sent to the Altria Group on May 3, 2006 at fn. 3.
[36] Edwards, Oakes, Bull, "Out of the smokescreen II: will an advertisement targeting the tobacco industry affect young people's perception of smoking in movies and their intention to smoke?", 16 *Tobacco Control* 177 (2007); Edwards, Harris, Cook, Bedford, Zuo, "Out of the Smokescreen: does an anti-smoking advertisement affect young women's perception of smoking in movies and their intention to smoke?", 13 *Tobacco Control* 277 (2004); Pechman, Shih, "Smoking Scenes in Movies and Antismoking Advertisements Before Movies: Effects on Youth", 63 *Journal of Marketing* 1 (1999).

principle. We have worked closely with the state attorneys general, who have taken an active leadership role in the effort to protect youth from the effects of media images of smoking, to make available without charge **truth®** ads to be included in DVD releases and other home viewing formats. Unfortunately, only one studio, the Weinstein Company, has agreed to include **truth®** ads in DVDs such as *School for Scoundrels, Clerks II* and others. The Foundation has also provided public health organizations and states around the country with usage rights and accessibility to **truth®** for their efforts to urge theaters to help protect teens from smoking images in the movies. In addition, we placed **truth®** ads in movie theaters for airing in the first few months of 2007. However, with the Foundation's declining budgets, we cannot come even close to assuring that these ads are shown before every movie which depicts smoking.

Fourth, there is no place at all for tobacco brand imagery in the movies or other media. While the research clearly shows that the depiction of smoking without an associated brand is a powerful influence on youth smoking initiation, the display of tobacco brands is tantamount to advertisements for those brands. Researchers at Dartmouth Medical School found that between 1996 and 2003 movies containing a tobacco brand appearance featured Marlboro 49% of the time.[37] As youth are particularly susceptible to advertising[38], it is not surprising to find that among youth smokers, 50% report that Marlboro is their usual brand.[39] Other research suggests that product placement, particularly when it includes an endorsement or use by an actor, effectively

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[37] Adachi-Mejia AM, Dalton MA, Gibson JJ, Beach ML, Titus-Ernstoff LT, Heatherton TF, Sargent JD. Tobacco brand appearances in movies before and after the master settlement agreement. JAMA. 2005 May 18;293(19):2341-2.

[38] Pollay RW, Siddarth S, Siegel M, Haddix A, Merritt RK, Giovino GA, Eriksen MP. The last straw? Cigarette advertising and realized market shares among youths and adults, 1979-1993. Journal of Marketing. 1996; 60: 1-16.

[39] Wunderink K, Allen J, Xiao J, et al. Legacy First Look Report 17. Cigarette Preferences Among Youth—Results from the 2006 Legacy Media Tracking Online (LMTO). Washington DC: American Legacy Foundation. June 2007.

functions as advertising.[40] Studies consistently show that 75% of teens smoke the three most heavily promoted brands: Marlboro, Camel and Newport.[41]

Finally, I recognize that after years of urging the MPAA to adopt the four principles and to keep smoking out of youth-rated movies, it has finally taken a hesitant half-step. On May 10, 2007, the MPAA announced that it would "consider smoking" when rating movies. In my view, this announcement, which contains no objective standards or commitment to actually do anything, is wholly inadequate. Nonetheless we will monitor closely what steps the MPAA actually takes. If this is to be at all effective, we would expect to start seeing a reduction in smoking in youth rated films no later than in the next month or so.

In conclusion, I would like to thank the Committee once more for holding this very important hearing. Removing images of smoking from media produced for children and teens is an essential step toward stopping the deadly smoking epidemic.

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[40] Sargent JD, Tickle JJ, Beach ML, Dalton MA, Ahrens MB, Heatherton TF. Brand appearances in contemporary cinema films and contribution to global marketing of cigarettes. Lancet. 2001 Jan 6;357(9249):29-32.

[41] Wunderink K, Allen J, Xiao J, et al. Legacy First Look Report 17. Cigarette Preferences Among Youth—Results from the 2006 Legacy Media Tracking Online (LMTO). Washington DC: American Legacy Foundation. June 2007; Magazine Advertising of Tobacco Products: Exposure and Targeting of Youth and Other High-Risk Groups After the Master Settlement Agreement. Tobacco Research Program, Division of Public Health Practice, Harvard School of Public Health. June, 2006.

Mr. MARKEY. We thank you very much, Doctor.

Our next witness is Dr. Donald Shifrin. He is a pediatrician and the chair of the Committee on Communications of the American Academy of Pediatrics.

Welcome, Doctor.

STATEMENT OF DONALD L. SHIFRIN, M.D., CHAIR, COMMITTEE ON COMMUNICATIONS, AMERICAN ACADEMY OF PEDIATRICS

Dr. SHIFRIN. Good morning, Chairman Markey. I want to thank you for calling this hearing and for your years of leadership on media's impact on children. I also thank the members of the subcommittee for their time and attention today on what we think is a critical issue.

I am Dr. Don Shifrin, representing the American Academy of Pediatrics, at 60,000 pediatricians. And for the past 4 years, I have served as the chair of the academy's Committee on Communications; served as a member of the academy's National Task Force on Obesity. I am a general pediatrician. I have been seeing patients for 29 years. For more than 25 years, the Academy of Pediatrics has been addressing the issue of media and its positive and negative effect on the physical and mental health and behavior of children and adolescents. With greater access and time to influence young people's attitudes and actions from infancy into adolescents, television, movies, video games, music and the Internet have displaced parents and teachers as children's primary role model, sources and filters of information about their world and how they can choose to behave in it. Children learn by observing and imitating. They cannot help but be influenced by the media. Media are a significant part of our lives and have much to teach. But some media messages are negative and can be harmful to children.

Please note that the academy has covered the issue of violence and tobacco for our written testimony. But for purposes of time, I will focus my oral remarks today just on advertising, the impact on childhood obesity.

It is now common knowledge by everyone that the prevalence of overweight and obese children has increased at some incredibly alarming rates in the United States. These children are much more likely to be at risk for medical problems, such as higher blood pressure, type 2 diabetes and cardiovascular and mental health issues.

Prevention is the hallmark of all pediatric care. The present trends indicate that families, schools, communities, policymakers, health care professionals, the food industry and the media all influence what is now the most significant ongoing chronic health threat to children. Therefore, everyone has a critical role in working to reverse the trend of increasingly obese children.

As a practicing pediatrician, I see parents and caregivers every day who are searching for help for their overweight children.

As I speak to you today for these 5 minutes with a significant sense of urgency, I can assure you that these 5 minutes are statistically more time than many of my colleagues have with families to discuss nutritional and activity awareness, media time and literacy issues during a once or every other year office visit. Contrast that time with the amount of time children spend seeing 40,000 ads per year on television alone. And according to the Kaiser Foun-

dation, the fact that one-third of children younger than 6 have televisions in their bedroom, there is no question it is not a level playing field for parents or pediatricians.

Leisure activity for children is increasingly sedentary, with wide availability of entertainment including televisions at home, in cars and on cell phones as well as videos and computer games. According to national survey data, children who watched 4 or more hours of television per day were significantly heavier compared to those watching fewer than 2 hours.

Furthermore, having a television in the bedroom has been reported to be a strong predictor of being overweight, even in preschool-aged children. In addition to not getting enough exercise, children who consume media are being overwhelmed with junk food advertising and marketing. They are seeing an unhealthy disproportionate amount of advertising for products that are high in fat, sugar and sodium and low in nutrition. In the recent Kaiser Foundation report, "Food For Thought," food was the top product seen advertised by children.

Mr. Inslee did very kindly give the statistics of 34 percent of all food ads were for candy and snacks. Of the more than 8,000 ads reviewed in the Kaiser study, none were for fruits and vegetables; yet advertising healthy food has been shown to increase wholesome eating in children as young as 3 to 6 years of age. Since 1999, the Academy has recommended no more than 1 to 2 hours of screen time per day for children. And we discourage any screen time for children under age 2 to encourage more interactive activities with parents and caregivers. But we recognize that educating families about moderation, helpful choices, balance rather than restrictions, portion size and physical activity many times are lost in the tsunami of their children's media exposure to less healthful foods. Children now grow up in demographic niches rather than neighborhoods targeted at the earliest ages by advertising wanting to brand them early and brand them often.

There are many risk factors that contribute to childhood obesity and certainly many lines of defense, beginning with parental responsibility, but that is not the only line of defense. The following are some of the Academy's recommendations:

The Academy of Pediatrics considers advertising directly to young children to be inherently deceptive and exploits children under the age of 8. Children younger than 8 cannot discriminate between fantasy and reality, and as such, they are uniquely vulnerable. Advertising and promotion of energy-dense, nutrient-poor food products to children should be reduced and restricted. The academy has called for a ban on junk food advertising during programming that is viewed predominantly by young children. The Government should limit commercial advertising on children's programming to no more than 5 to 6 minutes per hour which would decrease by 50 percent the current amount. And the Academy of Pediatrics supports and advocates for social marketing intending to promote healthful food choices and increased physical activity. The food and beverage companies and media industry should develop and advertise healthful food and eating choices, and the American Academy of Pediatrics wants the Federal Government to fund research on

the impact of media on the ongoing health and behavior of children.

In conclusion, media permeates our lives, and therefore, it deserves our collective action. Pediatricians will continue to do their part. Policymakers need to keep protecting the public interest in this arena. Parents need to understand the impact of media on children's health and take responsibility for finding—and that is difficult—and making informed choices about what media their family consumes. The industry needs to drastically reduce the number of junk food ads and rate programs properly. And together we can make a difference in the health and well-being of all children. And that is going to benefit all of us. Thank you, sir.

[The prepared statement of Dr. Shifrin follows:]

STATEMENT OF DONALD L. SHIFRIN, M.D.

Good morning. I appreciate the opportunity to testify today before the Telecommunications and the Internet Subcommittee at this hearing, Images Kids See on the Screen. My name is Dr. Don Shifrin, and I am proud to represent the American Academy of Pediatrics (AAP), a non-profit professional organization of 60,000 primary care pediatricians, pediatric medical sub-specialists, and pediatric surgical specialists dedicated to the health, safety and well being of infants, children, adolescents, and young adults. For the past 4 years, I have served as chair of the American Academy of Pediatrics' Committee on Communications, which has developed several AAP policy statements on media, including advertising, media violence, television, sexuality and media, and media education. I also served on the AAP Task Force on Obesity. I am a general pediatrician in Seattle, Washington, where I have been treating newborns through young adults for 29 years. I also hold a clinical professorship in pediatrics at the University of Washington School of Medicine.

For more than 25 years, the American Academy of Pediatrics has been addressing the issue of media and its positive and negative impact on the health and behavior of children and adolescents. With greater access and time to influence young people's attitudes and actions from infancy into adolescence, television, movies, video games, music, and the Internet have displaced parents and teachers as children's primary role models, sources, and filters of information about their world and how they can choose to behave in it. Children learn by observing and imitating—they cannot help but be influenced by the media. Media are an important part of our lives and have much to teach, but some media messages are negative and can be harmful to children.

Children in this country drink from a seemingly inexhaustible supply of media every day. What would we do if we discovered that the water our children drink was full of things toxic to their physical and mental health? There is a lot of toxic programming and advertising that's flowing unimpeded into homes, and it's impacting the health of our children. We want media experiences for children to be positive as well as limited. Just as we would limit certain foods in a child's diet that may be unhealthy, we also need to limit their media diet of messages.

It takes a village to raise a child, but our concern is that the electronic village is supplanting parental values. The AAP believes there is a role for parents, medical professionals, the entertainment industry, food and beverage industry, advertising industry, and yes, our government, in addressing the impact of media on children.

AAP HISTORY ON IMPACT OF MEDIA ON CHILDREN

For its part, the American Academy of Pediatrics has been directly involved in numerous voluntary, legislative, and regulatory solutions. For example, we supported the Children's TV Act of 1990 and the legislation creating the V-chip and participated in the TV ratings negotiations—an AAP member currently serves on the TV Oversight Monitoring Board. We launched a Media Matters campaign 10 years ago to train pediatricians about media issues and to educate parents and children about how to make good media choices. We provide materials for pediatricians to use during office visits to ask families about media use. The AAP is an active member of the Children's Media Policy Coalition, which recently reached an agreement with the media industry over public interest obligations for children's programming and advertising for digital TV. The AAP also currently serves on the Joint Task Force on Media and Childhood Obesity, initiated by Senators Brownback

and Harkin and FCC Chairman Martin, FCC Commissioner Tate and FCC Commissioner Copps. This Task Force is several weeks away from completing its work, and the Academy hopes the groups involved can reach a final agreement that makes substantive changes in the way food is advertised to children.

ADVERTISING AND CHILDHOOD OBESITY

By now it is common knowledge that the prevalence of overweight and obese children has increased at an alarming rate in the United States, doubling in the past 20 years. Overweight and obese children are much more likely to be at risk for such medical problems as higher blood pressure, type 2 diabetes, and cardiovascular and mental health issues.

Prevention is the hallmark of all pediatric care. The present trends indicate that families (traditional, single-parents, divorced, and stepfamilies), schools, communities, policy makers, health care professionals, the food industry, and the media all influence what is now the most significant ongoing chronic health threat to children. Therefore, all play a critical role in working to reverse the trend of increasingly obese children. Much like it has been stated that smoking is a pediatric disease, the same could be said for obesity. Pediatricians are committed to helping kids and families lead healthy, active lives.

As a practicing pediatrician I see parents and caregivers every day who are searching for help for their overweight children. As I speak to you today for 5 minutes with a significant sense of urgency, I can assure you that these 5 minutes are statistically more time than many of my colleagues have with families to discuss nutritional and activity awareness, media time, and literacy issues during an annual or every other year health maintenance appointment. Contrast that time with the amount of time children spend seeing 40,000 ads per year on television alone, and according to the Kaiser Family Foundation, the fact that 33 percent of children younger than age 6 have a TV in their bedroom. It hardly seems like a level playing field for parents or pediatricians.

Leisure activity for children is increasingly sedentary, with wide availability of entertainment, including televisions at home, in cars and on cell phones, as well as videos and computer games. According to national survey data, children who watched 4 or more hours of television per day were significantly heavier compared to those watching fewer than 2 hours a day. Furthermore, having a TV in the bedroom has been reported to be a strong predictor of being overweight, even in preschool-aged children.

In addition to not getting enough exercise, children who consume media are being overwhelmed with junk food advertising and marketing. They are seeing an unhealthy, disproportionate amount of advertising for products that are high in fat, sugar and sodium, and low in nutrition. In a Kaiser Family Foundation report released this year, Food for Thought, food is the top product seen advertised by children. The study found that "tweens ages 8–12 see the most food ads on TV, an average of 21 ads a day, or more than 7,600 a year. Teenagers see slightly fewer ads, at 17 a day, for a total of more than 6,000 a year. For a variety of reasons—because they watch less TV overall, and more of their viewing is on networks that have limited or no advertising, such as PBS and Disney—children ages 2–7 see the least number of food ads, at 12 food ads a day, or 4,400 a year." According to that same Kaiser report, 34 percent of all food ads targeting children or teens are for candy and snacks, 28 percent are for cereal, and 10 percent are for fast foods. Of the 8,854 food and beverage ads reviewed in the study, none were for fruits or vegetables targeting children or teens. Yet, advertising healthy foods has been shown to increase wholesome eating in children as young as 3 to 6 years of age.

Since 1999, the AAP has recommended no more than 1–2 hours of screen time per day for children, and we discourage any screen time for children under age 2 to encourage more interactive activities with parents and caregivers. We also advise parents to take TV sets out of children's bedrooms. But we recognize that educating families about moderation, healthful choices, balance rather than restrictions, portion size, and physical activity many times are lost in the tsunami of their children's media exposure to less healthful foods. To put it simply, advertising works. If it didn't, the industry wouldn't spend billions of dollars persuading children and their parents. Unfortunately, children do not grow up in neighborhoods any more. They grow up defined by demographic niches, targeted at the youngest ages by advertising wanting to brand them early and brand them often.

Granted, there are many risk factors that contribute to childhood obesity. And there are many lines of defense, beginning with parental responsibility. But that is not the only line of defense. According to the 2005 Institute of Medicine report, "Food Marketing to Children and Youth: Threat or Opportunity?" "...food and bev-

erage marketing influences the preferences and purchase requests of children, influences consumption at least in the short term, is a likely contributor to less healthful diets, and may contribute to negative diet-related health outcomes and risks among children and youth."

It has been 43 years since the first Surgeon General's report on smoking, and we are still dealing with its terrible toll on our Nation's health. Our children and their children cannot wait another 40 years for us to address the issue of food advertising and marketing and its role in obesity.

Advances in technology will definitely exacerbate the problem. Children's advertising protections will need to be updated for digital TV, which, if all goes according to plan, will be in place in 2009. Children watching a TV program will be able to click an on-screen link and go to a Web site during the program. Interactive games and promotions on digital TV will have the ability to lure children away from regular programming, encouraging them to spend a long time in an environment that lacks clear separation between content and advertising. Interactive technology also allows advertisers to collect information about children's viewing habits and preferences and target them much more specifically.

What should be done? The following are the Academy's positions and recommendations on advertising and marketing issues specifically as they relate to media and childhood obesity:

• AAP considers advertising directly to young children to be inherently deceptive and exploits children under the age of 8 years. Children younger than 8 cannot discriminate between fantasy and reality, and as such they are uniquely vulnerable.

• Advertising and promotion of energy-dense, nutrient-poor food products to children should be reduced and restricted. The AAP has called for a ban on junk-food advertising during programming that is viewed predominantly by young children.

• The government should limit commercial advertising on children's programming to no more than 5 to 6 minutes per hour, which would decrease the current amount by 50 percent.

• AAP supports and advocates for social marketing intended to promote healthful food choices and increased physical activity. The food and beverage companies and media industry should develop and advertise healthful food and eating choices.

• The AAP wants more federally funded research on the impact of media on the health and behaviors of children.

• The government should prohibit interactive advertising to children in digital TV. Information about children and their viewing habits should not be collected without affirmative parental consent.

MEDIA VIOLENCE

America's young people are being exposed to increasing amounts of media violence through television, movies, video games, and popular music. The American Academy of Pediatrics recognizes exposure to violence in the media as a significant risk to the health of children and adolescents. Extensive research evidence indicates that media violence can contribute to aggressive behavior, desensitization to violence, nightmares, and fear of being harmed. This "fear factor" has also extended to television news reports of violence locally, nationally, and internationally.

Although exposure to media violence is not the sole factor contributing to aggression, antisocial attitudes, and violence among children and teens, it is an important health risk factor on which we, as pediatricians and as members of a compassionate society, can intervene.

In its 2001 Media Violence policy statement, the AAP calls for simplified, content-based media ratings to help parents guide their children to make healthy media choices. Following the release of the Federal Communications Commission (FCC) media violence report, the AAP would like to open discussions with the broadcast industry about improving the 10-year-old TV ratings system. For example, the ratings are inconsistent between networks. One network might apply a "V" for violence to a program, and another network with a similar level of violence in a program doesn't. The AAP has also long advocated for content-based, not just age-based, ratings. Tell parents what's in the program, and let them determine if they believe it's appropriate for their children. The "alphabet soup" of the TV ratings—-V, S, D—are not understood by the public, especially "FV" which denotes fantasy violence, but many parents believe these letters stand for family viewing. A majority of parents also are not even aware that E/I stands for educational and informational children's programming. We would recommend displaying the ratings more often during shows and increase their visibility in on-air and print guides.

The AAP has promoted media literacy among children and parents and conducted public education campaigns to help parents understand all the ratings systems and to make them aware of the tools available, like the v-chip, to control content. We advise pediatricians to advocate for more child-positive media, not censorship, and created a "media history" form for pediatricians to use in their offices with families. Having such information can assist in reviewing and changing media diets.

What else can be done? The AAP offered recommendations from its Media Violence policy statement to the entertainment industry, such as:

• Avoid the glamorization of weapon carrying and the normalization of violence as an acceptable means of resolving conflict.
• Eliminate the use of violence in a comic or sexual context or in any other situation in which violence is amusing or trivialized.
• If violence is used, it should be used thoughtfully as serious drama, always showing realistic pain and suffering, and loss.
• Video games should not use human or other living targets or award points for killing, because this teaches children to associate pleasure and success with their ability to cause pain and suffering to others.

TOBACCO

Tobacco manufacturers spend $30 million per day ($11.2 billion per year) on advertising and promotion. Exposure to tobacco advertising may be a bigger risk factor than having family members and peers who smoke and can undermine the effect of strong parenting practices.

Preventing young people from starting to use tobacco is the key to reducing the death and disease caused by tobacco use. The AAP has joined with other public health groups, and 31 state attorneys general, through the Smoke Free Movies project to urge moviemakers to change how smoking is portrayed in films. Mainstream movies are one of the most important factors in recruiting preteens and teens to begin smoking. Research published in our scientific, peer-reviewed journal Pediatrics just last month found that U.S. films deliver billions of smoking impressions to 10–14 year olds, which is the age when most kids are likely to experiment with cigarettes.

The U.S. film industry can cut adolescent exposure substantially by extending the R-rating to tobacco imagery. This voluntary step will not result in more films being rated R. It will simply keep smoking out of future G, PG and PG–13 films, producing public health benefits at virtually no cost.

The Smoke Free Movies project has four goals:

• Rate new smoking movies "R"—any film that shows or implies tobacco should be rated "R." The only exceptions should be when the presentation of tobacco clearly and unambiguously reflects the dangers and consequences of tobacco use or is necessary to represent the smoking of a real historical figure.
• Certify no pay-offs—declare in the credits that nobody received anything of value in exchange for using or displaying tobacco.
• Require strong anti-smoking ads—to run before any film with any tobacco presence, regardless of the rating.
• Stop identifying tobacco brands in films.

These are four voluntary solutions that could and should be adopted immediately by the Motion Picture Association of America (MPAA) and their movie studios. Actions by them to date have fallen short. The AAP looks forward to the MPAA joining the effort to protect children and teens from becoming addicted to the largest avoidable cause of death in the United States by implementing evidence-based policies in rating movies.

The American Academy of Pediatrics also continues to urge Congress to pass Federal legislation (S. 625/H.R. 1108) that gives the Food and Drug Administration (FDA) authority to regulate both current and new tobacco products and restrict tobacco product marketing. It bans such tactics as cartoon advertisements, free tobacco-themed merchandise that appeals to children, and sponsorship of sports and entertainment events.

Finally, in its December 2006 Advertising policy statement, the AAP calls on Congress to implement a ban on cigarette and tobacco advertising in all media, including banners and logos in sports arenas. We believe advertisements can be restricted if there is a significant public health risk, particularly to children.

I appreciate this opportunity to present testimony on behalf of the American Academy of Pediatrics. Media permeates our lives, and therefore it deserves our collective action. Pediatricians will continue to do their part. Policymakers need to

keep protecting the public interest in this arena. Parents need to understand the impact of media on children's health and take responsibility for making informed choices about what media their family consumes. The industry should drastically reduce the number of junk food ads children see, rate their programs properly and standardize the ratings, offer more responsible portrayals of violence, and increase the amount of quality, educational programming for children. Together we can make a difference in the health and well being of all children, and that will benefit all of us.

Mr. MARKEY. Thank you, Dr. Shifrin.

Our next witness is Mary Sophos, who is the senior vice president and chief government affairs officer for the Grocery Manufacturers/Food Products Association. Welcome.

STATEMENT OF MARY SOPHOS, SENIOR VICE PRESIDENT, CHIEF GOVERNMENT AFFAIRS OFFICER, GROCERY MANUFACTURERS/FOOD PRODUCTS ASSOCIATION

Ms. SOPHOS. Thank you, Mr. Chairman. And thank you for the opportunity to be here today.

Reducing childhood obesity and encouraging healthy lifestyles for children and adults is an important cause that the food industry has made one of its top priorities.

The Grocery Manufacturers/Food Products Association represents the world's leading food, beverage and consumer packaged goods companies. GMA and our member companies are committed to helping Americans live healthier lives, and we believe that balanced nutrition and active lifestyle and healthy choices is the key for both children and adults.

The food industry recognizes that it can help by providing a wider range of nutritious product choices and marketing those choices in ways that promote healthy lifestyles. We are also committed to supporting parents, schools, communities and others whose participation is crucial if we are to have any measurable success.

The most important contribution that the food and beverage sector has made to help Americans improve their diets is the development and introduction of thousands of new and reformulated products. Companies are making meaningful improvements across their product portfolios, introducing over 10,000 new or reformulated products with reduced calories, reduced saturated and trans fats, reduced sodium and sugar, over the past 5 years. Companies have enhanced products with whole grains, fiber and micronutrients and have modified package sizes to help consumers focus on serving size and portion control, including new package sizes created for kids. While the cumulative impact of these individual efforts is already significant, we believe it will grow substantially.

So just how do people find 10,000 new and improved products? Overwhelmingly, the information is carried by the media represented here today. TV, radio and newspapers, magazines and Web sites will carry messages about these healthy and tasty choices to millions of consumers across the country. GMA members strive to deliver messages that are ethical and accurate. We take very seriously our obligation to advertise responsibly and to take into account the special needs of children. We have always had a strong voluntary self-regulation system in this country, and the

Council of Better Business Bureaus has just made it better by its recent modernization and strengthening of the cable guidelines.

Our members have been challenged to do even more with our marketing, and they have responded. Chairman Majoras of the Federal Trade Commission recently said, marketing can be part of the solution. And we agree. Food and beverage advertisers, accounting for over two-thirds of all TV advertising to children under 12, have announced their commitment to devote the majority of their messages to healthy choices and lifestyles as part of a new children's food and beverage advertising initiative which was launched last November under the auspices of the Council of Better Business Bureaus. In addition to shifting a mix of advertising messages to children to encourage healthier choices and lifestyles, participating companies commit to apply similar principles to interactive games and to licensed characters. And also to not advertise food or beverage products in elementary schools and not to engage in product placement in editorial and entertainment content.

Charter participants are Cadbury Schweppes USA, Campbell Soup Company, the Coca-Cola Company, General Mills, Inc., the Hershey Company, Kellogg Company, Kraft Food Inc., McDonald's, PepsiCo, Inc. and Unilever. We all know that marketing will be part of the solution, and our industry will not be the only one involved.

Public health authorities and experts in the U.S. and abroad have told us that success will depend on an unprecedented partnership of stakeholders from all sectors of society. We need to join forces, and we know from experience that we can achieve great results, and we do. In the last 3 years, GMA members have contributed over $100 million for nutrition and health-related activities and grants to communities that represents over 30 percent of the total charitable contributions. In particular, effective communication of sound nutrition guidance and promotion of healthy lifestyle is essential, and the U.S. Government plays a pivotal role in setting national policy in this area. GMA has undertaken a number of initiatives to augment Government's efforts to reach consumers and to ensure, for example, that the new U.S. dietary guidelines are relevant and useful tools in consumers' everyday lives.

Let me conclude with this, there is simply too much at stake for us to fail. The food and beverage industry has responded to the challenge, and we remain committed. But we all know that one industry can't win the battle alone. We can introduce new products and choices to the public. We can promote healthier lifestyles, and we can even remind folks that eating is fun now and then. Advertising can help consumers choose healthier lifestyles and healthier diets, but consumers, parents, teens and children must make those decisions, and they will need the support from every sector of society today. So thank you.

[The prepared statement of Ms. Sophos follows:]

TESTIMONY OF MARY SOPHOS

Thank you for the opportunity to be here today. Reducing childhood obesity and encouraging healthy lifestyles for children and adults is an important cause that the food industry has made one of its top priorities.

The Grocery Manufacturers/Food Products Association is the largest trade association representing the world's leading food, beverage and consumer packaged goods companies. In the wake of the Surgeon General's alert to the Nation about the rising trends of obesity in this country—and indeed around the world—in 2003 GMA's Board declared our goal of working to "help arrest and reverse the growth of obesity around the world. Achieving this goal will require multiple strategies, the integrated efforts of many sectors, and long-term resolve. We are committed to doing our part and will support others in doing theirs."

Experts in the U.S. and around the world agree that an effective solution to the problem requires a comprehensive approach to incorporating sound nutrition, increased physical activity, consumer education and community support. Collaborations and partnerships with stakeholders across the spectrum of government, academia, the public health community, the private sector, schools, non-profits, and parents are critical if we are to succeed.

The food and beverage industry recognizes that it can improve the situation by providing a wider range of nutritious product choices and marketing these choices in ways that promote healthy lifestyles. We also recognize and have focused on the importance of achieving a balance of physical activity and nutrition throughout life; the need for improved awareness and understanding by the public of nutrition and of the concept of energy balance; responsible advertising practices that take into account the special needs of children; clear communications across labeling, packaging, Web sites, brochures; in-store communications to enable consumers to make informed choices; and the need to work in partnership with other stakeholders in all of these endeavors.

PRODUCT INNOVATION AND REFORMULATION

The most important effort that the food industry has undertaken to help Americans live healthier lifestyles is the introduction of ten thousand new and reformulated products over the past five years. Virtually all companies are enhancing nutritional choices for consumers. Respondents to a 2006 GMA/FPA health and wellness survey of its membership reported that 98 percent of companies are reformulating and introducing new products. Individual companies are making meaningful nutrition enhancements in their broad product portfolios with products that offer reduced calories, reduced saturated and trans fat, reduced sodium and sugar, and with added whole grains, fiber and micronutrients. The overall impact these product changes are having on the nation's food supply and on the increased selection of healthier foods for consumers is impressive and unprecedented.

Those product innovations can be broken down into the following categories:

Development of products with low- or reduced-calorie options. Those companies participating in the GMA/FPA health and wellness survey reported that they had introduced more than 1,300 reduced-calorie products since 2002.

Development of products with low, reduced sugar and carbohydrates. Those companies participating in the GMA/FPA health and wellness survey reported that they had introduced more than 1,200 products offering reduced sugar and carbohydrates since 2002.

Reducing or eliminating saturated or trans fat. Those companies participating in the GMA/FPA health and wellness survey reported that since 2002 they had introduced more than 7,800 products and sizes with reduced saturated fat and trans fat.

Reducing salt content. Those companies participating in the GMA/FPA health and wellness survey reported that they had reduced sodium in nearly 700 products since 2002.

Development of products fortified with specific minerals and vitamins. Fortified vitamins and minerals can be found in nearly 1,000 products introduced since 2002 by those companies participating in the GMA/FPA health and wellness survey.

Increasing the range of portion sizes. Food and beverage companies have been working to help consumers manage their food intake. The GMA/FPA health and wellness survey found that half of all respondents had changed multi-serve packaging or were in the process of making changes, amounting to modifications of more than 350 products and sizes. Sixty-one percent had changed single-serve packaging or were in the process of making changes, affecting more than 450 products and sizes. The greatest focus has been on children, where 55 percent of respondents indicated they had created sizes for kids or were in the process of making changes to more than 400 products.

Finally, companies are also increasing the use of whole grains and fiber and developing products with specific health benefits.

ADVERTISING, MARKETING AND MEDIA

And how do people find 10,000 new and improved products? Overwhelmingly, the information is carried by the media represented here today—TV, radio, newspapers, magazines and Web sites will carry messages about the healthy and tasty choices to millions of consumers in homes across the country. GMA/FPA members strive to deliver messages that are ethical and accurate. The industry plays a central role as key communicator of healthy lifestyles to Americans through marketing and advertising, and our members take this responsibility very seriously. And we have systems in place to make sure we succeed. We have always had the best voluntary system of self-regulation in the world, and the Council of Better Business Bureaus has just made it better. GMA/FPA is a proud supporter of Children's Advertising Review Unit and participated in the recent modernization and strengthening of the CARU guidelines.

Our members have been challenged to do even more with our marketing, and we are answering the call. Chairman Majoras of the Federal Trade Commission recently said marketing can be part of the solution, and we agree. Food and beverage advertisers accounting for over two-thirds of all TV advertising to children under 12 have announced their commitment to devote the majority of their messages to healthy choices and lifestyles. The Council of Better Business Bureaus launched the Children's Food and Beverage Advertising Initiative in November 2006— a voluntary self-regulation program designed to shift the mix of advertising messages to children to encourage healthier dietary choices and healthy lifestyles. Here is how CBBB describes the program:

Under the terms of the Initiative, participating companies commit to:

- Devote at least half their advertising directed to children on television, radio, print and Internet to promote healthier dietary choices and/or to messages that encourage good nutrition or healthy lifestyles.
- Limit products shown in interactive games to healthier dietary choices, or incorporate healthy lifestyle messages into the games.
- Not advertise food or beverage products in elementary schools.
- Not engage in food and beverage product placement in editorial and entertainment content.
- Reduce the use of third-party licensed characters in advertising that does not meet the Initiative's product or messaging criteria.

Each participating company will submit to the CBBB a commitment, tailored to the company's product portfolio, which complies with the principles of the Initiative. Company commitments that identify better-for-you dietary choices must be consistent with established scientific and/or government standards.

Charter participants are Cadbury Schweppes USA; Campbell Soup Company; The Coca-Cola Company; General Mills, Inc.; The Hershey Company; Kellogg Company; Kraft Foods Inc.; McDonald's; PepsiCo, Inc. and Unilever. We expect to hear announcements of their pledges very soon.

An essential element of effective self-regulation is a strong monitoring and enforcement component, and the CBBB Initiative contains several important monitoring and enforcement provisions, all of which will be available to the public and the FTC. Monitoring and enforcement will include:

- Review of advertising materials, product information, and media impression information (submitted on a confidential basis) to confirm participant compliance. The program will also respond to public inquiries relating to compliance.
- Develop procedures that provide for the expulsion of a company that does not comply with its Pledge after being given notice and an opportunity to bring its conduct into compliance and notice of any expulsion to regulatory authorities such as the Federal Trade Commission under appropriate circumstances.
- Publicly issued reports detailing its activities, including any expulsions or notices of such to regulatory authorities.
- Periodic review of its procedures and the overall impact of this initiative.

Organizations participating in this initiative have also agreed to use the Ad Council's Coalition for Healthy Children's messaging to fulfill their commitments to promote healthy lifestyles among youth. The Coalition's messages have been developed and extensively researched by the Ad Council and made possible by a grant from the Robert Wood Johnson Foundation. The goal of the program is to provide Coalition members, which include non-profit, government and corporate entities, with a set of unified communications focused on key lifestyle behaviors. The initial round of messages center around three areas: Physical activity, portion control and energy balance.

In conjunction with the launch of the CBBB Children's Food and Beverage Advertising Initiative last November, the CBBB also announced a revision of the guidelines that the Children's Advertising Review Unit applies to advertising directed to kids. Again, in the words of CBBB,

The revised CARU Guidelines have been expanded to:

- Provide new authorization for CARU to take action on advertising targeted to children that is "unfair," in addition to advertising that is misleading.
- Specifically address "blurring," or advertising that obscures the line between editorial content and advertising messages. A new provision, which applies across all media, prohibits advertising that "blurs the distinction between advertising and program/editorial content in ways that would be misleading to children."
- Specifically address the use of commercial messages in interactive games, sometimes referred to as advergaming. The revised Guidelines require that "if an advertiser integrates a commercial message into the content of a game or activity, then the advertiser should make clear, in a manner that will be easily understood by the targeted audience, that it is an advertisement."

COLLABORATIONS, PARTNERSHIPS AND COMMUNITY INITIATIVES

We all know that marketing will only be a part of the solution. And the food industry will be only one of the important groups working for it. Every public health authority that has spoken on the subject—CDC, the Surgeon General, HHS, IOM, WHO—has told us that success will depend on an unprecedented partnership of stakeholders from all sectors of society. Quoting from the 2006 IOM Report Progress in Preventing Childhood Obesity: How Do We Measure Up?, "Addressing the childhood obesity epidemic is a collective responsibility involving multiple stakeholders and different sectors—including the Federal Government, state and local governments, communities, schools, industry, media, and families." We need to join forces, and GMA/FPA members know from experience that we can achieve great results when we do.

We asked 50 GMA/FPA members what they were doing in the area of health and wellness, and over three quarters of them told us that they are conducting consumer health promotions in local communities and partnering with public health organizations. Nearly 90 percent of the companies surveyed support national or local health and wellness initiatives. In the last three years, GMA/FPA members have contributed over 100 million dollars for nutrition and health-related activities and grants to communities representing over 30 percent of total charitable contributions. Let me give you just a few examples:

- GMA/FPA and individual companies have joined the Ad Council's Coalition for Healthy Children: Combating Childhood Obesity campaign
- "Triple Play" program. "A $12 million joint health and nutrition program held in partnership with Kraft, Coca-Cola and the Boys & Girls Clubs of America.
- General Mills sponsors the Champions for Healthy Kids—A program that awards 50 grants of $10,000 each to grassroots organizations each year to support innovative efforts that teach and promote youth nutrition and fitness habits. The program will celebrate its 5th anniversary this year and has committed $8,000,000 over the past four years.
- Kraft partners with the National Latino Children's Institute in "Salsa, Sabor y Salud," a healthy lifestyle course for Latino families in the U.S.
- Kellogg Company sponsors Earn Your Stripes—an initiative that is designed to help kids build their confidence, stay fit and at the same time have fun.
- PepsiCo, Kellogg Company and General Mills are corporate sponsors of the Partnership for Play Every Day, a collaboration convened by the YMCA of the USA, National Recreation and Park Association and National Association for Sport and Physical Education. Its focus is to bring together the public, private and non-profit sectors to advance policies, programs and practices that ensure all children and youth engage in at least 60 minutes of physical activity every day.
- Dannon awarded to selected community organizations the first "Dannon Next Generation Nutrition Grants" which support improvement in children's nutrition education.
- Hershey sponsors the Hershey's Track and Field Games, the longest-running youth fitness program of its kind in North America. In 2007, Hershey will conduct a sustained awareness-building campaign with the National Recreation and Park Association to encourage increased youth participation in the program's local and state-level events.

Together, the food and beverage industry in partnership with our retail partners and MatchPoint Marketing have launched an in-store promotion campaign "Take a

Peak into MyPyramid" to provide information about MyPyramid and the 2005 Dietary Guidelines to consumers in the grocery store aisles where shoppers ultimately make their food choices. Take a Peak represents the largest collective effort to date—including education and sales promotion—by the food and beverage industry to build an environment that supports Americans' efforts to live healthier lifestyles. Through clear and simple in-store point-of-purchase messaging, Take a Peak provides easy-to-follow advice that shows consumers how small, progressive changes in their product purchasing habits can improve their diets and their health. The campaign displays the tremendous efforts of the industry to change the food supply to make it easier for Americans to eat a healthier diet.

The campaign has grown to 32 retailers in over 5,500 stores in 30 states. Multiple Hispanic retailers are undertaking a Spanish execution of Take a Peak. Retailers that have completed executions are signing on for fall 2007 and January 2008. New retailers are selecting more elements than early adopters based on the positive response from consumers and continuing media coverage. Preliminary sales data is extremely positive, demonstrating that consumers are changing behavior.

Take a Peak will reach millions of Americans through educational mailer coupon booklets, point of purchase messages and materials, including aisle banners, informational kiosks, floor graphics, wobblers, displays, shopping lists and other means. The program will also increase consumer demand and sales for the foods and beverages that the Federal Government recommends consumers eat more of to get essential nutrients and build a healthy diet.

Retailers can customize Take a Peak to meet the diverse ethnic and cultural needs of their local shoppers, bringing it further to life for shoppers.

Finally, we are exploring opportunities to link Take a Peak to an ongoing collaboration between the Ad Council and USDA to promote MyPyramid in specific communities that may be at higher risk.

Let me spend a little more time telling you about another particular partnership that I think has great promise. It combines the two most basic elements of a healthy lifestyle—nutrition and physical education.

In 2007, the American Council for Fitness and Nutrition Foundation, which was founded by food and beverage manufacturers to promote healthier lifestyles, will conduct a pilot program in schools in the greater Kansas City-metro area in partnership with PE4Life and the American Dietetic Association Foundation. The school pilot will implement a cross discipline "energy balance" approach that focuses both on energy intake and energy expenditure. Physical education teachers and nutrition "coaches" will work side by side in the schools to implement strategies to get the students to be more active and to eat a more balanced and nutritious diet. The lessons learned from the pilot will allow us to create a blueprint for student health and wellness that could be replicated in schools across America. Support from a broad cross-section of interests will be critical to achieving effective scale for this project. In addition, the Kansas City Public Television PBS will be documenting physical activity and nutrition policies within schools this fall, and we hope that it will help to spur even greater interest.

Food and beverage, advertising and media companies continue to support the Ad Council's The Healthy Lifestyles PSA campaign, which is a partnership between the Ad Council and the U.S. Department of Health & Human Services (HHS). Since its launch in March 2004, the program has garnered approximately $270 million in donated media support. The campaign Web site attracted an average of 190,000 visits per month during 2006 and holds visitors' interest for an average of 6½ minutes. In addition, consumer tracking research data indicates the beginnings of positive changes in attitudes and behaviors around the campaign messages.

The Ad Council's Coalition for Healthy Children was initiated in 2005 to complement and increase the impact of their PSA efforts and has focused on developing consistent, research-based messaging for marketers, media, government agencies, non-profits, academics and the private sector. The Robert Wood Johnson Foundation provided support for the Ad Council's research and development of these health messages, which will ultimately be disseminated to the public by Coalition member organizations such as PepsiCo, General Mills, Kraft Foods, Kellogg, Coca-Cola, SUBWAY, McDonald's, American Heart Association, Girls Scouts of the USA, Shaping America's Health, Nickelodeon, Cartoon Network and Univision Communications.

GMA/FPA and our member companies have also been collaborating with government to promote the new U.S. Dietary Guidelines and MyPyramid consumer education platform with the goal of making the Dietary Guidelines relevant to consumers' everyday lives and to balance energy intake with energy expenditure. Our efforts to help ensure that the updated Dietary Guidelines and the Food Guide Pyramid were relevant to all Americans has specifically included initiatives to overcome

potential barriers that may exist—specifically socioeconomic and cultural factors—in understanding and using these tools.

On the same day the Federal Government released its new Food Guide Pyramid, GMA/FPA announced a partnership with the Weekly Reader Corporation to promote the new Food Guidance System through a national education campaign reaching an estimated 4 million teachers, students and their family members. The campaign consisted of a teacher's guide; math, nutrition and science activities; and a bilingual parent take-home component in English and Spanish. More than 58,000 posters were distributed to Weekly Reader teacher subscribers in fall 2005, coinciding with the start of the school year.

Industry funding has helped the Weekly Reader MyPyramid curriculum reach underserved populations. A Spanish translation of the curriculum, paired with the English-language materials, has been distributed free of charge to schools with high-Hispanic populations. Through a partnership with America's Second Harvest—The Nation's Food Bank Network, the MyPyramid curriculum has been distributed in 1,300 Kids Cafes, after-school programs that serve free, hot, nutritious meals to hungry children in a safe environment. Kids Cafes combine meals with other activities, including nutrition education, cooking and tutoring.

In 2006, GMA/FPA funded reprints of the Weekly Reader materials for incoming 4th graders for the 2006–07 school year, including targeted Spanish-language versions.

As part of our commitment to partnerships, GMA/FPA and five member companies are also participating in the Joint Media Task Force on Media and Childhood Obesity. GMA/FPA chose to participate because we think that this kind of engagement affords us a unique opportunity to build partnerships with an important group of stakeholders and through greater collaboration increase our chances of achieving the goal that we all share—health and fitness for our kids and ourselves. One of the most valuable aspects of this initiative has been the chance to learn in greater detail about the tremendous ongoing efforts of so many of the groups on the Task Force, including the media groups, the advertising community, advocacy groups and those in the public health community. Just one example of a possible future collaboration identified in Task Force discussions may be greater support for initiatives to promote more time spent on family activities, including the family dinner hour. There is growing evidence that the simple matter of families eating together results in a whole host of positive outcomes, including healthier nutrition habits.

As you in the Congress grapple with how best to address this problem, we urge you to keep in mind the 2004 Institute of Medicine report that identifies ten broad areas that all levels of government, business and individual citizens must address to reverse these alarming trends in childhood obesity. One of those ten areas involves media and advertising, but the report focused on many other essential elements and concluded that no single measure can be expected to solve the problem. Multiple strategies and the commitment of many stakeholders will be necessary to address this important public health issue. We believe that in the future among the things we can do working together are the following:

- Incorporate nutrition education and physical activity in our nation's schools;
- Continue to find additional ways to encourage people to incorporate physical activity in their daily lives;
- Educate the public on the connection between calories consumed and calories burned and provide the tools for individuals to understand and assess their caloric needs;
- Raise consumer awareness of proper serving sizes;
- Encourage employers to promote employee wellness; and
- Address the needs of different population groups.

There is too much at stake for us to fail; the food and beverage industry has responded, and we remain committed to the task. But we all know that one industry cannot win the battle alone. We can introduce new products and choices to the public, we can promote healthier lifestyles, and we can even remind folks that eating is fun now and then. Advertising can help consumers choose healthier lifestyles, but consumers—parents, teens and children—must make those decisions. They will need support from every part of society.

Mr. MARKEY. Thank you very much.

And our next witness is Ms. Patti Miller, who is the vice president and director of children and the media for Children Now. Welcome.

STATEMENT OF PATTI MILLER, VICE PRESIDENT, CHILDREN NOW

Ms. MILLER. Entertainment and media play a powerful and ubiquitous role in the lives of our Nation's children. Children spend more time with media than they spend doing anything else, except for sleeping. They look for media in all its forms for their role models, often imitating their favorite characters' style of dress, attitudes and behaviors.

Yet much of what children see in the media can have a serious negative impact on their physical health and well-being. According to the Centers For Disease Control and Prevention, tobacco use in movies is a major factor in teen smoking. Hundreds of research studies show that children who are exposed to violent programming face a higher risk of suffering from harmful consequences, including a belief that it is acceptable to behave aggressively and violently and increased desensitization towards violence in real life, a greater tendency for engaging in violent behavior later in life, and a heightened fear of becoming a victim of violence.

Finally, the Institute of Medicine has found strong compelling evidence that television advertising influences the food and beverage preferences, purchase requests and consumption habits of children. Children Now thanks Chairman Markey and the Subcommittee on Telecommunications and the Internet for hosting this hearing today to address the role of media in children's health. It could not come at a more crucial time. We are facing a public health crisis. For the first time in modern history, we have a generation of children whose life expectancy may be lower than that of their parents because of childhood obesity. The U.S. surgeon general has identified overweight and obesity as the fastest-growing cause of disease and death in America.

While there is a confluence of factors that contribute to childhood obesity, advertising is one of those factors, and it is a significant one. American companies are spending $15 billion a year advertising and marketing to children under the age of 12, and that is twice the amount they spent just 10 years ago. Children are exposed to thousands of food ads every year on television alone, the majority of which are for candy, snacks, cereal and fast foods. In addition, a recent Kaiser Family Foundation study found that 85 percent of the top food brands targeting kids TV also used branded Web sites to market to kids, using a range of strategies including advergames, viral marketing sweepstakes, promotions, memberships and online TV ads.

So why does this matter? Research shows that young children are uniquely vulnerable to commercial persuasion. Children under the age of 8 do not recognize the persuasive intent of ads, and they tend to accept them as accurate and unbiased. In fact, research shows that 30-second commercials influence food preferences in children as young as 2 years old.

Congress and the FCC have recognized children's vulnerability and have placed limits on the amount of advertising during children's shows and established rules about how children's TV characters can be used to pitch products to them. But that is simply not enough to protect children from a food advertising environment that is currently skewed toward promoting unhealthy, nonnutri-

tious food to the Nation's youth. In December 2005, the Institute of Medicine released a report that concluded, "Food and beverage practices geared to children are out of balance with healthful diets and contribute to an environment that puts children's health at risk."

Children Now believes that in order to address the role of advertising and marketing in the childhood obesity epidemic, we must focus on and ensure the implementation of two Institute of Medicine recommendations. The industry must, one, shift the balance of advertising and marketing targeted to kids to foods and beverages that are substantially lower in calories, fat, salts, and added sugars and higher in nutrient content. This should be across media platforms. Two, use licensed characters only to promote food and beverages that support healthful diets for children and youth. Licensed characters should not be used to sell food and beverages that are high in fat, calories, salt, added sugars, and low in nutrient content.

Children Now is currently working with the media industry, food and beverage companies, advertising associations, and advocacy and public health organizations on the Task Force on Media and Childhood Obesity at the request of Senator Brownback, Senator Harkin, and the FCC. The task force is currently engaged in discussions and working recommendations with a final report scheduled for release this summer. It is our hope the task force will achieve meaningful solutions to address the advertising and marketing of unhealthy foods to kids. However, if the task force is unable to address these issues sufficiently, we believe that Congress needs to intervene on behalf of the Nation's children. We must work towards tangible, real solutions to improve the media environment for our Nation's kids, and we must act now. Our children's health depends on it.

Thank you.

[The prepared statement of Ms. Miller follows:]

Testimony of Patti Miller
Vice President, Children Now

United States of House of Representatives
Subcommittee on Telecommunications and the Internet
Committee on Energy and Commerce
"Images Kids See on the Screen"
June 22, 2007

CHILDREN NOW

Entertainment media play a powerful and ubiquitous role in the lives of our nation's children. Children spend more time engaging with media than they spend doing anything else except for sleeping.[1] For almost six and a half hours a day, they watch their favorite television shows, download content to their iPods, surf the Internet and play video games.[2] They look to media—in all its forms—for their role models, often imitating their favorite characters' style of dress, attitudes and behaviors.

Yet much of what children see in the media can have serious negative impacts on their physical health and well-being. For example, according to the U.S. Centers for Disease Control and Prevention, tobacco use in movies is a major factor in teen smoking.[3] The Institute of Medicine has concluded that exposure to smoking in movies is linked to more favorable attitudes toward smoking and characters who smoke and increases the risk that adolescents will initiate the behavior.[4]

In addition to smoking, there are two other media issues that pose significant health risks for our nation's youngest consumers of media: 1) media violence and; 2) the advertising and marketing of unhealthy foods and beverages.

Media Violence

There is tremendous amount of violent content in the entertainment media that children consume. Based on the conclusions of hundreds of research studies, it is clear that children who are exposed to violent programming face a higher risk of suffering from harmful consequences[5] including a belief that it is acceptable to behave aggressively and violently, an increased desensitization towards violence in real life, a greater tendency for engaging in violent and aggressive behavior later in life and a heightened fear of becoming a victim of violence.[6]

Unfortunately, the existing media ratings systems for the television, video game and motion picture industries have not effectively helped parents discern what is appropriate and healthy entertainment. In order for media ratings to work well for parents, Children Now believes that the media industry should implement the following two recommendations:

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[1] Kaiser Family Foundation, *Generation M: Media in the Lives of 8-18 Year-Olds*, (Menlo Park, CA, March 2005).
[2] *Ibid.*
[3] "Smoke Free Movies: Problem: How Movies Sell Smoking," http://www.smokefreemovies.ucsf.edu/problem/moviessell.html. Last accessed June 19, 2007.
[4] *Ibid.*
[5] § 551 (a) (4) "Studies have shown that children exposed to violent video programming at a young age have a higher tendency for violent and aggressive behavior later in life than children not so exposed, and that children exposed to violent video programming are prone to assume that acts of violence are acceptable behavior."
[6] Murray, J. P., "Television and Violence: Implications of the Surgeon General's Research Program," *American Psychologist* 28 (1973): pp. 472-478.
National Institute of Mental Health, *Television and Behavior: Ten Years of Scientific Progress and Implications for the Eighties, Volume 1* (Rockville, MD: U.S. Department of Health and Human Services, 1982).
Kaiser Family Foundation, *National Television Violence Study, Volume 3* (Thousand Oaks, CA: Sage Publications, Inc., 1998).

CHILDREN NOW

1) Provide parents with more accurate and descriptive content-based ratings;

The media industry must apply the ratings in a reliable, consistent and accurate manner. There is significant concern about the accuracy of the TV ratings. For example, one study found that the content descriptor "V" for violence was not applied to all programs that included violent scenes. Of broadcast prime-time programs rated TV-G, a rating that does not receive content descriptors, almost one third (29%) contained violent content. Furthermore, of the TV-PG programs that received no "V" content descriptor, almost half (43%) contained violence, as did four out of five (79%) of programs rated TV-14 without a "V" designation.[7]

Further, while some parents are very concerned about violence, others are more concerned about sexual situations or suggestive dialogue. Children Now believes that content-based ratings are essential as they enable parents to make decisions about what their children see based upon their own values and preferences. Further, while the age-based ratings seem to be more recognizable to parents, those who have used ratings are twice as likely to say that content-based ratings offer more useful information as age-based ones.[8]

2) Increase public education efforts.

Broadcasters need to do more to educate parents about the content-based ratings. While four out of five parents say they have heard of the TV ratings, most don't understand what they mean. Only half of them (51%) know that "V" stands for violence, about a third (36%) know that S indicates a show has sexual content and only 2% know that "D" stands for suggestive dialogue. Further, only one in ten parents (11%) know that the FV rating indicates "fantasy violence" in children's shows; almost an equal number of parents (9%) think that it stands for "family viewing." [9]

Broadcasters must ensure that public education campaigns are ongoing, not cyclical, and that they focus on the content descriptors. Further, the media industry should find new ways to bring content ratings information to parents. For example, as television transitions from analog to digital, broadcasters should take advantage of emerging click-through, interactive technology to provide on-demand ratings information to parents. Parents should be able to click on a TV rating on the screen to find out what it means as well as more detailed information about why it received that particular content descriptor.

Children Now believes that by adopting these recommendations, the media industry would take a major step in ensuring that parents have the tools that they need to make informed choices about their children's media consumption and decrease the need for regulatory action. Media ratings

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[7] Kunkel, D., Farinola, W.J.M., Farrar, K., Donnerstein, E., Biely, E., and Zwarun, L., "Deciphering the V-chip: An Examination of the Television Industry's Program Rating Judgments," *Journal of Communication* 52 (March 2002): pp. 112-138.

[8] Kaiser Family Foundation, *Parents, Media and Public Policy: A Kaiser Family Foundation Survey*, (Menlo Park, CA, September, 2004).

[9] Kaiser Family Foundation, *Parents, Children & Media, A Kaiser Family Foundation Survey*, (Menlo Park, CA, June 2007).

systems can only be truly effective when parents know they are available, know how to use them, and believe that they provide accurate and descriptive content-based information.

Advertising and Marketing of Unhealthy Foods and Beverages to Children

Finally, we must address the role of media in the childhood obesity epidemic, an unprecedented public health crisis. For the first time in modern history, we have a generation of children whose life expectancy may be lower than that of their parents because of childhood obesity.[10] According to the National Center for Health Statistics, in the past three decades, there has been a 300 percent increase in the rate of U.S. children who are either overweight or obese.[11] The U.S. Surgeon General has identified overweight and obesity as "the fastest growing cause of disease and death in America."[12]

While there is a confluence of factors that contribute to childhood obesity, advertising is clearly one of those factors, and a significant one at that. And it is a factor that we *must* address.

American companies spend $15 billion a year on advertising and marketing to children under the age of 12—twice the amount they spent just 10 years ago.[13] Children are exposed to thousands of food ads each year on television alone, the majority of which are for candy and snacks (34%), cereal (28%) and fast foods (10%).[14] Only four percent of advertised foods are for dairy products, 1% is for fruit juices and none are for fruits and vegetables.[15] In addition, a recent Kaiser Family Foundation study found that 85% of the top food brands targeting kids on television also use branded websites to market to kids using a range of strategies including, advergames, viral marketing, sweepstakes, promotions, memberships and online television ads.[16]

So why does this matter? Research shows that young children are uniquely vulnerable to commercial persuasion. Children under the age of eight don't recognize the persuasive intent of ads and tend to accept them as accurate and unbiased.[17] Children ages four and under cannot consistently discriminate between program content and advertising.[18] In fact, research shows that 30-second commercials influence food preferences in children as young as two years-old.[19]

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[10] S. Jay Olshanksy, et al, "A Potential Decline in Life Expectancy in the United States in the 21st Century," *New England Journal of Medicine*: 352:11: 1138-1145.

[11] National Center for Health Statistics, "Prevalence of Overweight Children and Adolescents: United States, 1999-2002, http://www.cdc.gov/nchs/products/pubs/pubd/hestats/overweight.

[12] Richard H. Carmona, "The Obesity Crisis in America," Testimony of the United States Surgeon General before the Subcommittee on Education Reform, Committee on Education and the Workforce, " United States House of Representatives, July 19, 2003. http//www.surgeongeneral.gov/news/testimony/obesity07162003.html.

[13] Jennifer Wolcott, "Hey Kid—You Wanna Buy A…", *Christian Science Monitor* (April 28, 2004).

[14] Kaiser Family Foundation, *Food for Thought: Television Food Advertising in the United States*, (Menlo Park, CA., March 2007).

[15] *Ibid.*

[16] Kaiser Family Foundation, *It's Child Play: Advergaming and the Online Marketing of Food to Children*, (Menlo Park, CA, July, 2006).

[17] Dale Kunkel, "Children and Television Advertising," *Handbook of Children and the Media*, ed. Dorothy G. Singer and Jerome Singer (Thousand Oaks, CA: Sage Publication, pp. 375-393).

[18] *Ibid.*

[19] Dina Borzekowski and Thomas Robinson, "The 30 Second Effect: An Experiment Revealing the Impact of TV Commercials on the Food Preferences of Preschoolers," *Journal of the American Dietetic Association*, (January, 2001) 1: 42-46.

Congress and the FCC have recognized children's vulnerability and has placed limits on the amount of advertising during children's programs and established rules about how children's favorite TV characters can be used to pitch products to them. But this is not enough to protect children from a food advertising environment that is currently skewed toward promoting unhealthy, non-nutritious food to the nation's youth.

In December 2005, the Institute of Medicine released a report that concluded that "food and beverage practices geared to kids are out of balance with healthful diets and contribute to an environment that puts children's heath at risk."[20] The committee found strong, compelling evidence that television advertising influences the food and beverage preferences, purchase requests and consumption habits of children.

Children Now believes that in order to address the role of advertising and marketing in the childhood obesity epidemic, we must focus on and assure the implementation of two Institute of Medicine recommendations. The industry must:

> ***1) Shift the balance of advertising and marketing targeted to kids to products and beverages that are lower in calories, fat, salt, and added sugars and higher in nutrient content;***
>
> ***2) Assure that licensed characters are used only to promote foods and beverages that support healthful diets for children and youth.***[21]

Children Now is currently working with representatives from the media industry, food and beverage companies, advertising associations, and advocacy and public health organizations on the Task Force on Media and Childhood Obesity formed at the request of Senator Brownback, Senator Harkin, FCC Chairman Martin and FCC Commissioners Tate and Copps. The Task Force is currently engaged in substantive discussions and working on recommendations, with a final report scheduled for release this summer. It is our hope that the Task Force will achieve meaningful solutions to voluntarily address the advertising and marketing of unhealthy foods to children. However, if the Task Force is unable to address these issues voluntarily, we support the Institute of Medicine's recommendation that Congress intervene on behalf of the nation's children.

In conclusion, there is no question that the entertainment media plays an influential role in our children's healthy development. Let's work towards real, tangible solutions to improve the media environment in which they spend so much of their time. Our children's health depends on it.

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[20] Institute of Medicine, Fact sheet from *Food Marketing to Children and Youth: Threat or Opportunity?*, December, 2006.
[21] *Ibid.*

Mr. MARKEY. Thank you, Ms. Miller, very much.

Our next witness is Kyle McSlarrow. He is the president and chief executive officer of the National Cable and Telecommunications Association.

We welcome you back before the committee, and whenever you are ready, please begin.

STATEMENT OF KYLE McSLARROW, PRESIDENT AND CEO, NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

Mr. MCSLARROW. Thank you, Mr. Chairman, distinguished members of the subcommittee. And thank you for having me here to testify on this set of important issues.

I think the starting place for us, Mr. Chairman, is that we don't believe that society, acting principally through you as policymakers and parents should be forced to choose between protecting the first amendment and protecting children. Now, that means a lot of people have to step up and act responsibly in order to achieve that goal, and our industry is very much at the forefront of that.

If you think about the set of issues that sort of swirl around violence and decency, profanity, family programming, general audience viewing, the cable industry, I would assert, has done more than any other industry to ensure that households, parents, families have more family-friendly viewing than any other industry. You look at cable networks like Disney Channel, Nickelodeon, Sprout, PBS, other networks that are devoted specifically to children, you have got Hallmark and other channels that are devoted to family viewing, the list is actually so long that I would use the remaining few minutes of my time. The point is there is a plethora of choices in this model with cable programming that is providing exactly the kind of programming that everybody says that they want.

We also are attempting to provide tools to ensure that for the other sets of programming where there is clearly going to be content that is unsuitable for children, that parents have the ability to control and shape how that content is viewed in the home. Now, I am not going to argue that those tools are perfect, but they are pretty good.

Now, obviously, as you said at the outset, Mr. Chairman, you are the author of the v-chip legislation. Every cable household actually has that option. It is not just broadcast households. But in addition to that, cable and satellite companies have developed increasingly sophisticated parental controls. So these are controls that in today's world, particularly with digital set-top boxes, you can control so that you can block by time, by channel, by program, clearly by age rating, by content descriptors that are at the bottom of the rating. So language, dialog, and violence and so forth, you can block. If a program is not rated, there is actually an ability now to block that. And you can hide titles and some of the information that themselves may be unsuitable for children from being even shown on a program guide.

So all of these tools are available today, and in most households, certainly any household that has bought a TV since the year 2000 that has a v-chip in it, and certainly in those households which are digital cable households, you have all these tools. We still have a

large customer base that is analog. They have some of those tools. They are not perfect. But increasingly, all of those people will be in a digital household.

So with the family viewing that we do have, the tools that we provided to help parents control other programming that may be unsuitable, we are left with a couple of policy decisions. One is are parents even using those tools? Do they know about them? And are we making them as easy as we can for them?

I think there is a lively debate about whether or not parents actually understand and are deciding affirmatively to use parental controls or rejecting them. But I don't think it much matters from our point of view in terms of acting responsibly. The industry for over a decade has stepped up to engage a partnership at its origins with the national PTA to engage in media literacy not just surrounding television, it is broader than that, but it specifically included literacy to try to educate parents about the choices that they have in front of them.

More recently the cable industry has engaged in a massive public service announcement campaign. Many members of this committee actually participated in PSAs, and we thank you for that, trying to get the message out about the v-chip and parental controls. And then more recently even than that, the entire media industry, so organizations like NAB and MPAA, the satellite industry, cable industry, got together to do the TV Boss campaign. And we are roughly in the middle of that campaign now, which is another $300 million media campaign to tell parents about the tools they have, to drive them to Web sites and to other sites that have information so they can use them.

I can't report today that every parent is using the v-chip or parental controls. I can report that most of the data that we are seeing shows some modest improvement, a lot more awareness, and we are willing to keep working this problem.

And really I would end where I started, Mr. Chairman, which is if we are trying to avoid putting people to the test of the first amendment, certainly we want to make sure that we are protecting children, our industry very much wants to work with you and this entire subcommittee on how we can make what is a pretty good system, but not a perfect system, better.

Thank you, Mr. Chairman.

[The prepared statement of Mr. McSlarrow follows:]

TESTIMONY OF KYLE McSLARROW
PRESIDENT AND CEO
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

on

IMAGES CHILDREN SEE ON THE SCREEN

before the

SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

JUNE 22, 2007

I. INTRODUCTION

Chairman Markey, Ranking Member Upton and Members of the Subcommittee, my name is Kyle McSlarrow and I am President and CEO of the National Cable & Telecommunications Association. NCTA is the principal trade association for the cable television industry in the United States, representing cable operators serving more than 90 percent of the nation's cable TV households and more than 200 cable program networks. The cable industry is also the nation's largest broadband provider of high speed Internet access after investing $110 billion over ten years to build out a two-way interactive network with fiber optic technology. Cable companies also provide state-of-the-art digital telephone service to millions of American consumers. Thank you for inviting me to testify today about the images that children see on the screen.

The cable industry understands the concerns that have been expressed by Members of Congress, the FCC and other groups about the impact of television content on our children and families and takes seriously its role in addressing these concerns.

Cable television has greatly expanded not only the number but also the variety of viewing options available to America's television households. Before cable, most households spent the majority of their time watching three over-the-air broadcast networks, all of which sought to maximize advertising revenues by providing programming that would attract the greatest number of viewers. Cable fundamentally changed this business model by seeking to attract the greatest number of customers by providing the broadest range of programming options. Many cable program networks target audiences with particular interests and tastes, providing content that could never have been provided by broadcast networks seeking to appeal to everybody rather than the

unique interests of niche audiences. As a result, cable has transformed television into a medium that enables individuals to choose the entertainment, information and cultural offerings that suit their tastes, needs and interests.

Children and families, in particular, have benefited from this expanded breadth and diversity of programming, as cable challenged the three-network status quo and gave birth to programming services designed specifically for them. Program networks such as Nickelodeon, Discovery Kids, Disney Channel, PBS Kids Sprout and Toon Disney are 24-hour cable networks devoted solely to children. They provide hundreds of hours of high-quality, age-appropriate programming that educates, informs and entertains. In addition to these networks designed for children, cable provides an abundance of opportunities for the whole family to watch television together. ABC Family, National Geographic, and the Hallmark Channel are just a few of the dozens of examples of services that provide family-friendly programming and that make cable a great place for families to find appropriate fare any time of the day.

In short, the cable industry has done more to provide programming choices for families and children than any other industry. We're pleased to provide this kind of quality family programming, but we know that not all TV content is appropriate for all age groups. We take seriously our responsibility to ensure that parents have the tools they need to decide what is suitable for their families and to prevent their children from watching programming that they deem unsuitable. That's why the cable industry has developed and deployed technology to allow parents to manage TV content, and launched a number of initiatives designed to help families deal with our complex media environment. As cable technology has evolved, operators and programmers have

developed increasingly effective – and increasingly easy – ways for parents to take control of their children's television viewing. Digital Video Recorders and Video on Demand are also tools that parents use to manage what their children watch on television. Continued technological improvements and the increasing pace of consumers' shift to digital will ensure that all viewers have the ability to control the programming their families see.

II. THE CABLE INDUSTRY PROVIDES PARENTAL CONTROLS THAT ARE EASY TO USE

The cable industry has ensured that technology is available to enable customers to block access to programming they believe is unsuitable for their children. The Cable Communications Policy Act of 1984 requires cable operators to make such technology available, "by sale or lease," to subscribers upon request. And in 2004, leading cable companies, including the 10 largest cable operators serving more than 85% of the nation's cable subscribers, went further by agreeing to provide such technology free of charge to subscribers who request it.

Customers who opt for digital cable service, and more than 50 percent of cable subscribers have made the switch to digital cable, are given even greater control over the programming their children see. Digital set top boxes are equipped with advanced parental controls that can block individual programs based on title, time and date, and TV or movie rating. Electronic program guides provide better information about specific programming, including its TV rating, and can be used in conjunction with parental control tools to block programming. In addition, virtually all television sets manufactured since 2000 are equipped with a "V-chip," which empowers parents to block programming based on its TV rating.

However, for such blocking technology to be an effective tool, parents need to be able to identify in advance the programs that they want to block, the technology needs to be easy to use, and parents need to know how to use it. The cable industry has taken significant steps to meet each of these prerequisites. With ratings and program guides, program networks and operators make it easy to identify programming that may, in one respect or another, be deemed unsuitable for children. And when customers have identified channels or programs that they do not want their children to see, those channels can be easily blocked by the technology that cable operators make available. Indeed, such blocking typically requires only a few clicks of the customer's remote control.

The key to identifying potentially unsuitable content in advance is the ratings system developed by the cable, broadcast and motion picture industries in conjunction with the deployment of V-chips in television sets. Almost all cable programming (other than news, religious, and sports) is rated to identify the age-appropriateness of the programming and, where appropriate, specific types of material (*e.g.*, language, sexually-oriented material, depictions of violence) that is included in the programming. TV ratings are encrypted into the programming so that they can be identified by the V-chip. Once a parent enables the V-chip and decides what TV ratings they want to block, no programming with that rating will be viewable on that TV set. These settings can be changed at any time, or disarmed temporarily, to give adults in the house the ability to view their favorite programs.

In addition, TV ratings are visually displayed on the TV screen at the beginning of rated programs. They are also included in electronic program guide information so that cable customers can make viewing decisions for their family or use blocking

technology to ensure that unsuitable programming cannot be watched. In June 2005, as part of the cable industry's "Take Control. It's Easy." campaign (discussed further below), cable programmers made two major improvements to the TV ratings system to make the ratings more prominent and to help parents better understand whether the content of a specific program is appropriate for children. First, the size of the ratings icon that is displayed on the TV screen at the beginning of rated shows has been enlarged to make it more visible. Second, a ratings icon is being inserted on the screen after each commercial break to remind viewers of a program's rating throughout the duration of the program.

III. CABLE EFFORTS TO EDUCATE PARENTS ABOUT PARENTAL CONTROL TOOLS

Making sure that consumers know how easy it is to use the readily available blocking technology is the final component that ensures that parents can limit what their children watch. Over the past decade, the cable industry has launched a number of initiatives to achieve this goal.

In 1994, NCTA and Cable in the Classroom, the cable industry's education foundation, formed a partnership with the National PTA to offer media literacy training across the country. This initiative provides resources to parents and teachers in order to help families critically examine media messages and make informed judgments and decisions about media use. Cable in the Classroom collaborates with the National PTA and other partners to produce and distribute media literacy materials that help parents learn how to get the most out of media while mitigating its potentially negative effects.

Since 1997, the cable industry has developed and distributed informational materials to increase public awareness of the TV ratings and V-chip. Often working in

conjunction with other television industry organizations and interested advocacy groups, the industry has created and aired public service announcements, established a website (www.tvguidelines.org), created information for the FCC's Parent's Place (www.fcc.gov/parents) and distributed brochures aimed at helping parents understand and use the TV ratings system and the V-chip.

In March 2004, we launched the "Cable Puts You in Control" initiative, where leading cable operators pledged to provide free channel blocking technology to customers who don't have the means to block unwanted programming from being viewed in their home. This campaign also included a consumer outreach element designed to heighten awareness of the tools and resources cable provides to help families make educated decisions about television viewing. NCTA and Cable in the Classroom created a new website – www.ControlYourTV.org – to serve as a clearinghouse for information about the parental controls contained in cable set top boxes, the TV ratings and V-chip and media literacy. The site also includes a sample of cable programming from which families can choose and TV viewing tips for parents.

In April 2005, we announced a much broader set of initiatives to provide families with even more tools and resources to manage their home viewing environment and protect children from programming their parents may find inappropriate for them. Featuring the tag line "Take Control. It's Easy," the campaign emphasizes that parental control tools provided by cable operators are accessible and easy to use. Major elements of this campaign include:

- **$250 million PSA campaign** – More than 100 program networks and thousands of local cable systems committed to air new Public Service Announcements (PSAs) in markets across the country, donating air time valued at $250 million over 12 months. The PSAs are designed to inform consumers about cable's

parental controls, the TV ratings and V-chip, and direct consumers to the industry's website, www.ControlYourTV.org, for more information. Since making this pledge in 2005, the value of the airtime contributed to PSAs by cable programming services and cable systems combined has exceeded $300 million, with millions more dollars in commercial airtime being added to this total every month.

- **Enhanced TV Ratings** – As discussed above, cable programmers committed to increase the size of the TV ratings icon that is displayed on the TV screen at the beginning of rated shows, and to insert a TV ratings icon after each commercial break.

- **"Control Your TV" Events** – Local cable systems committed to host 100 local "Control Your TV" community events (which has been far surpassed) throughout the country to provide information about using cable's parental control tools, and the TV ratings and V-chip. Many of these events were coordinated with, and attended by, Members of Congress.

- **Comprehensive Customer Outreach Efforts** – Cable operators committed to improve customer notification about the availability of parental control tools by providing materials and instructions to new and upgrade customers, notifying customers about parental controls through statements in cable invoices, and adding "one click" access to parental control information to the home page of company websites. Additionally, NCTA agreed to re-launch the ControlYourTV.org website with new materials providing instructions for using cable's parental controls.

- **Free Blocking Technology** – Leading cable operators reaffirmed their commitment to provide free channel blocking technology to customers who currently don't have equipment that allows them to control the flow of programming into their homes.

- **Retail Partnership** – Leading cable operators agreed to explore partnerships with Best Buy and Circuit City stores throughout the U.S. and to seek ways to add informational materials about cable's parental controls to in-store displays.

And last year, the cable, broadcast, consumer electronics, motion picture, and satellite industries combined to launch a multi-million dollar campaign coordinated by the Ad Council to further increase awareness of the TV ratings system and the tools that are available to parents to help them control what their children watch on television. Components of this large-scale effort include TV and radio public service

announcements, developed by the Ad Council, that explain parental control options. These PSAs are currently being run during advertising time donated by the media companies involved in the effort. The campaign also includes print ads and a comprehensive website, www.TheTVBoss.org, where parents and other consumers can find useful information about managing media in their homes, including information on parental controls, television ratings, and the V-chip.

IV. LEGISLATION TO BAR OR RESTRICT CERTAIN CONTENT WOULD NOT PASS CONSTITUTIONAL MUSTER

Taken together, these commitments, along with the blocking technology available to cable customers at no charge, provide parents in cable households with the tools they need to prevent their children from viewing programming that is inappropriate for them. These blocking tools may not, of course, be wholly foolproof. There is always the possibility that a clever child may figure out how to unblock a program, or that parents may inadvertently fail or forget to block a program that they would not want their children to see. As the United States Supreme Court has itself noted with respect to cable's blocking technology, in *Denver Area Telecommunications Consortium, Inc. v. FCC*, 518 U.S. 727, 759 (1996), "No provision, we concede, short of an absolute ban, can offer certain protection against assault by a determined child."

But, according to the Court, "[w]e have not, however, generally allowed this fact alone to justify 'reduc[ing] the adult population . . . to . . . only what is fit for children.'" *Id., quoting Sable Communications of Cal., Inc. v.* FCC, 492 U.S. 115, 128 (1989), *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 73 (1983), *and Butler v. Michigan*, 352 U.S. 380, 383 (1957). As the Court subsequently made clear in *U.S. v. Playboy Entertainment Group, Inc.*, 529 U.S. 803 (2000), if blocking technology is an effective –

even if not foolproof – means of achieving the government's legitimate interest in protecting children from the harmful effects of programming that their parents do not want them to see, the Court has held that more restrictive measures that bar or restrict the availability of such programming to households that may want to view it are prohibited by the First Amendment.

In that case, the Court set forth clear principles for determining the permissibility, under the First Amendment, of restrictions on cable programming that, while not "obscene," may nevertheless be inappropriate for children:

- First, the Court made clear that restrictions that applied specifically and uniquely to programming on the basis of the programming *content* is subject to "strict scrutiny" – the least deferential and most rigorous standard of First Amendment review. It must be justified by a *compelling* government interest, must be "narrowly tailored" to promote that interest, and must be the *least restrictive* means of achieving that interest. Under this standard, as the Court acknowledged, "[i]t is rare that a regulation restricting speech because of its content will ever be permissible." 529 U.S. at 818.

- Second, the Court noted that even if certain content is not completely barred but is restricted to certain hours, strict scrutiny still applies: "It is of no moment that the statute does not impose a complete prohibition. The distinction between laws burdening and laws banning speech is but a matter of degree. The Government's content-based burdens must satisfy the same rigorous scrutiny as its content-based bans." 529 U.S. at 813.

- Third, the Court found that even where the government has a compelling interest in protecting children from certain inappropriate programming such as indecency, the fact that "[c]able systems have the capacity to block unwanted channels on a household-by-household basis" is a "key difference between cable television and the broadcasting media." 529 U.S. at 815. "Simply put, targeted blocking is less restrictive than banning, and the Government cannot ban speech if targeted blocking is a feasible and effective means of furthering its compelling interest."

These standards make clear that, in light of blocking tools available to cable households and the steps taken by cable operators and program networks to ensure that

those tools are easily understood, usable and effective, legislation that bars the availability of indecent or violent programming to *all* adults *and* children would violate the First Amendment rights of cable operators and programmers. Let me be clear: the First Amendment does not prevent Congress from protecting children from indecent and inappropriate programming. But government must do so in a way that utilizes less speech-restrictive means when they are available, and that's the case here.

V. THE FCC'S RECENT REPORT ON TV VIOLENCE CONTAINS NO LEGAL ANALYSIS OF THE CONSTITUTIONAL AUTHORITY TO REGULATE VIOLENT CONTENT ON SUBSCRIPTION-BASED CABLE AND SATELLITE TV SERVICES

Numerous courts at all levels have rejected attempts to regulate portrayals of violence in literature, movies and video games. As one court observed, "every court that has considered the issue has invalidated attempts to regulate materials solely based on violent content, regardless of whether that material is called violence, excess violence, or included within the definition of obscenity." *Davis-Kidd Booksellers v. McWherter*, 866 S.W.2d 520, 531 (Tenn. 1993). In contrast, the FTC's recent report on marketing violent media to children contained a more detailed legal analysis and concluded that "[g]iven important First Amendment considerations, the Commission supports private sector initiatives by industry and individual companies." The FCC's recent violence report pays no attention to these considerations in its recommendations.

In particular, the FCC report fails to adequately recognize that the availability of sophisticated parental control technology offered by cable and DBS makes it highly unlikely that regulation of TV violence would sustain judicial scrutiny. The FCC claims that these user-controlled solutions are inadequate, and therefore Congress should pass a law. This unsupported conclusion ignores the relevant case law, from the U.S. Supreme

Court and others, which requires careful consideration of less restrictive alternatives. It also ignores the practical experience of parents in using controls to decide which content is appropriate for their households.

VI. MANDATED A LA CARTE WOULD NOT BE AN EFFECTIVE TOOL FOR PARENTS IN MANAGING CONTENT, WOULD HARM CONSUMERS AND THREATEN PROGRAM DIVERSITY

Government mandated a la carte is bad for cable consumers, who would wind up paying higher prices to receive fewer programming choices than they get today. Most studies conclude that a mandated a la carte regime would be more expensive for consumers and result in less diversity in programming.

Additionally, mandated a la carte would do little to help parents protect their children from programming they deem unsuitable. Many individual cable and broadcast networks offer a variety of programming choices, some of which might not always be appropriate for everyone in the family. In its 2004 report on a la carte, the FCC's Media Bureau found that a la carte was a "particularly blunt instrument" for blocking objectionable content. It concluded that regulatory and technology options already exist and are better suited for controlling content.

Ironically, mandating a la carte distribution of cable networks to allow only family-friendly networks will put at risk the very family-friendly programming available today on networks such as Disney Channel, Hallmark Channel and Discovery Channel, leaving families with fewer viewing options. That's because the number of homes that would buy these networks would immediately shrink, raising their individual cost – in a downward spiral leading to ever lower penetration and ever higher prices to account for decreased penetration. Even the FCC's Further Report on a la carte confirms that an a la

carte regime will likely diminish diversity and minority-interest programming. The report acknowledges that bundling gives cable operators incentives "to add niche programming that appeals to a small set of subscribers rather than add additional mainstream programming that provides greater total value to consumers" and that, in contrast, a la carte would be likely to provide more "mainstream" programming and less "niche" programming.

Lastly, in order to survive in an a la carte environment, networks would be forced to spend substantially more money to constantly market their channel and emphasize programming that attracts subscribers. This could result in an increase in edgier, sensational programming, which, ironically again, could lead to more sex and violence on TV.

Because it has all these adverse effects on the programming options available to consumers, *and* because there are equally effective – and less restrictive – tools available to enable parents to control the content available to their children, mandatory a la carte would not only be a particularly ill-suited but also an unconstitutional approach.

VII. CONCLUSION

Mr. Chairman, in addition to offering the widest diversity of programming that viewers of all ages can enjoy, cable companies believe they have an important responsibility to provide customers with the necessary tools and resources to manage content that they deem offensive.

Since parents are best suited to make decisions about the appropriateness of TV programs for their household, the industry has dedicated itself to providing customers with easy-to-use tools that both inform parents about TV content and allow them to easily

block unwanted programs. The combination of technology built into set top boxes that the majority of cable customers already have, plus an enhanced TV ratings system, enable parents to take charge of their home viewing environment.

And cable companies remain committed to airing PSAs in markets across the country, donating valuable air time, as part of the industry's multifaceted effort designed to inform all customers about the tools they already have to make appropriate viewing decisions for their family.

Mr. Chairman, thank you again for inviting me to testify on this important matter. I would be happy to answer any questions you or the Members of the Subcommittee may have.

Mr. MARKEY. Thank you, Mr. McSlarrow.

And our next witness is Jon Rand. He is the general manager of several local television stations in Washington State and in Idaho. Welcome, sir.

STATEMENT OF JON RAND, GENERAL MANAGER, KAYU FOX 28, SPOKANE/COEUR D'ALENE, SPOKANE, WA

Mr. RAND. Thank you. Good morning, Chairman Markey, Ranking Member Upton. My name is John Rand, and I am the general manager of three Fox affiliate stations, serving all of eastern Washington and northern Idaho, broadcasting out of Spokane. I am here today to testify on behalf of the National Association of Broadcasters about the issue of childhood obesity and the efforts my stations have taken to fight this battle.

Education is key to combating obesity challenges facing our children and families. Therefore, our stations have chosen to play a part in reversing this trend. The result of that commitment is a campaign called Healthy Choices = Healthy Families. The genesis for this campaign becomes evident when you consider the facts. According to the Centers for Disease Control, the prevalence of overweight children ages 6 to 11 has more than doubled in the past 20 years. The rate among adolescents ages 12 to 19 has more than tripled.

Just as frightening are the health risks associated with obesity in children. For example, overweight children and adolescents are more likely to have high blood pressure, high cholesterol, and type 2 diabetes.

The goal of our Healthy Choices = Healthy Families campaign is to utilize the power of television and the Internet to make a difference in the health of our children. This campaign, which began in January 2007, is a three-pronged effort. First, we have trademarked and branded the Healthy Choices = Healthy Families logo and created public service announcements aimed at children and their parents. To date we have created 16 different PSAs that we are showing at all times of the day and every day of the week.

To give you a flavor of what we are doing, I would like to share with the committee one of the PSAs that we have produced.

[Videotape played.]

Mr. RAND. The second prong of the campaign involves utilizing our news broadcasts to inform our viewers about the threats from childhood obesity.

Lastly, we have launched a Healthy Choices = Healthy Families Web site, filled with resources that families can use to find expert knowledge and helpful tips about nutrition, exercise and childhood obesity. This site directs visitors to information provided by health professionals about childhood obesity, including how overweight is defined, the prevalence of children who are overweight, the factors associated with being overweight, and the related health consequences. In fact, we have partnered with Sacred Heart Children's Hospital in Spokane. And I have attached a letter to my testimony from the hospital indicating that because of the PSAs, viewers are utilizing the Web site to ask for help and information. This is a campaign to which we are dedicated for the long term. We plan to

keep the information fresh and continually add new research to educate our viewers.

While I agree that we need to view the issue of childhood obesity as a serious national dilemma, I do not believe that regulation of children's advertising is the best way to solve this problem. I fear that regulation of that kind of advertising may diminish the availability and quality of children's programming. The harder it is to find advertising for children's programming, the harder it is to convince the creative community to produce high-quality programming.

At my Spokane station over the last few years advertising in children's programming has dwindled. In the late 1990s, we had just over a million dollars in children's advertising on our station. In 2007, we had $2,415 in children's advertising. The main reason for this dramatic change is that much of children's programming, and consequently the advertising, has migrated to cable networks where there are niche channels geared specifically to children.

There are many factors that contribute to childhood obesity. Computers, video games and television all contribute to a child's inactive lifestyle. But the solution to this problem is found well beyond what kids see on broadcast television. Children must be encouraged to exercise. Parents must take the responsibility for providing their children healthy foods, and schools should serve nutritious meals and reinstate physical education.

As a broadcaster, I take my responsibility to my local community seriously. It is because of this responsibility that we have undertaken this Healthy Choices = Healthy Families campaign against childhood obesity.

Thank you, Mr. Chairman, for inviting me here today, and I welcome any questions.

[The prepared statement of Mr. Rand follows:]

Statement of Jon Rand

General Manager, KAYU, KCYU and KFFX

On behalf of the National Association of Broadcasters

Hearing before the House Committee on Energy and Commerce

Subcommittee on Telecommunications and the Internet

June 22, 2007

Good morning Chairman Markey, Ranking Member Upton, and Subcommittee Members, my name is Jon Rand. I am the General Manager of KAYU, Fox 28 in Spokane, WA/Coeur d'Alene, ID; KCYU, Fox 41 in Yakima, WA; and KFFX Fox 11 in Pasco/Richland/Kennewick, WA. I have worked in the broadcast industry for a total of 31 years, and have been General Manager of these television stations serving Eastern Washington and Northern Idaho since 2001. I also serve on the Small Market TV Advisory Committee of the National Association of Broadcasters (NAB), on whose behalf I am testifying today. NAB is a trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the Courts.

This morning I'm here to assure members of this Subcommittee that local broadcasters share your concerns and those of parents about the images children are exposed to through the media – and that we are doing something about it. My stations have committed to a long-term public service campaign called Healthy Choices=Healthy Families. This campaign focuses on childhood obesity, and aims to provide nutrition, exercise and other important information to help parents combat obesity and related child health problems. Through the on-air and on-line

resources of our stations, we are working to educate parents and children about lifestyle choices to improve the health of the families in our viewing area.

Beyond addressing concerns about childhood obesity and health, broadcasters are also responding to parental and governmental concerns about depictions of violence in the media. Currently a wide and growing range of tools are available to help parents guide their children's television consumption. A broad coalition of broadcasters, cable operators, program producers and others, moreover, are now conducting an extensive campaign to educate parents on how they can use these myriad of tools to control effectively their children's television viewing. Empowering parents in this manner is a better – and more First Amendment friendly – way to address concerns about content on television than legislation seeking to restrict the programming that all viewers, including adults, can watch on television.

Local Broadcasters Are Actively Responding To Concerns About Childhood Obesity and Health

Beginning in January of this year, our stations serving Eastern Washington and Northern Idaho began an extensive, long-term public service campaign called Healthy Choices=Healthy Families. This campaign focuses on childhood obesity, and intends to provide nutritional, exercise and other important information to help parents combat obesity and related child health problems, such as juvenile diabetes. We believe that the combined resources of television and the Internet can be harnessed to educate parents and children about lifestyle choices to improve the health of the families in our viewing audience.

Specifically, our stations have created a series of public service announcements (PSAs) focusing on nutrition and diet, exercise and related health information. The PSAs have covered such topics as nutritious snacks for children, ideas for working out as a family, and even the nutritional needs of expectant mothers. These PSAs air continuously, seven days a week at all

hours. To provide more detailed information and additional resources to parents and children, our PSAs refer viewers to the Healthy Choices page of our stations' websites, or to the websites of other organizations that can offer specialized information. And beyond PSAs, the local news broadcasts on our stations will this summer begin to air features related to this campaign. To drive home the message of this campaign, we repeat the Healthy Choices=Healthy Families tag line when our stations make their station identification announcements.

Beyond air time on our television stations, the Healthy Choices campaign fully utilizes on-line resources as well. For example, the Healthy Choices page on KAYU's website provides extensive information on childhood obesity, obesity-related health risks, nutrition and diet, and physical fitness for families. So parents can more easily obtain expert information, we provide links to other organizations, including the Centers for Disease Control and Prevention (CDC), the Weight-control Information Network (WIN) and the United States Department of Agriculture (USDA). The specific topics on which parents can find information through our stations' websites include dietary guidelines, recipe ideas and meal planning, children's nutrition and kid-friendly recipes, information on local recreational activities and classes, including programs of the YMCA and local parks and recreations department, and information on local lakes, parks, trails and conservation areas. In addition, KAYU's website provides a list and the biographies of health care specialists, including pediatricians, dieticians and psychologists, several of them associated with the local Sacred Heart Medical Center and Children's Hospital. Finally, our campaign includes "An Apple A Day," an on-line advice service for children's health issues. Parents can submit by e-mail questions about kids' health, and these questions are answered by our panel of experts in a monthly web cast.

To make our campaign more successful and useful to viewers, we have marshaled the resources of local partners. For example, as described above, KAYU has partnered with Sacred Heart Children's Hospital and local medical specialists. Using the resources of local health care professionals, as well as the resources of national organizations such as the CDC, we are able to offer local viewers greatly enhanced and more valuable information about childhood obesity and related health issues. As attested by the attached letter from Sacred Heart, the Healthy Choices=Healthy Families program is already showing positive effects, with more questions coming to the hospital's website and more calls to specialists asking for information.

I want to stress that our stations do not see an end point to this Healthy Choices campaign. We intend to continue adding material, including PSAs, to the campaign to keep it up-to-date and fresh for viewers for the long-term. Thus, this public service campaign represents a significant commitment of resources by our stations. Essentially all work for this campaign has been performed in-house, utilizing the resources of our production and graphics department and using our on-air news personalities in the PSAs. Beyond the time, effort and resources devoted by our stations and employees to create the Healthy Choices campaign, we have donated significant valuable airtime to running the PSAs. From January 1, 2007 through June 19, 2007, our three stations have aired a total of 4461 spots, ranging in length from five seconds to 30 seconds. We estimate the total value of this airtime to be nearly $109,000.

I also want to emphasize that many other local broadcasters in Washington state and across the country are frequently involved in similarly important public service campaigns in their communities. For example, KHQ, the NBC affiliate in Spokane, WA, last year celebrated the tenth anniversary of its Success By 6 community outreach campaign focused on young children and preparing them for success in school. As part of this campaign, KHQ has provided

information about childhood obesity, including information about nutrition, exercise and juvenile diabetes.

And it is hardly surprising that local stations initiate such programs. After all, local broadcasters are an integral part of their communities – station managers and personnel live, work, join local clubs and organizations, attend church and raise families in the communities our stations serve. As NAB has documented, in calendar year 2005:[1]

- Local broadcasters provided over $10.3 billion in community service, counting donated airtime for PSAs and funds raised for charities and disaster relief.
- More than 19 out of 20 television and radio stations (98 percent) reported helping charities, charitable causes or needy individuals by raising funds or offering other support. More than 19 out of 20 television and radio stations (96 percent of each) were involved in on-air or off-air disaster relief campaigns.
- 61 percent of PSAs aired by the average radio station were about local issues. For the average television station, the figure was 55 percent.
- Local stations provided important support -- including fundraising and awareness campaigns -- for community organizations such as hospitals, fire and police departments, libraries, schools, food banks, homeless and domestic violence shelters, and humane societies, among many others.
- Broadcasters supported and organized community events such as blood drives, charity walks, community cleanups, town hall meetings, health fairs and much more.
- Awareness campaigns organized and promoted by local broadcasters covered the full range of issues confronting American communities today, including alcohol abuse, education and literacy, violence prevention, women's health, drug abuse, children's issues, and hunger, poverty and homelessness. With regard to children's issues specifically, broadcasters have focused on adoption; raising funds for children's hospitals, neighborhood centers, and nonprofits and other agencies serving children; collecting toys, clothing and other items for needy children; and many other initiatives.

Beyond these efforts at the local level in communities across the country, broadcasters at the national level are working to address the childhood obesity issue specifically. Several

[1] National Association of Broadcasters, *National Report on Broadcasters' Community Service* (June 2006) (Online available at http://www.nab.org/publicservice).

broadcast companies, including Ion Media, Telemundo, and The Walt Disney Company, serve on the federal Task Force on Media and Childhood Obesity. This Task Force is working to reach a consensus on voluntary steps and goals that the public and private sectors can take to combat childhood obesity.

Concerns About The Content Of Television Programming Are Best Advanced By Empowering Parents

Concerns about the content of some programming, particularly violent depictions and images, have led some to call for Congress to consider legislation barring broadcast of violent television content except during late-night hours. Any such proposal would be fraught with constitutional problems under the First Amendment. This is an area where parents are much better positioned than the government to decide what kinds of programs are appropriate for their children. Currently, a broad and growing range of tools are available to help parents guide their children's television-viewing habits.

The V-Chip and program ratings information can be used by parents to facilitate the supervision of their children's viewing choices. The proportion of parents who have used the V-Chip specifically has "increased significantly" in recent years (from seven percent in 2001 to 15 percent in 2004), and the "vast majority" of those parents (89 percent) said they found it "useful." *Parents, Media and Public Policy: A Kaiser Family Foundation Survey* at 7 (Fall 2004) (61 percent of parents using the V-Chip found it "very useful," while 28 percent found it "somewhat useful"). By 2006, the proportion of parents using the V-Chip had risen to 16 percent, with nearly three out of four parents (71 percent) who had tried the V-Chip finding it "very" useful, significantly up from 2004, and a "higher proportion than for any of the media ratings or advisory systems." *Parents, Children & Media: A Kaiser Family Foundation Survey* at 10 (June 2007). Significantly, among parents aware of the V-Chip but who have chosen not to

use, 60 percent report that they usually monitor their children's television viewing in person and 20 percent say they "trust their children to make their own decisions." *2004 Kaiser Report* at 7. Thus, parents declining to use the V-Chip are not doing so because they think the technology is ineffective, not useful, or too difficult or complicated to employ. Moreover, 82 percent of parents have purchased new television sets since January 2000, when the requirement that all televisions over 13 inches be equipped with a V-Chip went into effect, so the vast majority of homes can be presumed to have V-Chip equipped televisions. *2007 Kaiser Report* at 9. Parents with older television sets that lack a V-Chip can separately purchase V-Chip technology to use with existing sets.

And even significantly greater numbers of parents use the voluntary ratings systems to guide their children's television viewing. In 2004, 50 percent of all parents reported using the television ratings to "help guide their children's television choices," and the "vast majority" (88 percent) of those parents said that they found the ratings "useful," including 38 percent who reported the ratings to be "very useful" and 50 percent "somewhat useful." *2004 Kaiser Report* at 4-5. By 2006, 53 percent of all parents reported using the ratings system, and the percentage who found them "very" useful rose by 11 percentage points, to 49 percent. *2007 Kaiser Report* at 9.

Beyond the V-Chip and voluntary ratings system, there are a number of additional technological and other tools that empower parents and viewers. As noted by FCC Commissioner Adelstein, cable subscribers have various options available. Digital cable subscribers can use their set-top boxes to block shows with certain ratings, titles, or by time or date, and analog cable subscribers can use their set-top or "lockbox" technology that blocks specific channels (including broadcast channels delivered via cable) so that they can no longer be viewed. Parents can also block pay-per-view and video on demand purchases. Similarly, satellite

television subscribers have access to the Locks & Limits feature on DirecTV and Adult Guard on Dish Network. Digital and personal video recorders permit families to pre-record and watch selected programming whenever they deem appropriate. *See* Report at 32 (statement of Commissioner Adelstein, approving in part and concurring in part). Parents can also obtain third-party ratings about the content of specific programs from a number of family and religious organizations.[2] Although parents remain concerned about media content, it is not surprising – given all these parental control technologies – that parents now "say they are getting control of their own children's exposure to sex and violence in the media." Kaiser Family Foundation, *News Release* at 1 (June 19, 2007).

The television industry is, moreover, now conducting an extensive campaign to educate parents on how they can use these many tools to control effectively their children's television consumption. NAB, the broadcast networks, the Motion Picture Association of America, the National Cable & Telecommunications Association, the Consumer Electronics Association, DirecTV and EchoStar, and the Ad Council and others are collaborating on a campaign to empower parents so they may better monitor and supervise their children's television consumption. Broadcast television and radio stations and cable/satellite channels have run and are continuing to run a number of PSAs about parental controls. These PSAs further direct viewers and listeners to www.TheTVBoss.org, where they can learn more about the V-Chip and cable and satellite technologies to better control the television programming coming into their homes. Local stations have placed links to TheTVBoss site on their websites.

[2] *See* Adam Thierer, *The Right Way to Regulate Violent TV,* The Progress and Freedom Foundation (May 10, 2007), for a thorough discussion of these and additional tools available for parents.

Local broadcasters also assist parents by making determinations about the appropriateness of programming for local communities, and declining to air programs and commercials deemed inappropriate for their local audiences.

Adopting legislation directly regulating programming content on television – especially at a time when consumers have unprecedented control over the video programming that enters their homes – would be overreaching and unnecessary to accomplish the government's goal of supporting parental choices. Indeed, it would impermissibly substitute the government's judgment for that of parents, while also interfering with the right of adults to watch what they want. This is a real concern because approximately 68% of the country's 110 million television viewing households *do not include children under the age of 18 at all*. Thus, for the majority of households in the country, restrictions on content, including violent content, would do nothing but impinge on the viewing choices of adults. In fact, adults over the age of 55 spend *more* time watching television than any other age group, and both children ages 2-11 and teens ages 12-17 spend *less* time watching television than any other age/gender group, except men ages 18-24. *See* Nielsen Media Research, *2007 Report on Television* at 20 (2007). The impact of speech-restrictive regulations will be disproportionately felt by adults, not children. And make no mistake, regulating violent television content could easily affect an extremely broad range of the most popular mainstream television programming enjoyed by millions of adults. For example, advocates of restricting violent television content have called *ER* the "second-most-violent series on television in the 2005-2006 season," due to its "medical violence," and have also consistently cited other top-rated programs, including *C.S.I.*, *Lost*, *Law and Order* and *Grey's Anatomy*, as containing problematic violence.[3]

[3] *See* Parents Television Council, *Dying to Entertain: Violence on Prime Time Broadcast Television 1998 to 2006* at 7, 9-13 (Jan. 2007).

A law dictating that such violent content may not be broadcast on television except late at night is very likely to be struck down by the courts. To begin with, it is virtually impossible to come up with a constitutionally acceptable definition of the type or types of violent programming that should be banned from television during most hours. Indeed, despite having three years to consider the issue, the Federal Communications Commission (FCC) itself did not propose a definition in its recent report about violent content on television,[4] and one of the Commissioners expressed serious doubts about the ability ever to do so. *See* Report at 32 (Statement of Commissioner Jonathan S. Adelstein, approving in part and concurring in part). It is not an accident that no other law on the books in any state or at the federal level restricts violent content. Every attempt to do so – in the context of videos, trading cards, books, and video games – has been struck down by the courts, in part because every definition of targeted violent content runs into problems with vagueness and overbreadth.[5] Regulations targeting televised depictions of violence -- which are fully protected speech under the First Amendment -- would meet the same fate.

Leaving aside the definitional problem, a law regulating depictions of violence on broadcast television would single out a particular category of protected speech for disfavored treatment. That kind of discriminatory burden on speech is directly at odds with fundamental First Amendment principles, and courts have consistently subjected these content-based laws to

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[4] *Violent Television Programming And Its Impact On Children*, Report, FCC 07-50 (rel. April 25, 2007) ("Report").

[5] *See, e.g., Winters v. New York*, 333 U.S. 507 (1948); *Interactive Digital Software Ass'n v. St. Louis County*, 329 F.3d 954 (8th Cir. 2003); *American Amusement Mach. Ass'n v. Kendrick*, 244 F.3d 572 (7th Cir. 2001); *Eclipse Enterprises, Inc. v. Gulotta*, 134 F.3d 63 (2d Cir. 1997); *Video Software Dealers Ass'n v. Webster*, 968 F.2d 684 (8th Cir. 1992).

the strictest form of constitutional scrutiny.[6] The justifications for regulation that could be offered here are far too weak to satisfy such scrutiny. Prior cases, principally involving attempts to regulate distribution of violent video games to minors, illustrate the problem: the social scientific studies on the effects of exposure to violent material are far too thin a reed to justify content-based regulation of fully protected speech.[7] These courts, in the context of violent video games, found that the studies presented failed to constitute "substantial evidence" of harm to minors. Scholars have also similarly criticized studies on the effects of exposure to violent television programming.[8]

Some have suggested that the government may nevertheless impose content-based restrictions in the context of over-the-air television broadcasts, citing to the Supreme Court's decision in *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978). But that decision has never been expanded beyond the narrow context of so-called "indecent" programming, and provides no support for the government to take the unprecedented step of censoring images of violence. Indeed, there are serious questions about whether *Pacifica* is viable anymore, even in the context of indecency. There remains little, if any, reason to treat the content of broadcast television programs any differently, in terms of First Amendment protection, from the content of other programming delivered alongside broadcast stations over cable and satellite systems. Certainly

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[6] *See, e.g., R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992); *U.S. v. Playboy Entertainment Group, Inc.*, 529 U.S. 803 (2000).

[7] *See, e.g., Kendrick*, 244 F.3d at 578-79; *Interactive Digital Software*, 329 F.3d at 959; *Entertainment Software Ass'n v. Foti*, 451 F. Supp. 2d 823, 832 (M.D. La. 2006); *Entertainment Software Ass'n v. Granholm*, 426 F. Supp. 2d 646, 652-54 (E.D. Mich. 2006); *Entertainment Software Ass'n v. Blagojevich*, 404 F. Supp. 2d 1051, 1059-63 (N.D. Ill. 2005); *Software Dealers Ass'n v. Maleng*, 325 F. Supp. 2d 1180, 1188 (W.D. Wash. 2004); *Entertainment Software Ass'n v. Hatch*, 443 F. Supp. 2d 1065, 1069-70 (D. Minn. 2006).

[8] *See, e.g.,* Jonathan L. Freedman, *Television Violence and Aggression: Setting the Record Straight*, The Media Institute (2007).

there remains no meaningful difference in the pervasiveness or accessibility of broadcast television versus other media today.[9] Courts are thus likely to conclude that broadcast television is entitled to the same level of strong First Amendment protection as other media, including cable television and the Internet.[10] And there is no question that proposed restrictions on televised depictions of violence would fail strict First Amendment scrutiny.[11]

In short, we understand parents' desire to ensure that their children are not exposed to televised content, including violent images, they believe inappropriate. Broadcasters are continuing to work to inform parents of all the technological and other alternatives for effectively controlling the television programming viewed by their children. Particularly in light of these myriad technological and other alternatives for consumers to control the television programming entering their homes, Congress should refrain from seeking to empower parents by censoring

[9] For instance, approximately 86 percent of television households now get television, including broadcast channels, via cable, satellite or broadband provider. *See* FCC, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Twelfth Annual Report, 21 FCC Rcd 2503, 2506 (2006). A plurality of the Supreme Court has found that cable television, like broadcast television, is both pervasive and accessible to children. *See Denver Area Educ. Telecomms. Consortium, Inc. v. FCC*, 518 U.S. 727, 744-45 (1996).

[10] *See, e.g., Reno v. ACLU,* 521 U.S. 844, 868, 879 (1997); *Playboy*, 521 U.S. at 813 (applying strict scrutiny to attempts to restrict "indecent" speech on both the Internet and cable television). *See also Fox Television Stations, Inc. v. FCC*, No. 06-1760, 2007 WL 1599032, at *17-18 (2d Cir. June 4, 2007) (describing how cases such as *Playboy* and "today's realities" have undermined *Pacifica*).

[11] We note that, even if *Pacifica* were to remain good law at least to some extent, the level of judicial review given to any regulation of violent content on broadcast television would remain stringent. The Supreme Court has clarified that even *Pacifica* permits speech restrictions only if they are "narrowly tailored to further a substantial governmental interest." *FCC v. League of Women Voters*, 468 U.S. 364, 380-81 (1984). This level of "intermediate" scrutiny is not easy to satisfy. *See Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 665-66 (1994). Legislation restricting depictions of violence on television would fail both intermediate and strict scrutiny for the definitional, evidentiary and other reasons discussed.

speech. The availability of less speech-restrictive alternatives renders content-based programming restrictions not only unnecessary but invalid under the First Amendment.[12]

Conclusion

Local broadcasters are an integral part of the communities they serve and thus share the concerns of the viewers and listeners in those communities. These concerns about the well-being of families in Eastern Washington and Northern Idaho have lead KAYU, KCYU and KFFX to commit to a long-term public service campaign focused on childhood obesity and related child health problems. Local broadcasters throughout the country have committed to a myriad of other public service campaigns addressing important problems, as NAB has documented.

Broadcasters are also committed to addressing concerns about the content of programming, including violent content. A broad coalition of broadcasters, cable operators, program producers and others are currently conducting an extensive campaign to educate parents on how they can use the numerous available tools to control effectively their children's television viewing. Empowering parents is a better – and more First Amendment friendly – way to address concerns about content on television than legislation seeking to restrict the programming that all viewers, including adults, can watch on television.

[12] *See, e.g., Playboy*, 529 U.S. at 813, 816; *Reno*, 521 U.S. at 879; *Ashcroft v. ACLU*, 542 U.S. 656 (2004). The Supreme Court has already specifically identified the V-Chip as a type of "less restrictive" alternative for blocking "sexually explicit or violent programs" that renders content-based programming restrictions unconstitutional. *See Denver Area*, 518 U.S. at 756.

June 18, 2007

Jon Rand
General Manager
KAYU
Spokane, WA.
Jon.rand@KAYUTV.com

Dear Jon,

Sacred Heart Medical Center and Children's Hospital, a 623 bed Tertiary Care Regional referral hospital in Spokane, Washington, is pleased to provide you with a letter of support for your presentation in Washington, DC. We are proud to have you speak for Spokane and the partnership that we have undertaken when you present to the congressional committee on Friday, June 22nd.

Please feel free to speak for us in our new venture, ***Healthy Choices = Healthy Families***.
We are proud to be associated with a television station that has chosen to address the issue of childhood obesity. Our partnership allows a pairing of ***KAYU,*** a recognized television station in the region, with the medical voices of pediatric specialists and registered dieticians from the only comprehensive Children's Hospital between Minneapolis and Seattle.

Although this program, ***Healthy Choices = Healthy Families*** is only a few months old, we are already seeing a positive outcome. Having Children's Hospital physicians and dieticians speak to the issues that are facing our children as they struggle to find a balance of healthy nutrition and exercise with their normal hectic life, is taking advantage of a "teachable moment". We are seeing questions come into our website, and calls to specialists asking for more information. As ***KAYU*** continues to expand this program to include a Question and Answer format along with other news features, we are optimistic that this will continue to be a positive long term relationship between our organizations. We believe we share a role in addressing public health issues and recognize that this is a partnership that allows us the opportunity to "brand" our message and provide medical advice based on evidence based practice.

I hope that the committee will appreciate that one small idea, one unique partnership; one caring community can make a difference. Thank you for the opportunity to work with ***KAYU*** to address this national issue of childhood obesity. ***Healthy Choices = Healthy Families*** is a model for the nation and we would be happy to provide any information that might assist others as they tackle this topic.

Sincerely,

Peggy Mangiaracina

Peggy Mangiaracina
VP, Executive Director
Sacred Heart Medical Center & Children's Hospital

101 W. Eighth Avenue
PO Box 2555
Spokane, WA 99220-2555
800-474-2801
www.shmcchildren.org

Mr. MARKEY. Thank you, Mr. Rand, very much.

Our final witness is Mr. Adam Thierer. He is a senior fellow and director of the Center for Digital Media Freedom at the Progress and Freedom Foundation.

STATEMENT OF ADAM D. THIERER, SENIOR FELLOW, PROGRESS & FREEDOM FOUNDATION

Mr. THIERER. Thank you, Mr. Chairman and members of the committee, for inviting me here today to testify on this issue. My name is Adam Thierer, and I am a senior fellow with the Progress and Freedom Foundation, a think tank here in Washington, DC. This hearing is particularly timely for me because just this week the Progress and Freedom Foundation has released this new special report I have spent the last 2 years compiling, entitled "Parental Controls and Online Child Protection: A Survey of Tools and Methods." The booklet provides a broad survey of everything that is on the market that can help parents better manage media content today, whether it be on broadcast television, cable or satellite TV, music devices, mobile phones, video game consoles, the Internet, or even social networking Web sites.

Incidentally, the booklet can be downloaded free of charge on the *PFF.org* Web site, and I plan on making frequent updates to the publication as new information comes to my attention.

As I note in my book, we live in an always on, interactive multimedia world. Parents need to be prepared to deal with media on multiple platforms, screens and devices. While this can be a formidable challenge, luckily there has never been a time when parents have had more tools and methods at their disposal to help them determine and enforce what is acceptable in their homes and in the lives of their children. And that conclusion is equally applicable to all major media platforms or all the screens our children might view.

In the past, the off button was the only technical control at parents' disposal. Today, by contrast, parents like me have myriad tools and methods to restrict or tailor media content to their own household tastes or values. I could spend all my time here today discussing merely those restrictive tools that could help parents block or curtail media. Those tools include, of course, the v-chip and television ratings, cable and satellite set-top box screening tools, DVD blocking controls, cell phone blocking tools, video game console controls and ratings, Internet filtering and monitoring tools, instant message monitoring tools, operating system controls, Web browser controls, search engine safe tools, and media management time devices, so on and so on. These devices are all extensively discussed in my book, along with many other tools. But while those restrictive tools are very important, they are only part of the parental control story today.

Enabling or tailoring tools are what makes today's parental control market so exciting. By enabling or tailoring tools, I mean any tool or method that a parent might use to enable their families to see, hear or consume content they would regard as more appropriate, ethical or enriching. For example, for televised media, VCRs, DVD players, and personal video recorders have emerged as important parental control devices. These technologies give parents

the ability to accumulate libraries of preferred programming for their children and then determine exactly where and when it will be viewed. Pay-per-view options also help parents better tailor viewing choices. And don't forget about the huge and growing market for educational DVDs, videotapes, and computer software.

Speaking of computers and the Internet, parents can now tailor their children's on-line activities in many similar ways. In my new book I document dozens of kid-friendly search engines or Internet portals that are essentially on-line walled gardens, filled with prescreened content and safe chat areas. And even in the world of mobile media, new wireless handsets and services offer parents the ability to not only monitor the content their child might try to access, but also establish preapproved calling lists and tailor the communications experience for even very young kids.

But it is also vital we not overlook the importance of informal household media rules in this discussion. Oftentimes debates about inappropriate content get so caught up with disputes about technical controls, ratings, or even regulation, that we forget that parents often view these things merely as backup plans. In my book I identify four categories of household media rules that surveys show almost all parents use in some combination to control their children's media consumptions. This four-part taxonomy I have created is first "where" rules; second, "where and how much" rules; third, "under what condition" rules; and fourth, "what" rules.

I don't have time to run through all the possible examples, but certainly most of us are familiar with widely used household rules like no watching TV or playing games until your homework is done or you can't watch that movie until you complete your chores. Such household rules can be actually far more effective in controlling children's media habits than technical controls. But debates about parental controls and media policy often treat them as an afterthought if they are discussed at all. It is time we start thinking and talking about them.

Finally, let us not forget that the ultimate parental control tool is the power of the purse. In most cases, when kids want to consume a certain type of media, or even consume something they see advertised in the media, they need money to do so. Televisions, movies, video games, cell phones, computers and so on do not just drop into our kids' laps from a high-tech heaven. When our kids want those things, they have to come to us and ask for them. And that includes the things that are advertised on those platforms. And although at times it may be difficult for us to say no, we always have the power to do so. That is the ultimate way to control the images our kids see on the screen.

Thank you again.

Mr. MARKEY. Thank you very much, Mr. Thierer.

[The prepared statement of Mr. Thierer follows:]

Testimony of
Adam D. Thierer
Senior Fellow and Director of the Center for Digital Media Freedom
The Progress & Freedom Foundation

Hearing on
"Images Kids See on the Screen"

Before the

Subcommittee on Telecommunications and the Internet
Committee on Energy and Commerce
U.S. House of Representatives

June 22, 2007

Mr. Chairman and members of the Committee, thank you for inviting me here today and giving me the opportunity to testify. My name is Adam Thierer and I am a senior fellow with the Progress & Freedom Foundation (PFF) where I serve as director of PFF's Center for Digital Media Freedom.

This hearing is particularly timely for me because this week PFF released a new special report that I spent the last two years compiling entitled, "*Parental Controls and Online Child Protection: A Survey of Tools and Methods.*" The booklet provides a broad survey of everything on the market today that can help parents better manage media content, whether it be broadcast television, cable or satellite TV, music devices, mobile phones, video game consoles, the Internet, or social networking websites.

(Incidentally, this booklet can be downloaded free-of-charge at www.pff.org/parentalcontrols, and I plan on making frequent updates to the report and re-posting the document online as new information comes to my attention).

As I note in my book, we live in an "always-on," interactive, multimedia world. Parents need to be prepared to deal with media on multiple platforms, screens, and devices. While this can be a formidable challenge, luckily, there has never been a time when parents have had more tools and methods at their disposal to help them determine and enforce what is acceptable in their homes and in the lives of their children. And that conclusion is equally applicable to all major media platforms, or all the screens our children might view.

In the past, the OFF button was the only technical control at a parent's disposal. Today, by contrast, parents like me have myriad tools and methods to restrict or tailor media content to their own household tastes and values. I could spend all my time here today merely discussing the *restrictive* tools on the market that parents can and do use to block or curtail media. Those restrictive tools include: the V-Chip and TV ratings; cable and satellite set-top box screening tools; DVD blocking controls; cell phone blocking tools; video game console controls; Internet filtering and monitoring tools, instant messaging monitoring tools; operating system controls; web browser controls; search engine "safe search" tools; media time management devices, and so on. You will find an exhaustive discussion of all these tools and many others in my book.

But while those restrictive tools are important, they are only part of the parental control story. *Enabling* or *tailoring* tools are what makes today's parental control market so exciting. By enabling or tailoring tools I mean any tool or method that a parent might use to enable their families to see, hear, or consume content they would regard as more appropriate, ethical, or enriching.

For example, for televised media, VCRs, DVD players, and personal video recorders have emerged as important parental control devices. These technologies give parents the ability to accumulate libraries of preferred programming for their children and determine exactly when and where it will be viewed. Pay-per-view options also help parents better tailor viewing choices for their kids. And don't forget about the huge and growing market for educational DVDs, video tapes and computer software.

Speaking of computers and the Internet, parents can now tailor their children's online activities in similar ways. In my new book, I document dozens of kid-friendly search engines and Internet portals that are essentially online "walled gardens" filled with pre-screened content and safe chat areas.

And even in the world of mobile media, new wireless handsets and services offer parents the ability to not only monitor the content their child might

try to access, but to also establish pre-approved calling lists and tailor the communications experience to make it safe enough for even very young kids.

Also, it is vital that we not overlook the importance of informal household media rules in this discussion. Oftentimes, debates about inappropriate content get so caught up with disputes about technical controls, ratings or even regulation that we forget that parents often view all these things merely as backup plans. In my book, I identify four categories of household media rules that surveys show almost all parents use some combination of to control their children's media consumption. These household media rules include:

(1) "where" rules (assigning a place for media consumption);
(2) "when and how much" rules (creating a media allowance);
(3) "under what conditions" rules (carrot-and-stick incentives); and,
(4) "what" rules (specifying the programming kids can and cannot watch).

I don't have the time here to run through all the possible examples, but certainly most of us are familiar with widely used household media rules like, "No watching TV or playing games until your homework is done," or "You can't watch that movie until you complete your chores." Such household media rules can actually be more effective in controlling children's media habits than technical controls. But debates about parental controls and media policy treat these

household media rules almost as an afterthought, if they are mentioned at all. It's time we start talking about them.

Finally, let's not forget about the ultimate parental control tool: the "power of the purse." In most cases, when kids want to consume a certain type of media—or even consume something they see advertised in the media—they need money to do so. Televisions, movies, video games, cell phones, computers, and so on, do not just drop from high-tech heaven into our kids' laps! When our kids want those things—or want things that are advertised on those media platforms—they must come to us and ask. And, although at times it may be difficult, we all have the power to say "No." That is the ultimate way to control the images our kids see on the screen.

Thank you again for inviting me today.

[*Attachment*: "The Right Way to Regulate Violent TV," by Adam Thierer]

Mr. MARKEY. Five minutes on the button. You and Ms. Miller actually win the award for closest to the time that we asked you to hit.

The Chair will now recognize himself for a round of questions. I will say to you, Ms. Miller, that I am prepared to ask the Federal Communications Commission to initiate a rulemaking under the Children's Television Act, which I am the author of, on the issues of advertising on children's television so that it is not inconsistent with the goals of the 1990 Children's Television Act, which is to have educational and informational programming for 3 hours per week on every television station in America.

So I just wanted to let you know that it is something that I am putting people on notice that I am really willing to pursue. And I think it is something that is very important that we ensure that that be a safe haven for kids and for parents, that they know that those programs are there.

Let me ask you, if I can, Mr. Glickman—and, again, I want to commend you and the MPAA for including smoking as a rating factor in the movies. It is an important step. Now, two of our witnesses have proposed additional steps, which include banning tobacco brand imagery in movies and certifying that no one working on a movie took payments or other consideration from tobacco companies. And Ms. Healton mentioned running antismoking public service commercials, announcements, before the movie began as kind of a countermessage to children watching those movies. They seem like good ideas. It seems like that would help to mitigate this problem. Can you comment upon those ideas?

Mr. GLICKMAN. Yes. First of all, I think John Fithian is here from the National Association of Theatre Owners, but the theatre owners have run I don't know how many, many, many tens of thousands of spots in theatres. Many of you have seen them. And so those spots have run and have had great impact, and we certainly support that particular effort on their part.

Mr. MARKEY. Have the MPAA members been asked to implement these types of recommendations?

Mr. GLICKMAN. Well, let us put it this way: we work with NATO in terms of on those particular spots. I just was talking here with Mrs. Healton about other things that we may talk about doing in the future. But individual companies may make those decisions. But I would say this: now recognizing that about 900 movies a year go through our ratings system, about 300 of those are our member companies and 600 of them are independent producers and a lot of other people. And to the best of my knowledge, none of our companies are responsible for containing paid product placement of tobacco products in our motion pictures.

Although we are not a party to the master settlement agreement, that is of course the tobacco companies themselves, we believe that is very, very important. And so what we do as a trade association, what my personal view on this is, we have got to continue to work with our companies in all possible ways to try to minimize the amount of smoking in movies and in the country as a whole. Both my parents died of lung cancer, both were smokers, so I have a personal interest in seeing this done but doing it in a way that does not abridge the normal creative freedom process.

Mr. MARKEY. I understand that. And my father died from lung cancer as well. And unfortunately, as Mrs. Healton said, it is the most preventable of all diseases. Is it possible—and my father was ticked, too, when he was dying from it. He was really angry.

Could you put the antismoking PSAs in the DVDs when they are released as well?

Mr. GLICKMAN. That would be a decision that each company would make on their own. There has been some discussion about, I think, one company, not one of our member companies, has determined to do that. But there are a lot of options that we are going to continue to explore both in terms of marketing options as well as ratings options as well.

Mr. MARKEY. Could you survey the companies that you represent and report back to the subcommittee on which of them are willing to and which are not willing to put PSAs in their DVDs so we can identify——

Mr. GLICKMAN. What we would do is, in addition to that, I think it would be useful to have representatives of the companies come and talk to you all about the various programs that they are proposing in these areas. So we will certainly provide you the information that you requested and try to do more than that.

Mr. MARKEY. OK. And just on the issue of banning tobacco imagery in movies, could you just comment on that as well?

Mr. GLICKMAN. Again, our member companies do not in their content, to the best of my knowledge, do not contain paid product placement of tobacco products in our pictures. But I cannot speak for every picture done by every film producer in the country who are not part of the MPAA organization.

Mr. MARKEY. What I would like to do is just make a request from the subcommittee that you do a survey of the companies that you represent in terms of their positions on these issues, on banning tobacco brand images, on certifying that no one is working and receiving payments. And is the NATO representative here?

Mr. GLICKMAN. He is.

Mr. MARKEY. Yes. What I would like to do, I know you are not testifying here today, but I would like to ask you as well, if I can just informally here, if you would give your organization's position to the subcommittee on running PSAs before any movie that has tobacco in it. It would be very helpful for us to understand. That is the National Association of Theatre Owners, by the way. That is not the North American Treaty Alliance, protecting the world from nuclear threats, although many of the movies that they show——

Mr. GLICKMAN. Mr. Chairman, although sometimes they act like it. But John and I are very good friends as well. May I just make one point, too, is that in the depiction of smoking in movies, and while Mrs. Healton and I may have some disagreement about how to measure those things—there is an awful lot of negative depiction of smoking in movies. For example, the film "Good Night, Good Luck." I have got the movie "Constantine" where the character played by Keanu Reaves just about dies when he lights up a cigarette; in the movie "Stranger than Fiction" a similar type of situation. So we want to point out that qualitatively there are lots of ways that movies can be portrayed—smoking can be portrayed in

not positive ways. And that is our goal is to try to encourage more of that as well.

Mr. MARKEY. Ms. Healton, would you just like to make a brief comment here on what you have heard?

Ms. HEALTON. I would just simply say that the research suggests very strongly that any form of smoking, unless it is entirely unambiguous with regard to health effects, definitely has a negative impact. It is not just whether it is a bad guy with the cigarette. In fact, bad guy can be even more attractive considering the personality profile of kids who start smoking at a young age.

The other point is Legacy Foundation is paying for a very substantial proportion of the placement of Truth PSAs in film. And, in fact, most States that choose to use their PSA dollars or other money to advertise there frequently use our ads, which we provide gratis.

Mr. MARKEY. I thank you. And the subcommittee is going to be paying a lot of attention to this issue over the next 2 years. And so we will be working with NATO and all of the organizations that are represented here today as well.

Ms. HEALTON. I am sorry, I did want to add one point. I respect the statement made by Mr. Glickman with regard to his own companies, but I think it is important for the committee to understand that those companies distribute films that are made by independent collections of people who put them together. And the request for the certification would cover not only the companies themselves, but everyone else along the line, whether internationally or domestically. And the fact of the matter is that there is such pervasive smoking that frankly it is very hard to believe there isn't money changing hands. If there isn't, it is just totally confusing about how there could be so much brand placement occurring and no money changing hands anywhere.

Mr. GLICKMAN. Just I have great respect for Mrs. Healton, but a lot of her allegations are not based on facts whatsoever. It is hard to believe, she says. The truth of the matter is that our companies are committed that there be no product placement and stand by that and are committed to try to reduce the amount of smoking in movies. And that is why we changed the ratings system to allow the new factor to be put in.

Mr. MARKEY. And I appreciate that. And, again, it would help us if we could have in writing some sense of what individual companies are doing as well.

Mr. GLICKMAN. Sure.

Mr. MARKEY. What happens oftentimes is each part of all of these industries in the entertainment area have annual awards shows and give out awards for all the good things. But who claims credit for all the bad things? They don't have that awards ceremony. And that is what we are trying to be able to get at; have the people who really don't want to testify here. Rooting out who they are could help the committee if in writing you tell us who wants to, which companies will do it, and which will not sign on, because that will help us to focus in on that problem.

Let me turn and recognize the gentleman from Georgia Mr. Deal.

Mr. DEAL. Thank you, Mr. Chairman.

Let us take a family that has two small children, and they get their television programming, Mr. McSlarrow, through one of your cable providers. Is that cable provider allowed to offer that family who might say to them, I don't even want television programming coming through my cable system that is rated TV PG and below, is that cable operator allowed to offer that family such a package? And if not, why not?

Mr. MCSLARROW. If you were restricted to PG and G, I don't think you could. And the reason would be that even for those cable operators who are offering family tiers, so the cable networks that would be part of the family tier would most likely be G-rated, maybe some PG, they also by law have to offer broadcast stations must carry and retransmission consent alike. And while most of those are not going to be MA, certainly not before 10 o'clock, there is some point during the day that you would have TV14 a lot. So, no, you couldn't.

Mr. DEAL. I mentioned in my opening statement that retransmission consent appears to me to be one of the impediments in allowing a cable operator to offer more family-friendly packaging in their cable service area. Is retransmission consent an issue, and how does it impact the packaging and the bundling that comes with cable presentations?

Mr. MCSLARROW. I think at least in this context the issue, I would say, is actually broader than retransmission consent. It is the broadcast carriage regime. So it is both must carry and retrans. And it really impacts the bundling of packages in two ways. Number 1, by law any station that is a must carry broadcast station has to be carried on that cable operator's system. Don't have a choice about it. And then number two, all those stations, the must carry stations and the retransmission consent stations, by law must be part of a package offered to a cable subscriber. It's called the must buy tier. You have to have all the broadcast stations before you can even think about adding any of the cable networks.

So in a sense, with those two rules, you have a forced bundle. And I happen to like the bundles. I am not saying it is a bad thing, but I am just saying it is not a choice that the consumer has.

Mr. DEAL. And that is something that only Congress can change since it is legislatively mandated.

Mr. MCSLARROW. Correct.

Mr. DEAL. Mr. Rand, since you are here representing the National Association of Broadcasters, we all have heard, and it has been alluded to by several here today, about the public's opinion through polling about there being too much violence, too much profanity, et cetera, on television programming. Would you elaborate on what steps that the broadcast industry is taking in this regard, and what limitations, if any, are you faced with in that area of being able to be more proactive on these issues?

Mr. RAND. Well, along with Mr. McSlarrow's organization, we certainly have been very supportive, both on a network level as well as local broadcasters, of the measures that are available to families to limit different images coming into their homes through a v-chip, through identifying by ratings, and also through the TV Boss campaign.

I am often asked if we have the ability to block programming that comes from the network, if we choose to look at it and say that it is not appropriate for local viewing in our estimation. Our stations in Spokane and in Yakima/Tri-Cities were among the first Fox affiliates last fall to say no to the Fox Television Network on the O.J. Simpson special. And it ultimately led, through the efforts of that group of people who said no to begin with, to them canceling it and canceling the book associated with it. So there is that level of control and ability to say no.

Mr. DEAL. Could I ask a follow-up on that particular issue? That was courageous, in my opinion, on your part to do that. But is that the norm in the industry, or is it only those who have shown that kind of courage that have been able to deal with broadcast networks in that regard? And what, if anything, is being done or can be done to give you that autonomy?

And let me just follow up before you answer my question. As a former prosecutor and as one who prosecuted some of the first pornography cases in my part of the world, one of the tests always was whether or not something had met a community standard. It was always one of the elements of determining that. I have always viewed, in a rather simplistic fashion, that a local cable operator, or in your case a local broadcaster, in some form or fashion serves as the determiner of a community conscience about some of these issues. I have run over my time.

Mr. MARKEY. Yes.

Mr. DEAL. I guess I will have to come back later. But I thank you both from the cable operator and the broadcaster.

Mr. MARKEY. The gentleman is over by a minute, but I ask unanimous consent that the witness be allowed to answer the question.

Mr. DEAL. Can you respond to that?

Thank you, Mr. Chairman.

Mr. RAND. Will you repeat the question?

Mr. DEAL. In simple terms, what degree of autonomy are individual broadcast stations being able to have in terms of what is coming to them from the big broadcasters?

Mr. RAND. Well, it is difficult to speak on behalf of the whole industry, but in the last couple years, as the profanity issue grew to be of more and more interest, you saw a number of ABC affiliates choosing to preempt "Saving Private Ryan" as it was going to run as it was made to begin with. And you saw a lot of stations that chose to preempt that program for that reason. And the network was faced with putting up with that. So there is that ability to do that.

Mr. MARKEY. The gentleman's time has expired.

The Chair recognizes the gentlelady from California Mrs. Capps.

Mrs. CAPPS. Thank you to each of our panelists for your presentations. I want to talk about or ask about obesity. Ms. Sophos, as you know, the Council of Better Business Bureaus has established a voluntary initiative among 11 companies that represent two-thirds of food advertising targeted at children. These companies have committed that half of their advertising will promote healthy lifestyles, a laudable commitment. I am pleased that the industry is recognizing this as a problem.

Here is my question. When advertising is integrated with healthy messages, how healthy is the resulting impact on children? For example, and this is not a stretch, when an advertisement features someone eating french fries and then riding a bike, what is the child going to learn from that, and how does that really satisfy the healthy lifestyle goal?

Ms. SOPHOS. I can't speak to that specific example. We haven't looked at——

Mrs. CAPPS. Just as an example.

Ms. SOPHOS. But I think what the overall purpose of the CBBB program is is to take very seriously the requests that have been made of the industry by the IOM and by FTC Chairman Majoras to shift the mix of products that are advertised to children, to shift the balance into healthier products and to also communicate healthy lifestyle messages. So I think the industry is very keenly focused on both those aspects. And I think as the pledges that the companies are making become public later this summer, that we will have an ability to assess just how much they have been able to sort of meet expectations on that point, because I think they are very much focused on both aspects of making and marketing better for you foods. So I think that we are going to have to try and get a sense of what the impact has been overall once the pledges are out and once we see them actually play out in the advertisements.

Mrs. CAPPS. Two other of the panel are eager to respond. Dr. Shifrin, and then I will turn to you, Ms. Miller. But I wanted to just—the topic is mixed messages. What does this do to a young child? This is your area of expertise.

Dr. SHIFRIN. When you watch children's commercials, children's commercials talk about the fun of the food. You rarely see children eating the food on the commercials, if you look at children's commercials with a contextual eye. So children are enamored because the food is fun. You look at the music, you look at the quick cuts.

So what we would like from the industry, the American Academy of Pediatrics would like to use the most bright minds in the marketing industry and say, let us create these commercials. Let us do focus groups. Let us look at what is going to work. Let us not try things and then wait again down the road to see that perhaps they are not working.

So I think it is up to the industry to say if we are devoting a huge amount of our budget to this process and project, let us do it right. They have the brightest minds in the industry. They have changed children's purchasing and preferences for years. Let us let them do the work. We will work with them.

Mrs. CAPPS. That is good. I will give my own 2 cents' worth. Ms. Miller, you raised your hand. And being from California, I am very familiar and a big fan of the work of Children Now and your yearly scorecard on children in California. This must be one of the topics you have examined as well.

Ms. MILLER. Yes, it is one of the topics. We are examining not only media but across other issues, kids' health and education. And just a quick note on shifting the balance. What public health advocates and children's advocates need to see is an actual reduction in junk food advertising to kids. When we talk about shifting the mix, it is actually seeing less unhealthy food ads. So what we are con-

cerned about with the healthy lifestyle messages is the idea of a child riding a skateboard in a skateboard park and then eating a bowl of sugar cereal to us isn't getting to that issue.

So what we are really hopeful, and when we see some of these pledges, that we actually see reduction in some of these unhealthy food ads in terms of trying to shift that mix so it is more of an equal playing field for kids in terms of healthy versus unhealthy images.

Mrs. CAPPS. Ms. Sophos, you are nodding. And here is a question for you. Wouldn't industry-funded public service announcements separate from your advertisements be more effective than integrating healthy messages? Is that something the industry might consider bringing to the table at the FCC Task Force on Childhood Obesity?

Ms. SOPHOS. We believe there is a role for both integrating the messages and also for PSAs. Our industry is joined with a lot of the media groups and advertising communities supporting work that is being done by the Ad Council now. And whether it is PSAs or companies using the messages that have been developed by the Ad Council and the Department of Health and Human Services in communicating through labeling and other ways, we do think carrying those messages as part of broader social marketing campaigns can be very helpful.

Mrs. CAPPS. Thank you all.

Mr. MARKEY. The gentlelady's time has expired.

The Chair recognizes the ranking member of the subcommittee, Mr. Upton from Michigan.

Mr. UPTON. Well thank you, Mr. Chairman. And I regret that I wasn't here for the opening statements. I did read them. But I have good news. When Ms. Harman and I walked back into the room, in fact, our amendment did pass on the House floor, saving the taxpayers millions of dollars in energy costs. So it was good news.

Just a couple things. We are going to have votes on the House floor, so I may not use my whole 5 minutes, so I can let other Members ask some questions before we adjourn.

Ms. Sophos, just in follow-up to Mrs. Capps's question, do you think that it is wise then, yes or no, for the FCC to move forward in terms of their Task Force on Media and Childhood Obesity report? Do you think that is a wise thing, or should they be waiting until they hear more from you all? It is not supposed to be a softball question, but as my former boss I have to be careful.

Ms. SOPHOS. I understand.

We have been participating in the Joint Task Force as well, along with a number of our member companies. And I think it has been a useful dialog that we have had. I think the one thing that has been clear throughout this is that everyone in the room is very, very interested in making a difference, in trying to push the envelope and do something. I think that there are a lot of things that the task force can recommend, and I am hopeful that we can find some consensus around a lot of things. So I think that that process should move forward.

We have been trying to talk a good deal about the pledge program, about the initiative that is under way through the CBBB, be-

cause we think a lot of the issues that are currently being discussed on the task force are actually being implemented through that program. And we think that there is a nice dovetailing of effort there.

Mr. UPTON. Great. And, Mr. McSlarrow and Mr. Thierer, as I have watched my two kids grow up, and now they are both teens, and we have cable, as you know, we watch a lot of different programming. From when my son used to beat me up, beat me up in terms of getting up earlier than I on Saturday mornings to race down to turn on the TV, and now it is all I can do with school out to get him up before noon now that he is 15, but, as we watch and think about how a la carte—we think about so many different programs that are truly geared for kids that they enjoy and they learn from, Nickelodeon, Discovery Kids, Disney Channel is terrific, Planet Earth is a great one, particularly when you have HD, can those types of programs, those types of channels survive in an a la carte world? What is your thoughts?

Mr. MCSLARROW. Many of them could not.

Mr. UPTON. They never would have started.

Mr. MCSLARROW. In most cases, no. A la carte really has the honor of being one of the truly awful policy ideas floating around Washington. Every study that has been done on it has shown it will be more expensive for consumers, and they will have less choice. You just put your finger on an obvious downside, which is the very family programming you want will be at risk. And then there is another one, which is if you were in an a la carte world, and each network had to punch through in the marketing haze in order to survive, they are more likely to produce edgier content, so you would go exactly the opposite direction that people say they want.

Mr. UPTON. Mr. Thierer?

Mr. THIERER. Yes. I sincerely hope those educational enriching options for children don't disappear. And in my book on Parental Controls & Online Child Protection, on page 38 I list two dozen educational and enriching options for children, only two or three of which existed when I was a child. And I hope they wouldn't disappear, but I think they probably would under a la carte regulation.

But beyond that, I just want to say that the great things about these educational options is not only that they are there today, but that they are always there for me, because, through either the cable provider in my area or the telco provider, Verizon, I can record all of these on the integrated PVRs and the boxes in my home, tailor them to when I want my kids to watch them. And my two kids, who are under the age of 6, they don't see any advertising because either I record certain programs that don't have any, like on the Noggin Network, which is my personal family favorite, or I actually sit there—and I hate to say this with my media friends on the panel—I zap through those commercials. And that is the reality. That is tailoring, that is empowering parents to provide those sorts of choices to their family.

So I hope these media programs can get funded as I fast-forward through the ads. That is another problem to discuss, but the reality

is that is the way we have empowered parents in our new media environment.

Mr. UPTON. Dr. Shifrin, last word here with my time.

Dr. SHIFRIN. Speaking from a truly pediatric standpoint, it is doubtful that any child in America doesn't see advertising. When we have parents that say—and I see these parents every day—I don't have TV in my house, the children are going elsewhere, they are going to malls, they are going to sporting arenas. So they are seeing advertising, no question.

Mr. UPTON. I think my time has expired.

Mr. MARKEY. The gentleman's time has expired.

The Chair recognizes the gentlelady from California Ms. Solis.

Ms. SOLIS. Thank you. And I want to thank the witnesses for some very courageous statements, I guess, that are being made here about what we need to do here for our children to prevent further chronic diseases.

I am concerned about tobacco use, and I want to direct my question to Mrs. Healton regarding any movement that you see occurring on the rise amongst young teen Latinas, and if there is any kind of advertising that is being projected to them to somehow attract them or to become smokers, because I have seen some evidence that the number has gone up. But maybe you could enlighten me a little better.

Ms. HEALTON. Essentially in the most recent year for which we have data, 12th-grade smoking has continued to decline, and both 8th- and 10th-grade smoking has stalled. So that is a bad sign. And it is something to be very concerned about, because it is the first stall since 1997.

Really tobacco advertising in general targets every possible subgroup imaginable. It may use different methodologies depending upon the population prevalence of the ethnic group or gender group in the region. But clearly, I will take an example, this most recent brand, Camel No. 9, that was referred to earlier today, this brand with its menthol teal and its shocking pink wrapper, is clearly a brand meant to appeal to young teens and meant to draw in new smokers.

The growth in smoking among Latinos, Latinos have relatively lower rates, Latino girls have relatively lower rates of smoking. But the picture in South America is extraordinary. In Santiago, Chile, for example, over 65 percent of girls smoke. So because the rates are low, one way of looking at it is they are more aggressively a target of tobacco industry marketing, because there is a growth curve there. And you could argue there is some theoretical cap above which the smoking rate can't go, so the low rate is a marketing opportunity.

Ms. SOLIS. And for Dr. Shifrin, I wanted to ask you quickly, in your research have you taken a look at advertising with respect to Spanish-language television and how that affects this whole issue of obesity and targeting some vulnerable populations?

Dr. SHIFRIN. Well, quickly, the American Academy of Pediatrics puts out a number of Spanish-language products and publications. Certainly Healthy Kids in Espanol is one. We don't have any research at this point about that. But it is an ongoing area that we are interested in.

Ms. SOLIS. Is that something we might want to entertain?

Dr. SHIFRIN. Oh, absolutely.

Ms. SOLIS. Testing that?

Dr. SHIFRIN. Absolutely. Because there is a big difference in how it is viewed.

Ms. SOLIS. Absolutely.

Ms. Sophos.

Ms. SOPHOS. Yes. I just wanted to add that one of the things that GMA has done is to fund a person at the Children's Advertising Review Unit specifically to address the Hispanic market. Advertising monitoring is something we did on a voluntary basis. And also when the USDA came out with its newest dietary guidelines, GMA partnered with the Weekly Reader to distribute the MyPyramid educational curriculum into the schools in both English and Spanish as a way to try and reach specific audiences that may be at higher risk.

Ms. SOLIS. Good.

I wanted to just mention to Mr. Thierer that one of the issues that we face in the Hispanic community, and sometimes just low-income community, is access to the Internet. And so a lot of the tools that you talked about, and the vehicles, there is no way of people knowing in some sections of my district where they just don't have the availability and economically it is not feasible. How would you recommend we get the message out to those communities and in multicultural communities?

Mr. THIERER. You look at what some of the industries are doing, for example video games, distributing brochures and pamphlets and other materials in Spanish, and making sure that it is not just on the Internet, but also in stores and elsewhere where families might want to take a look at these things.

Clearly more education and awareness efforts are necessary. If I could recommend one thing the Government should do more of in this area, it would be building awareness about all these wonderful tools. When we wanted to build awareness about the dangers of forest fires, we had Smokey Bear. When it is littering, it is Hoot the Owl. Where is that equivalent effort when it comes to building awareness and doing it for many different ethnic groups, many different languages and so on? That is an important part.

Ms. SOLIS. It is amazing Thomas the Train seems to be able to captivate all kids from all backgrounds. So I know it can be done.

I am sorry, Ms. Miller, you wanted to comment?

Ms. MILLER. I just wanted to add one of the big concerns we have is that many of the tools we are talking about here are just out of the economic reach of a lot of families in this country, such as, you know, DVRs, for example. And so that is why I think it is so important that we give parents accurate content-based descriptors so they can make informed choices, that there is public education, and the ratings are accurate.

Ms. SOLIS. Thank you.

Mr. MARKEY. The gentlelady's time has expired.

The Chair recognizes the gentleman from Washington State Mr. Inslee.

Mr. INSLEE. Thank you. Obviously something is going on. I am told compared to 20 years ago children drink two times more soda

than milk, and 20 years ago they drank two times more milk than soda. Advertising works. Our kids are being deluged by an avalanche of corn fructose syrup that is the basis for all of these processed foods. And I guess I heard some discussion about how to limit the number of messages of these high-caloric-density, high-corn-fructose foods that that are bombarding our kids. And I appreciated Mr. Rand's suggestion to have some PSAs like the one he showed us, but these kids are seeing 7,600 of these ads a year. And I am just concerned that these PSAs are going to be like having an umbrella during the London blitz given the number of the ads that these kids are being hit with.

So I guess maybe I can ask Ms. Miller and Ms. Sophos to elaborate on what restrictions there may be on these high-density foods. Now, here is just an idea. Maybe there ought to be some limitation per manufacturer of how many high-density-calorie-per-gram ads you can bombard these kids with, particularly for ads that are targeted for the kids under 8. I am interested in Ms. Miller's idea that advertising to kids under 8 might be an unlawful trade practice in itself, because these kids have no rational freedom of thought, if you will. So I just wonder if you could each give us maybe, Ms. Miller and Ms. Sophos, what could we do to limit the number of these hits on these kids for this high-density food?

Ms. MILLER. It is unfair to advertise to kids under the age of 8. They have no cognitive ability to discern that someone is trying to sell them something. I think what we want to see is a shifting the balance to more healthy foods being advertised to kids. I would suggest that we start shifting the balance within a 2-year time period, a 25 percent reduction in the next year of foods that are higher in fats, salts, added sugars, and lower in nutrient content, with a goal of at least getting to balance in the next 2 years.

To your point about public service announcements, according to the Kaiser study, children ages 2 to 7 see one PSA on fitness or nutrition every 2 to 3 days. So there is not an equal playing field here. And so I think we just have to start really shifting the balance of those unhealthy food ads. And I would say we have to get to a level playing field, so when kids are actually seeing these ads, they are seeing an equal number, at least, of healthy food choices. And as we have seen right now, the fact that no fruits and vegetables are being advertised is pretty frightening.

So actually I would say there has to be a point, a percentage reduction within a certain time period to say that we are actually moving the needle on this issue.

Mr. INSLEE. Ms. Sophos.

Ms. SOPHOS. Well, first I want to say that all of our members take very seriously their responsibility to advertise in a way that is sensitive to children no matter what the age. And there is the FTC and CARU also to help make sure this advertising is ethical and responsible.

But to your point about reducing or shifting the balance, I think that is exactly the commitment that the companies who have been part of the Children's Food and Beverage Initiative have made and that their efforts are going to be unfolding over the next several weeks and months and years. And I think we should take a look. I think through part of that program is an element where the

CBBB is required to monitor compliance and issue a report on impact. So I think we are going to have available the data to show what progress we were able to make. But I think the goal is, in fact, fairly widely accepted that we need to shift the balance.

Mr. INSLEE. Could we get to numerical targets that would be legally enforceable? The reason I say this is you represent a great industry with great people that care for the kids. No one wants to hurt our kids. But cumulatively, the impact of this is what we are concerned about. So the question is could we get to numerical requirements?

Ms. SOPHOS. I think one of the things we have seen is that all the experts, IOM and others, say, look, we need to do this through a voluntary basis, because, in fact, that is probably the quickest way to get there. The commitment and the initiative is that a minimum of 50 percent of the ads that are directed to children by these companies representing two-thirds of all advertising will be for healthier foods and delivering healthy messages. So we do have numerical goals in there, and my guess is that when the pledges come up, that those goals will be exceeded in many cases.

Mr. MARKEY. I apologize to you, but there are only 6 minutes left to vote on the House floor, and in order to give Ms. Harman only 4 minutes to ask questions, we have to——

Ms. HARMAN. I thank my colleague, and I thank the chairman, and I think we have to also walk, so let's do this in two. I am late because I had an amendment on the floor with Mr. Upton. But I had to show up first to tell our former colleague Mr. Glickman how fond we are of him, and how fond we were of Jack Valenti, and how important the MPAA remains in this issue of trying to figure out what violent content there is in movies and what responsible people should do about it.

Having said that, I just want to make a couple of points. First, at least to me, government censorship is a blunt and dangerous instrument. I believe that regulating violent content on the airwaves is a slippery slope and that censorship has no place in a society that values the free exchange of ideas, speech, and expression.

Having said that, I believe in good parenting. Now, how many of you are parents? How many in the audience are parents? Right. And some of us up here are grandparents. Right. So, I think all of you should do a better job than I did as a parent in using the tools that are out there wisely to be sure that your kids don't eat the wrong stuff and don't watch the wrong stuff. And I think that parents who take that responsibility must take that responsibility and can do it well.

And finally, on this issue of an a la carte option, I did want to weigh in here, it may be an easy tool for techno-lazy parents like I was, but the problem with it is that it also may take away the diversity in programming that people like me, and I think most people, have come to value.

So let us pick the right tools. Let us exercise our responsibilities as parents. And again, my apologies for missing what I am sure was excellent testimony.

I thank the chairman for yielding. Two minutes and two seconds to go make it.

Mr. MARKEY. I thank the gentlelady.

Mr. Glickman, you had a few words you wanted to add. I saw your hand was up.

Mr. GLICKMAN. I was going to say to Mr. Inslee, under the Clinton administration and it has been continued under the Bush administration, there has been some funding to try to increase the quality of food in the National School Lunch Program, School Breakfast Program. Those programs need significant additional funds, particularly fresh fruits and vegetables. It would really train kids. And you know, it is an area we haven't discussed today, but it is part of this mix.

Mr. MARKEY. I thank the gentleman. Look, here is the bottom line: the first amendment is precious, but the children of our country are just as precious. And we need a healthier balance in our country. We have to make sure that these children are not bombarded with messages from commercial America that is, in fact, to the detriment of the children of our country. And most of these parents aren't in a position—they are both working; they are out of the house; they need help. Parents are heroes, but they need the help that makes it possible for them to protect their children. And so, again, I just want to make clear that while these kids have all of these unhealthy choices that are being presented to them in the media on an ongoing basis, that if there is not a proper response from industry, that I am prepared to press the Federal Communications Commission to put on the books the rules that will protect the children of our country from these unhealthy messages. The FCC has the authority under the Children's Television Act to do that, and I just hope that the industry responds, that they do, in fact, protect the children of our country. We have to put the tools in the hands of the parents to be able to do it. But that also includes the work of the Federal Communications Commission to fulfill the mandate of the law, that the children's programming of our country is nutritious for children, both intellectually but also their diet as well.

I can't thank the panel enough. This was a great, great day for us. And I apologize to you for the chaos that is going on out on the House floor, drawing away the Members. But with that, this hearing is adjourned.

[Whereupon, at 12:40 p.m., the subcommittee was adjourned.]

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