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HEARING

BEFORE THE

SUBCOMMITTEE ON COURTS, THE INTERNET, AND INTELLECTUAL PROPERTY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

MAY 20, 2004

Serial No. 93

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://www.house.gov/judiciary

U.S. GOVERNMENT PRINTING OFFICE

93–773 PDF WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
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DERIVATIVE RIGHTS, MORAL RIGHTS, AND MOVIE FILTERING TECHNOLOGY

THURSDAY, MAY 20, 2004

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, THE INTERNET,
AND INTELLECTUAL PROPERTY,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:10 a.m., in Room 2141, Rayburn House Office Building, Hon. Lamar S. Smith (Chair of the Subcommittee) presiding.

Mr. SMITH. The Subcommittee on Courts, the Internet, and Intellectual Property will come to order. We have a very interesting hearing today which we all look forward to, and when I say "we," let me explain that the reason for the dearth of Members, at least Members to my right, is that the Republican Conference is listening to President Bush. In fact, I had to leave early in order to not be any more late than I am now to this particular hearing, but I am sure we will be joined by some of our colleagues shortly. I am sure the President will give equal time to my colleagues on my left in the near future, as well, so we will see.

I am going to recognize myself for an opening statement, then the Ranking Minority Member, and then we'll look forward to hearing what our witnesses have to say.

Today, we will hear testimony on an issue that is of vital importance to families across America. How do we help provide a safe and nurturing home environment for our children?

A generation ago, there was not near the amount of sex, violence, and profanity on television and in movies than there is today, but I still remember how my own parents dealt with it. We had a small box, it was actually not a box, it was a round device that had a switch on it that they manually clicked whenever there was something objectionable that I might have heard on the television and this muted out the sound. There are other times when they would get up and turn off the TV for a minute or two. They felt then, as most Americans do today, that it is the right of parents to protect their children from offensive audio or video in their own homes.

Just as the author of a book should not be able to force me to read that book in any particular manner or order, a studio or director should not be able to use the law to force me or my children to watch a movie in a particular way. It is unrealistic and impractical to expect parents to monitor their children's video habits 24 hours a day. They need our help and support.

Some have argued that this hearing should not be held due to ongoing litigation between a number of parties. That is like saying a hearing should not be held on copyright piracy because copyright laws are challenged in the courts all the time, and unsuccessfully, I might add. This hearing instead is about the technology that allows parents to shield their children from violence, sex, and profanity, not a court case, and, of course, it is not about a lawsuit.

We will hear from two witnesses about the scientific research that exists to demonstrate the impact of media violence on children. Such research is a scientific validation of basic common sense. Violence, sex, and profanity repeatedly seen and heard in movies are not good for our children and can, in fact, affect their behavior.

Our third witness is the CEO of ClearPlay. I am not here to endorse ClearPlay, the company, but I will endorse the common sense approach that ClearPlay, the technology, uses to enable parents to protect their children from that violence, sex, and profanity. ClearPlay, the technology, does not create derivative works, does not add new material to a movie, and makes no permanent alterations to a legally purchased or rented DVD. This technology does not violate the copyright and trademark laws of our nation, nor does the technology violate the DMCA. In fact, ClearPlay, the technology, will only work with legal DVDs. It will not work with a copied DVD.

The technology available today is the electronic equivalent of what parents did a generation ago to protect their children by muting the sound or fast-forwarding over objectionable material. The issue isn't whether a movie loses some of its authenticity due to skipping of various audio and video but whether parents have a right to shield their children from offensive content. I believe that the right of parents to protect their children is essential, and if they choose to designate a third party to help them accomplish this, more power to them.

Since there is an outstanding lawsuit involving several of the companies that create such family-friendly technology, I am going to avoid talking about the lawsuit today. Negotiations among some of the parties have been ongoing for 8 months and I hope that the participants will resolve their issues very soon. If not, the Chairman of the full Judiciary Committee and I are prepared to introduce legislation or use other legislative vehicles to protect the right of parents to shield their children from violence, sex, and profanity.

That concludes my opening statement and the gentleman from California, Mr. Berman, the Ranking Member, is recognized for his.

Mr. BERMAN. Thank you very much, Mr. Chairman. This hearing certainly delves into a number of interesting issues about artistic freedom, the definition of copyright infringing derivative works, and the extent to which the unfair competitions of the Lanham Act protect the moral rights of creators.

However, I am not sure any of these issues are ripe for a Congressional hearing. The movie studios, directors, and ClearPlay are actively engaged in licensing negotiations to resolve their dispute. As I understand it, those negotiations had been close to a mutually acceptable conclusion. The public posturing and adversarial nature

inherent in Congressional hearings is bound to set back these negotiations and thus thwart the stated purpose of the hearing.

Furthermore, the problem on which this hearing focuses is hypothetical, at best. A district court case addressing these very issues has not yet proceeded past the most preliminary stages. It seems a waste of time to discuss statutory amendments before any court has interpreted the law in an allegedly undesirable way.

But despite my misgivings, we're here, so I might as well use my time to clearly state my opposition to the hypothetical legislation that may be forthcoming to address the hypothetical problem before us. I don't believe Congress should give companies the right to alter, distort, and mutilate creative works or to sell otherwise infringing products that do functionally the same thing.

I believe such legislation will be an affront to the artistic freedom of creators. It would violate fundamental principles of copyright and trademark law, and if drafted to avoid violating the first amendment, it would almost surely defeat the apparent purposes of its drafters.

Such legislation presents an almost endless variety of complications and conundrums. Would legislation attempt to define the types of offensive content that could be altered or deleted? If such definitions include violence, sexual material, and profanity, the legislation will almost certainly violate the first amendment, and first amendment concerns aside, putting them aside, attempts to define offensive conduct will backfire. Legislation that allows the deletion of violent scenes from "The Last Samurai" would also allow "The Passion of the Christ" to be stripped of its graphic violence. Do those who find the violence in "The Passion" so integral to the story think a sanitized version would do the story justice?

Of course, first amendment concerns could be skirted by granting a content-neutral right to edit content, but that will just create further problems. For every case in which ClearPlay sanitizes the kitty litter humor in "The Cat in the Hat," another company will strip "The Passion" of offensive depictions of Jews. Personally, I might not mind the outcome.

Someone else might prefer if scenes depicting interracial physical content were cut from "Look Who's Coming to Dinner" or "Jungle Fever," but I don't think this is what America is about. Innovation, growth, and progress occur through exposure to an unbridled marketplace of ideas, not by ensuring that everything you see, read, and experience fits within your preconceived world views.

Would legislation distinguish between fictional and non-fictional works? I don't see how. For instance, is "The Passion of the Christ" fictional or historical? What about "The Reagans" mini-series? And who would be the arbiter, the Anti-Defamation League in the case of "The Passion," the Reagan family in the case of "The Reagans"? But if the legislation does not make a fiction/non-fiction distinction, it's an invitation to rewrite history. For instance, World War II documentaries could be stripped of concentration camp footage. "Fahrenheit 911" could be stripped of scenes linking the houses of Bush and Fahd.

And on what principle basis would such legislation apply only to motion pictures? If it is really meant to empower consumers to customize their lawfully purchased copyrighted works, then it would

apply to all copyrighted works. It would legalize the unauthorized software plug-ins that enable you to play the "Tomb Raider" computer game with a topless Laura Croft and to put the faces of teachers and classmates on the heads of target monsters in certain shooter computer games. Would the legislation make it legal for someone with digital editing software to doctor a 30-year-old photograph of a Vietnam War rally so that it appears that John Kerry is standing next to Jane Fonda?

Would the legislation only apply to digital works? If so, what nonsense. It means that someone could sell an e-book reader that prevents reading the murder scene in an e-book version of Dostoevsky's Crime and Punishment but can't sell the hard-copy book with the offending pages ripped out. Why would legislation protect technology that skips the violent scenes in a DVD version of "Platoon" but not protect a service that cuts the same scenes from the VHS version? If both activities are copyright infringement today, why would legislation only immunize the digital infringement?

As a parent, I am concerned about what my children see and hear in our cacophonous media society, but I believe parenting is the parents' job, not the Government's. I wonder why vocal proponents of personal responsibility and limited Government readily abandon those principles when presented with the opportunity to place the Government in loco parentis. If the Government should stay out of our gun closets, shouldn't it stay out of our bedrooms and living rooms?

I yield back, Mr. Chairman, the balance of whatever time I might have.

Mr. SMITH. Thank you, Mr. Berman.

Are there other Members who wish to make opening statements? The gentleman from Florida, Mr. Keller, is recognized.

Mr. KELLER. Thank you, Mr. Chairman. I just want to briefly thank the witnesses for being here today.

I would disagree just a bit with the opening statement by Mr. Berman. I certainly respect what he has to say, but I don't think it's premature to have this hearing. I represent an area that family is everything, Orlando, Florida. We market ourselves to family. We like clean entertainment. We fight gaming operations because we think that would bring an unsavory factor. And at the same time, in the interest of full disclosure, I represent some of the major movie companies who are not so thrilled about potential legislation here.

In the interest of free speech, I'm looking forward to hearing both sides of this. While it may be premature in some people's minds to have legislation on this issue, it's certainly not premature to have a hearing on it so that we can get educated on both sides, and that's what you guys are here to do and tell us your thoughts on these and other issues.

And so I thank you very much for taking time out of your busy lives to be here and I look forward to listening to your testimony with great interest and getting educated on the issue.

Mr. Chairman, I yield back.

Mr. SMITH. Thank you, Mr. Keller.

The gentleman from Michigan, Mr. Conyers, the Ranking Member of the full Committee, is recognized.

Mr. CONYERS. Good morning, Chairman. I am so happy to be here. As you know, I sent a letter to you and the Chairman yesterday. You are aware of that, aren't you?

Mr. SMITH. Yes, Mr. Conyers, I am.

Mr. CONYERS. And it says, in part, I am concerned that this hearing would interfere with ongoing negotiations regarding *Huntsman* v. *Soderbergh* and should be delayed until the resolution of that case.

As you know, the parties to the lawsuit have been negotiating in good faith to resolve copyright issues surrounding the editing of film. Our Committee has a longstanding precedent of not investigating matters pending in the courts, and the hearing entitled "Derivative Rights" et cetera would clearly involve the Committee in litigation. Thank you for your consideration of this request.

Is it too late to ask you to honor the——

Mr. SMITH. Mr. Conyers, will you yield?

Mr. CONYERS. Of course.

Mr. SMITH. It is too late to make the request, but it is not to late for me to respond to your request, if you'd like for me to do so.

Mr. CONYERS. That's why I sent it.

Mr. SMITH. Okay. If the gentleman will yield further, let me mention a couple of things. First of all, the ongoing negotiations, as I mentioned in my opening statement, have, in fact, been ongoing for 8 months, and it's actually my hope that today's hearing will expedite the solution and resolution of the problems and I have good reason to believe that that's the case.

As far as witnesses who are a party to a lawsuit not testifying, if we made that a hard rule, I'd say we would have eliminated half of our witnesses over the last several months, including witnesses from MPAA and the Recording Industry of America, and I haven't heard any objections to those individuals testifying.

Lastly, this hearing, as I also mentioned, is really not about a lawsuit or anything about the negotiations. It's about technology that I think can be used very valuably by parents, and I thank the gentleman for yielding.

Mr. CONYERS. Thank you, sir, for the response.

Mr. BERMAN. Mr. Chairman, may I ask unanimous consent to just have 30 seconds to ask you a question? Ten seconds to ask you a question?

Mr. SMITH. The gentleman is recognized for an additional 30 seconds out of order.

Mr. BERMAN. If the Chairman chooses, because negotiations haven't gone anywhere, because the issue isn't resolved in any other fashion, if he chooses to introduce legislation, will we have an opportunity to have a hearing on that legislation?

Mr. SMITH. If the gentleman will yield, I would expect us to have a hearing on that legislation and have no reason to expect that it wouldn't be the case. Thank you. Good question.

The gentleman from Virginia, does he have an opening statement?

Mr. CONYERS. Just a moment, Mr. Chairman.

Mr. SMITH. I'm sorry. Mr. Conyers?

Mr. CONYERS. Thank you.

Mr. SMITH. I thought you had given back your time. Is it still your time? The gentleman continues to be recognized.

Mr. CONYERS. Thank you so much. You see, there may be only 20 or 30 members of the bar that have engaged in this kind of litigation that could possibly come to the conclusion that a Congressional hearing on legislation would facilitate its quick resolution. What it does is that we are flagrantly entering into one side of this litigation to the complete detriment of the other side.

Now, we have courses in law school that will help anybody that doesn't understand this. As a matter of fact, you don't even have to go to law school to figure this out. Congressional pressure would automatically appear by just holding the hearing. So to think that it would facilitate a legitimate resolution of the problem is very hard for me to understand.

Now, why isn't Jack Valenti here? Well, good question. I'll tell you why he isn't here. He isn't allowed to be here, and that's who should be representing the motion picture studios.

So this is a wonderful way to start a Thursday morning, May 20, in which we just hold a hearing about the end of intellectual property law as we know it, because what we are saying, and nobody knows this better than Mr. Aho, is that we're not only not going to protect intellectual property law, which was the whole idea, we are going to legalize people for profit intersecting into other people's property.

Well, on what grounds? Is there some higher moral ground or is there some laws that we don't understand about? Is there something special about this case that allows it to do what nothing has ever happened before in the history of intellectual property law? What? What gives in Utah and with Mr. Aho and with this company?

By what right are we now going to say, well, look, if you want to edit a little bit on intellectual property, well, we just had a hearing in the House of Representatives in the Judiciary Committee that has jurisdiction. They say it's okay.

I think that somewhere along the line, that there ought to be a balanced hearing—a balanced hearing. What about the producers? What about the directors? What about the people whose property it is? Do they ever get a chance to say anything? What's happening?

Well, I thank the Chairman for allowing me to vent a little bit.

Mr. SMITH. Thank you, Mr. Conyers.

I will recognize myself for 15 seconds. The gentleman from Michigan asked a good question, which is where is the MPAA and what about Jack Valenti? I need to say, and I'm happy to say for the record, that Mr. Valenti called me. In fact, he called me from France day before yesterday and expressed a preference not to be a part of this panel. So that's the quick answer to your question.

Does the gentleman from Virginia, Mr. Forbes, have an opening statement?

Mr. FORBES. Mr. Chairman, thank you. I will be very brief.

Mr. SMITH. The gentleman is recognized.

Mr. FORBES. Thank you. Mr. Chairman, when I walked in here, I thought this was a simple little hearing and I guess I have to rely

now on the statement, thou doest protest too much. You know, when you're talking, I think I look at what Mr. Keller said, that this is a hearing to put facts on the table and ideas on the table, and truly I believe that in the marketplace of ideas, truth will win out, and I, for the life of me, scratch my head and wonder why certain people are so concerned that we get certain facts and ideas out on the table that we can explore.

I don't think there's any legislation that is before us at this time. But if we have learned anything from this Committee, it is that technology moves so quick that we have to constantly be exploring those new ideas and those new concepts so that we can be up with the technology.

I think, Mr. Chairman, what we're really looking at here, when I hear individuals saying we want to keep the Government out of our homes and out of our bedrooms, that's exactly what we want to talk about, whether or not our copyright laws are keeping parents in their homes from determining what their children are going to see and how they are going to see it.

So Mr. Chairman, I commend you for holding this hearing and I hope that what we're going to be doing today is putting facts on the table so that we can see how our parents in their homes can have a better voice and how they determine what their children are going to see. And so I hope that's what we'll explore today.

Mr. SMITH. Thank you, Mr. Forbes.

Are there any other Members who wish to make opening statements? The gentlewoman from California, Ms. Lofgren.

Ms. LOFGREN. Just briefly. I'm looking forward to the testimony. I think there's an obvious reason why, in addition to any other, why this hearing is being held, and that's to assert our jurisdiction. Certainly the Commerce Committee has looked at this, but we are the Intellectual Property Subcommittee and I think it is important that we maintain over jurisdiction over intellectual property.

Clearly, I realize that ClearPlay is not—the issues before—at play here are not about encryption and defeat of technology in the DMCA, but I think some of the issues really are similar, even though that is not the gist of the legal dispute. And so I'm looking forward to hearing from the witnesses and especially the academic witnesses for their guidance, not just on this issue but the broader issue of consumer rights to utilize what it is they have bought. Thank you.

Mr. SMITH. Thank you, Ms. Lofgren.

Let me say that we've been joined by a Member of the Judiciary Committee, Mr. Cannon from Utah. We appreciate his presence. He has a particular interest in this subject at hand and we will look forward to his participation later on.

Let me proceed with introducing our witnesses today. Joanne Cantor is a Professor Emerita, University of Wisconsin at Madison. Jeff McIntyre is the Senior Legislative and Federal Affairs Officer of the American Psychological Association. Bill Aho is Chief Executive Officer, ClearPlay Inc. And Marjorie Heins is a Fellow, Brennan Center for Justice at New York University Law School and Founding Director of the Free Expression Policy Project.

We welcome you all, and Ms. Cantor, we will begin with you.

STATEMENT OF JOANNE CANTOR, PROFESSOR EMERITA, UNIVERSITY OF WISCONSIN-MADISON

Ms. CANTOR. Mr. Chairman and Members of the Subcommittee, thank you for inviting me to present my views on the media's impact on children.

Since 1974, I've been a professor at the University of Wisconsin, focusing the greater part of my research on the impact of media violence on children's aggressive behavior and emotional health. My parenting book, Mommy, I'm Scared and my new children's book, Teddy's TV Troubles present parents—help parents and children cope with the disturbing images that television and movies present on a daily basis. Finally, and not the least important, I am the mother of a teenage son.

I am submitting for the record a paper I wrote on the psychological effects of media violence on children and adolescents, which is also available on my website, tvtroubles.com. Let me summarize the major points here.

We now know a lot about the effects of media violence. Study after study has shown that children often behave more violently after watching media violence. The violence they engage in ranges from trivial aggressive play to injurious behavior with serious medical consequences. Children also show higher levels of hostility after viewing violence, and the effects of this hostility range from being in a nasty mood to an increased tendency to interpret a neutral comment or action as an attack.

In addition, children can be desensitized by media violence, becoming less distressed by real violence and less likely to sympathize with victims. Finally, media violence makes children fearful, and these effects range from a general sense that the world is dangerous to full-blown anxieties, nightmares, sleep disturbances, and other trauma symptoms.

The evidence about these effects of media violence has accumulated over the last few decades. Meta analyses, which statistically combine all the findings in a particular area, demonstrate that there is a consensus on the negative effects of media violence. They also show that the effects are strong, stronger than the well-known relationship between children's exposure to lead and low IQ scores, for example. These effects cannot be ignored as inconclusive or inconsequential. Even more alarming, recent research confirms that these effects are long lasting.

The long-term effects of media on fears and anxieties are also striking. Research shows that intensely violent images often induce anxieties that linger, interfering with both sleeping and waking activity for years. Many young adults report that frightening movie images that they saw as children have remained in their minds in spite of their repeated attempts to get rid of them. They also report feeling intense anxieties in non-threatening situations as a result of having been scared by a movie or television program, even though they now know that there is nothing to fear.

For example, you might find it logical that many people who have seen the movie "Jaws" as children worry about encountering a shark whenever they swim in the ocean, but you would be surprised to learn how many of these people are still uncomfortable

in lakes or pools because of the enduring emotional memory of the terror they experienced while viewing this movie as a child.

Findings are beginning to emerge from research teams mapping the areas of the brain that are influenced by violent images and these studies may help us understand how media violence promotes aggression and why it has such enduring effects on emotional memory. These effects are hard to undo and media literacy often doesn't work when children have been frightened by something in the media.

What can Government do for the problem of media violence? Of course parents are responsible for their children's upbringing. However today's media environment has made parenting an overwhelming challenge. Not only are diverse and potentially unhealthy media available to children both inside and outside the home around the clock, the media actively market extremely violent and sexual products to children whose parents would never dream of bringing them to their children's attention. Several Federal Trade Commission reports have documented this.

Parents need all the help they can get to perform their roles as arbiters of the activities their children engage in, and yet when help is offered, the media typically resists. The television industry agreed to implement the V-chip in TV ratings, but they then designed a device that is difficult to use and a rating system that has been under-publicized and hard to understand. In fact, each mass medium—TV, movies, video games, and music—has its own ratings system and the industries resist pressure to get together on one system that would be easy to learn and readily understood.

Other good solutions are attacked head on. Various municipalities have passed laws restricting the access of children to mature-rated video games without parental permission, but these have been attacked ferociously in the courts and with success. And the makers of ClearPlay, which permits parents to filter out certain contents in movies without altering the movie itself or limiting what others may see, are being sued for copyright infringement.

Small companies and nonprofit groups that are trying to provide helpful tools for parents live under the constant threat of lawsuits from powerful companies. A great deal has changed in the past generation or two. Our children are spending much more time with the media than we did, and what they are exposed to is more violent and more graphic than we ever imagined.

Our children's heavy immersion in today's media culture is a large-scale societal experiment with potentially horrifying results. That is one reason why I am devoting so much of my time to writing books for parents and children and to getting the message out as best I can, and anything that Congress can do to help ease the way for those who are trying to help families raise healthy children, without interfering with the rights of others to see what they want, will provide a great benefit to society.

Thank you very much.

Mr. SMITH. Thank you, Ms. Cantor.

[The prepared statement of Ms. Cantor follows:]

PREPARED STATEMENT OF JOANNE CANTOR

Mr. Chairman and members of the Subcommittee, thank you for inviting me to present my views on the media's impact on children. Since 1974, I have been a professor at the University of Wisconsin, focusing the greater part of my research on the impact of media violence on children's aggressive behaviors and their emotional health. My parenting book, *"Mommy I'm Scared": How TV and Movies Frighten Children and What We Can Do to Protect Them* and my new children's book, *Teddy's TV Troubles,* help parents and children cope with the disturbing images that television and movies confront them with on a daily basis. Finally, and not the least important, I am the mother of a teenage son.

I am submitting for the record a paper I wrote on "The Psychological Effects of Media Violence on Children and Adolescents," which is also available on my web site (www.tvtroubles.com). Let me summarize the major points here: We now know a lot about the effects of media violence. Study after study has found that children often behave more violently after watching media violence. The violence they engage in ranges from trivial aggressive play to injurious behavior with serious medical consequences. Children also show higher levels of hostility after viewing violence, and the effects of this hostility range from being in a nasty mood to an increased tendency to interpret a neutral comment or action as an attack. In addition, children can be desensitized by media violence, becoming less distressed by real violence and less likely to sympathize with victims. Finally, media violence makes children fearful, and these effects range from a general sense that the world is dangerous, to full-blown anxieties, nightmares, sleep disturbances, and other trauma symptoms.

The evidence about these effects of media violence has accumulated over the last few decades. Meta-analyses, which statistically combine all the findings in a particular area, demonstrate that there is a consensus on the negative effects of media violence. They also show that the effects are strong—stronger than the well-known relationship between children's exposure to lead and low I.Q. scores, for example. These effects cannot be ignored as inconclusive or inconsequential.

Even more alarming, recent research confirms that these effects are long lasting. A study from the University of Michigan shows that TV viewing between the ages of 6 and 10 predicts antisocial behavior as a young adult. In this study, both males and females who were heavy TV-violence viewers as children were significantly more likely to engage in serious physical aggression and criminal behavior later in life; in addition, the heavy violence viewers were twice as likely as the others to engage in spousal abuse when they became adults. This analysis controlled for other potential contributors to antisocial behavior, including socioeconomic status and parenting practices.

The long-term effects of media on fears and anxieties are also striking. Research shows that intensely violent images often induce anxieties that linger, interfering with both sleeping and waking activities for years. Many young adults report that frightening movie images that they saw as children have remained on their minds in spite of their repeated attempts to get rid of them. They also report feeling intense anxieties in nonthreatening situations as a result of having been scared by a movie or television program—even though they now know that there is nothing to fear. [For example, you might find it logical that many people who have seen the movie *Jaws* worry about encountering a shark whenever they swim in the ocean. But you would be surprised to learn how many of these people are still uncomfortable swimming in lakes or pools because of the enduring emotional memory of the terror they experienced viewing this movie as a child.] Findings are beginning to emerge from research teams mapping the areas of the brain that are influenced by violent images, and these studies promise to help us understand how media violence promotes aggression and to help explain why it has such enduring effects on emotional memory.

I have limited my comments here to the effects of media violence, but there are other areas of parental concern (including sex and profanity) that television and movies present to children, and I will be happy to comment on these areas as well during the question-and-answer period.

What can government do about the problem of media violence? Isn't this all the parents' responsibility? Of course parents are responsible for their children's upbringing. However, today's media environment has made parenting an overwhelming challenge. Not only are diverse and potentially unhealthy media available to children both inside and outside the home around the clock; the media actively market extremely violent and sexual products to children whose parents would never dream of bringing them to their children's attention. Several Congressional

hearings regarding the Federal Trade Commission's studies have made this woefully apparent.

Parents need all the help they can get to perform their roles as arbiters of the activities their children engage in. And yet, when help is offered, the media typically resist and resist forcefully. The television industry agreed to implement the v-chip and TV ratings, but they then designed a device that is difficult to use and a rating system has been under-publicized and hard to understand. In fact, each mass medium—TV, movies, music, and video games—has its own rating system, and the industries resist pressure to get together on one system that would be easy to learn and readily understood.

Other good solutions are attacked head-on. Various municipalities have passed laws restricting the access of children to mature-rated video games without parental permission, but these have been attacked ferociously in the courts, and with success. And the makers of a tool like ClearPlay, which permits parents to filter out certain contents in movies, without altering the movie itself or infringing the rights of others, are being sued for copyright infringement. Small companies and nonprofit groups that are trying to provide helpful tools for parents live under the constant risk of lawsuits from powerful corporations.

Let's not lose sight of the stakes here. A great deal has changed in the past generation or two. Our children are spending much more time with media than we did, and what they are exposed to is more violent and more graphic than we ever imagined. Our children's heavy immersion in today's media culture is a large-scale societal experiment with potentially horrifying results (and with hardly a child left behind to serve in the control condition). That is one reason why I'm devoting so much of my time to writing books for parents and children and to getting the message out as best I can. And anything that Congress can do to help ease the way for those who are trying to help families raise healthy children, without interfering with the rights of others, will provide great benefit to society.

Thank you very much. I will be happy to answer any questions you may have.

RELATED REFERENCES

Anderson, C. A., & Bushman, B. J. (2001). Effects of violent video games on aggressive behavior, aggressive cognition, aggressive affect, physiological arousal, and prosocial behavior: A meta-analytic review of the scientific literature. *Psychological Science, 12,*353–359.

Black, S. L., & Bevan, S. (1992). At the movies with Buss and Durkee: A natural experiment on film violence. *Aggressive Behavior, 18,* 37–45.

Bushman, B. J., & Anderson, C. A. (2001). Media violence and the American public: Scientific facts versus media misinformation. *American Psychologist, 56,* 477–489.

Cantor, J. (2003, May). I'll never have a clown in my house": Frightening movies and enduring emotional memory. Paper accepted for presentation at the Annual Conference of the International Communication Association. San Diego.

Cantor, J. (1998). *"Mommy, I'm scared": How TV and movies frighten children and what we can do to protect them.* San Diego, CA: Harcourt.

Cantor, J. (2002). Fright reactions to mass media. In J. Bryant & D. Zillmann (Eds.), *Media effects: Advances in theory and research* (2d ed., pp. 287–306). Mahwah, NJ: Erlbaum.

Cantor, J. (2002). Whose freedom of speech is it anyway? Remarks at Madison (WI) Civics Club, October 12, 2002. *http://joannecantor.com/Whosefreedom.html*

Cantor, J. (2004). *Teddy's TV Troubles.* Madison, WI: Goblin Fern Press.

Center for Successful Parenting (2003). Can violent media affect reasoning and logical thinking? *http://www.sosparents.org/Brain%20Study.htm*

Harrison, K., & Cantor, J. (1999). Tales from the screen: Enduring fright reactions to scary media. *Media Psychology, 1* (2), 97–116.

Huesmann, L. R., Moise-Titus, J., Podolski, C., & Eron, L. (2003). Longitudinal relations between children?s exposure to TV violence and their aggressive and violent behavior in young adulthood: 1977–1992. *Developmental Psychology, 39,* 201–221.

Johnson, J. G., Cohen, P., Smailes, E. M., Kasen, S., & Brook, J. S. (2002). Television viewing and aggressive behavior during adolescence and adulthood. *Science, 295,* 2468–2471.

Kirsh, S. J. (1998). Seeing the world through Mortal Kombat-colored glasses: Violent video games and the development of a short-term hostile attribution bias. *Childhood, 5* (2), 177–184.

Lemish, D. (1997). The school as a wrestling arena: The modeling of a television series. *Communication, 22* (4), 395–418.

[Matthews, V. P.] (2002). Violent video games trigger unusual brain activity in aggressive adolescents. *http://jol.rsna.org/pr/target.cfm?ID=94*

Murray, J. P. (2001). TV violence and brainmapping in children. *Psychiatric Times, XVIII (10).*

Owens, J., Maxim, R., McGuinn, M., Nobile, C., Msall, M., & Alario, A. (1999). Television-viewing habits and sleep disturbance in school children. *Pediatrics, 104* (3), 552, e 27.

Paik, H., & Comstock, G. (1994). The effects of television violence on antisocial behavior: a meta-analysis. *Communication Research, 21,* 516–546.

Simons, D., & Silveira, W. R. (1994). Post-traumatic stress disorder in children after television programmes. *British Medical Journal, 308,* 389–390.

Singer, M. I., Slovak, K., Frierson, T., & York, P. (1998). Viewing preferences, symptoms of psychological trauma, and violent behaviors among children who watch television. *Journal of the American Academy of Child and Adolescent Psychiatry, 37* (10), 1041–1048.

Twenge, J. M. (2000). The age of anxiety? Birth cohort change in anxiety and neuroticism, 1952–1993. *Journal of Personality and Social Psychology, 79,* 1007–1021.

Zillmann, D., & Weaver, J. B. III (1999). Effects of prolonged exposure to gratuitous media violence on provoked and unprovoked hostile behavior. *Journal of Applied Social Psychology, 29,* 145–165.

ATTACHMENT

THE PSYCHOLOGICAL EFFECTS OF MEDIA VIOLENCE ON CHILDREN AND ADOLESCENTS

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[Submitted as part of written testimony before the House Judiciary Committee Subcommittee on Courts, the Internet, and Intellectual Property on May 20, 2004 at 10:00 a.m., Room 2141 Rayburn Office Building]

Originally Presented at the

Colloquium on Television and Violence in Society
Centre d'études sur le media
HEC Montréal
Montréal, Canada

April 19, 2002

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Research on media violence is often misunderstood by the general public. One reason has to do with research methodology. We can't randomly assign children early in their lives to watch different doses of violence on television and then 15 years later see which children committed violent crimes. But the same type of limitation also exists for medical research: We can't randomly assign groups of people to smoke differing amounts of cigarettes for 15 years, and then count the number of people who developed cancer.

Tobacco researchers conduct correlational studies in which they look at the amount people have smoked during their lives and then chart the rate at which they have succumbed to cancer. They control statistically for other factors, of course—other healthy and unhealthy behaviors that either reduce or promote the tendency to develop cancer. Then they can find out whether smoking contributed to cancer, over and above these other influences. And since they can't do cancer experiments on people, they use animal studies. These are artificial, but they tell us something about the short-term effects of tobacco that can't be found from correlational studies. Putting the two types of research together, we now have powerful data about the effects of smoking on the development of cancer.

Similarly, media violence researchers do longitudinal studies of children's media exposure and look at the types of behaviors they engage in over time. They also control for other factors, such as previous aggressiveness, family problems, and the like.[1] They don't look at media violence in a vacuum; they examine whether there is a correlation between television viewing and violent behavior, even controlling for other influences. They also do experiments. Like the animal experiments for cancer, these are not natural situations, but such experiments fill the gaps they cannot fill otherwise. Experiments are designed to show short-term effects, like increases in hostility or more accepting attitudes toward violence—changes that we know increase the likelihood of violent actions, both in the short term and in the long run.

A second reason for the misunderstanding of the media-violence work is that most public discussions of the problem focus on criminal violence and ignore the other unhealthy outcomes that affect many more children. In an attempt to clarify the issues, I will first discuss the research consensus about some of the major consequences of exposure to media violence, illustrating the general trends in the data with specific studies that make the outcomes more comprehensible. I will then discuss some of the implications of these findings for parents and educators, and for society at large.

Effects of Media Violence on Aggression, Desensitization, and Interpersonal Hostility

Most of the research and public attention has focused on the important question of whether viewing violence in the media makes children and adolescents more violent. The question is not, of course, whether media violence *causes* violence, but whether viewing violence contributes to the likelihood that someone will commit violence or increases the severity of violence when it's committed. The most direct and obvious way in which viewing violence contributes to violent behavior is through imitation or social learning. There is a wealth of psychological research demonstrating that learning often occurs through imitation, and, of course, most parents know that children imitate televised words and actions from an early age. Media apologists, who cannot deny that imitation sometimes happens, try to argue that the effects are trivial because children know better than to imitate anything that's really harmful. We are all familiar with incidents in which criminal and lethal violence has had an uncanny resemblance to a scene in a movie. However, any crime is the result of many influences acting together, and skeptics and even researchers will point out that isolated anecdotes cannot be generalized to society at large. Because most children are so fully immersed in our media culture, it is usually difficult to link a specific media program to a specific harmful outcome, even though some similarities between media scenarios and subsequent acts seem too close to be considered coincidences.[2]

Once in a while researchers get the chance to conduct a "natural experiment" that makes a vivid and compelling point in a systematic and rigorous fashion. This happened in the mid 1990's in Israel, shortly after *World Wrestling Federation* was introduced to Israeli TV. Noting news reports that this program had resulted in a crisis of playground injuries in schools, Dafna Lemish of Tel Aviv University conducted a nationwide survey of elementary school principals, with follow-up questionnaires of teachers and students in selected schools.[3] What Lemish found was that more than half of the principals responding to her survey reported that WWF-type fighting had created problems in their schools. The principals had no trouble distinguishing the imitative behavior they were suddenly seeing from the martial-arts type behaviors that had occurred prior to the arrival of *WWF*. The new behaviors occurred during re-creations of specific wrestling matches that had aired, and in-

[1] Johnson, J. G., Cohen, P., Smailes, E. M., Kasen, S., & Brook, J. S. (2002). Television viewing and aggressive behavior during adolescence and adulthood. *Science, 295,* 2468–2471.

[2] A web site titled, "Brutality Isn't Child's Play" chronicles some of these incidents. Retrieved from *http://www.bicp.org/wwfdeaths.html* on March 20, 2002.

[3] Lemish, D. (1997). The school as a wrestling arena: The modeling of a television series. *Communication, 22* (4), 395–418.

cluded banging heads, throwing opponents to the floor and jumping onto them from furniture, poking their eyes with fingers, pulling their hair, and grabbing their genital areas. Almost half of the responding principals reported that these new behaviors had necessitated first aid within the school, and almost one fourth reported injuries (including broken bones, loss of consciousness, and concussions) that required emergency room visits or professional medical care. Although most of the children involved were old enough to know that the wrestling they were watching was fake, this knowledge did not stop many of them from trying out the moves themselves. The mayhem continued throughout Israel until programmers agreed to reduce the frequency with which *WWF* appeared, and until schools initiated media literacy programs designed to counteract the program's effects. During the past few years, there have been news reports of groups of children imitating *WWF* matches in the United States,[4] and of physicians dealing with the consequences of such imitation on a regular basis.[5]

Simply copying what is seen in the media is only one means by which viewing violence contributes to unhealthy outcomes among youth. Another commonly discussed psychological process is desensitization. Desensitization occurs when an emotional response is repeatedly evoked in situations in which the action tendency that is associated with the emotion proves irrelevant or unnecessary. For example, most people become emotionally aroused when they see a snake slithering toward them. The physiological response they are experiencing is part of what is called the "flight or fight" reaction—n innate tendency that prepares an organism to do what it needs to do when it's threatened. But the individual who spends a good deal of time around harmless, nonpoisonous snakes, knows there is no need to retreat or attack the animal, and over time, the body "learns" not to experience increased heart rated, blood pressure, or other physiological concomitants of fear at the sight of snakes. In a somewhat analogous fashion, exposure to media violence, particularly that which entails bitter hostilities or the graphic display of injuries, initially induces an intense emotional reaction in viewers. Over time and with repeated exposure in the context of entertainment and relaxation, however, many viewers exhibit decreasing emotional responses to the depiction of violence and injury. Studies have documented that desensitization results in reduced arousal and emotional disturbance while witnessing violence.[6] More disturbingly, studies have reported that desensitization leads children to wait longer to call an adult to intervene in a witnessed physical altercation between peers,[7] and results in a reduction in sympathy for the victims of domestic abuse.[8] Few people would argue that these are healthy outcomes. Today's youth have greater opportunities for desensitization to media violence than ever before. We now have so many television channels, so many movies on video, and so many video-, computer-, and Internet-based games available, that media-violence aficionados have a virtually limitless supply and can play intensely gruesome images over and over, often in the privacy of their own bedrooms.

A third common outcome of viewing violence is an increase in hostile feelings. Some people argue that the well-substantiated correlation between chronic hostility and violence viewing simply shows that people who are already hostile are more likely to choose violence as entertainment. Well, it's true that violent, hostile people are more attracted to media violence,[9] but research shows that the relationship goes both ways. A 1992 field investigation[10] is a good illustration of this process. Researchers in Quebec went to a theater and asked moviegoers to fill out the Buss-Durkee hostility inventory either before or after they viewed a film that they themselves had selected. The findings showed that both the male and female viewers who had chosen the Chuck Norris action movie, *Missing in Action,* were initially more

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[4] ABCNEWS.com (2001). Backyard wrestling: Don't try these moves at home. Retrieved from *http://abcnews.go.com/sections/GMA/GoodMorningAmerica/GMA010828Backyard—wrestling.html* on March 20, 2002.

[5] Dube, J. (2000). Wrestling with death: Moves may be faked, but danger isn't. Retrieved from *http://abcnews.go.com/sections/living/DailyNews/wrestlingdanger991007.html* on March 20, 2002.

[6] Cline, V.B., Croft, R.G., & Courrier, S. (1973). Desensitization of children to television violence. *Journal of Personality and Social Psychology, 27,* 360–365.

[7] Molitor, F., & Hirsch, K. W. (1994). Children's toleration of real-life aggression after exposure to media violence: A replication of the Drabman and Thomas studies. *Child Study Journal, 24,* 191–207.

[8] Mullin, C.R., & Linz, D. (1995). Desensitization and resensitization to violence against women: Effects of exposure to sexually violent films on judgments of domestic violence victims. *Journal of Personality and Social Psychology, 69,* 449–459.

[9] Goldstein, J., Ed. (1998). *Why we watch: The attractions of violent entertainment.* New York: Oxford University Press.

[10] Black, S.L., & Bevan, S. (1992). At the movies with Buss and Durkee: A natural experiment on film violence. *Aggressive Behavior, 18,* 37–45.

hostile than the viewers who had selected the nonviolent drama, *A Passage to India,* demonstrating that people who were more hostile to begin with were more likely to be attracted to a violent than a nonviolent film. Furthermore, viewers' levels of hostility were even higher after viewing the violent movie, but were at the same low level after viewing the nonviolent movie. This study once again disproves the sometimes-popular notion of "catharsis," that violence viewing helps purge people of their hostile inclinations. To the contrary.

What are the consequences of this increased hostility after viewing violence? Often, it interferes with the ability to interact in interpersonal settings. One aspect of this effect has been termed an increased *hostile attribution bias.* A 1998 study illustrated this outcome in an experiment in which 9- to 11-year-old girls and boys were asked to play one of two video games.[11] One was a nonviolent sports game called *NBA JAM:TE;* the was other a somewhat sanitized version of *MORTAL KOMBAT II,* a highly violent martial arts games. After playing the game, the children were read five stories involving provoking incidents in which the intention of the provoker was ambiguous. For example, in one story, a child gets hit in the back with a ball, but it is unclear whether the person who threw the ball, always a same-sex peer of the research participant, has done this on purpose or by accident. In answering questions after hearing the stories, the children who had just played the violent video game were more likely than those who had played the nonviolent game to attribute bad motives and negative feelings to the perpetrator, and to anticipate that they themselves would retaliate if they were in that situation. Participating in violence in fantasy apparently cast a negative cloud over the children's views of interpersonal interactions

And this increase in hostility is not necessarily short-lived. A 1999 experiment looked at the interpersonal consequences of repeated exposure to gratuitous violence in movies.[12] Researchers randomly assigned both male and female college students to view either intensely violent or nonviolent feature films for four days in a row. On the fifth day, in a purportedly unrelated study, the participants were put in a position to help or hinder another person's chances of future employment. The surprising results indicated that both the men and the women who had received the recent daily dose of movie violence were more willing to undermine that person's job prospects, whether she had treated them well or had behaved in an insulting fashion. The repeated violence viewing apparently provided what the researchers termed *an enduring hostile mental framework* that damaged interactions that were affectively neutral as well as those that involved provocation.

These are just a few studies that illustrate some of the unhealthy effects of media violence. But how representative are these studies? Although media spokespersons argue that the findings are inconsistent, meta-analyses, which statistically combine the findings of all the studies on a particular topic, show otherwise. The most widely quoted of these meta-analyses was conducted by Paik and Comstock in 1994.[13] This meta-analysis combined the results of 217 empirical studies appearing between 1957 and 1990, and included both published and unpublished studies that reported on the relationship between viewing violence and a variety of types of antisocial behavior. Using the correlation coefficient *(r)* as a measure of association, Paik and Comstock reported an overall *r* of .31. Although the size of the correlations varied depending on the age of the participant and the genre of programming, a significant association was observed for viewers of all ages and for all genres of programming.

A meta-analysis conducted in 2001[14] confirmed and updated Paik and Comstock's conclusions. Bushman and Anderson's analysis included studies that appeared between 1956 and 2000. The sample of studies was smaller because it included only published studies and only studies involving aggressive behavior (eliminating measures of self-report of aggressive intent and nonviolent antisocial effects). The meta-analysis, which included 202 independent samples, found an overall correlation of .20 between exposure to media violence and aggressive behavior. Anderson and

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[11] Kirsh, S. J. (1998). Seeing the world through Mortal Kombat-colored glasses: violent video games and the development of a short-term hostile attribution bias. *Childhood, 5* (2), 177–184.

[12] Zillmann, D., & Weaver, J. B. III (1999). Effects of prolonged exposure to gratuitous media violence on provoked and unprovoked hostile behavior. *Journal of Applied Social Psychology, 29,* 145–165.

[13] Paik, H., & Comstock, G. (1994). The effects of television violence on antisocial behavior: a meta-analysis. *Communication Research, 21,* 516–546.

[14] Bushman, B. J., & Anderson, C. A. (2001). Media violence and the American public: Scientific facts versus media misinformation. *American Psychologist, 56,* 477–489.

Bushman also published a meta-analysis of the effects of violent video games on aggression and found a similar effect size (r = .19, based on 33 independent tests).[15]

Confronted with the meta-analytic results that the findings on the relationship between media violence on aggressive and hostile behaviors consistently show an effect, media apologists often claim that the effects are very small. However, Bushman and Anderson[16] have compared the results of media violence meta-analyses to those of well-documented relationships in nine other areas. Their data showed that Paik and Comstock's media-violence effect was second in size only to the association between smoking and lung cancer. Even using the smaller effect sizes associated with Bushman and Anderson's own meta-analyses, the media violence effect sizes are still among the largest—larger, for example, than the relationship between exposure to lead and low IQ in children, and almost twice as large as the relationship between calcium intake and bone density.

Effects of Media Violence on Fears, Anxieties and Sleep Disturbances

Although most of researchers' attention has focused on how media violence affects the interpersonal behaviors of children and adolescents, there is growing evidence that violence viewing also induces intense fears and anxieties in young viewers. For example, a 1998 survey of more than 2,000 third through eighth graders in Ohio revealed that as the number of hours of television viewing per day increased, so did the prevalence of symptoms of psychological trauma, such as anxiety, depression, and posttraumatic stress.[17] Similarly, a 1999 survey of the parents of almost 500 children in kindergarten through fourth grade in Rhode Island revealed that the amount of children's television viewing (especially television viewing at bedtime) and having a television in one's own bedroom, were significantly related to the frequency of sleep disturbances.[18] Indeed, 9% of the parents surveyed reported that their child experienced TV-induced nightmares *at least once a week.* Finally a random national survey conducted in 1999 reported that 62% of parents with children between the ages of two and seventeen said that their child had been frightened by something they saw in a TV program or movie.[19]

Two independently conducted studies of adults' retrospective reports of having been frightened by a television show or movie demonstrate that the presence of vivid, detailed memories of enduring media-induced fear is nearly universal.[20, 21] Of the students reporting fright reactions in the study we conducted at the Universities of Wisconsin and Michigan, 52% reported disturbances in eating or sleeping, 22% reported mental preoccupation with the disturbing material, and 35% reported subsequently avoiding or dreading the situation depicted in the program or movie. Moreover, more than one-fourth of the respondents said that the impact of the program or movie (viewed an average of six years earlier) was still with them at the time of reporting.

Studies like these and many anecdotal reports reveal that it is not at all unusual to give up swimming in the ocean after seeing *Jaws*—in fact, a surprising number of people report giving up swimming altogether after seeing that movie. Many other people trace their long-term fears of specific animals, such as dogs, cats, or insects, to childhood exposure to cartoon features like *Alice in Wonderland* or *Beauty and the Beast* or to horror movies.[22] Furthermore, the effects of these depictions aren't only "in the head," so to speak. As disturbing as unnecessary anxieties are by themselves, they can readily lead to physical ailments and interfere with school work and other normal activities (especially when they disrupt sleep for long periods of time).

For the most part, what frightens children in the media involves violence or the perceived threat of violence or harm. It is important to note, however, that parents

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[15] Anderson, C. A., & Bushman, B. J. (2001). Effects of violent video games on aggressive behavior, aggressive cognition, aggressive affect, physiological arousal, and prosocial behavior: A meta-analytic review of the scientific literature. *Psychological Science, 12,* 353–359.

[16] Bushman, B. J., & Anderson, C. A. (2001). Media violence and the American public: Scientific facts versus media misinformation. *American Psychologist, 56,* 477–489.

[17] Singer, M. I., Slovak, K., Frierson, T., & York, P. (1998). Viewing preferences, symptoms of psychological trauma, and violent behaviors among children who watch television. *Journal of the American Academy of Child and Adolescent Psychiatry, 37,* 1041–1048.

[18] Owens, J., Maxim, R., McGuinn, M., Nobile, C., Msall, M., & Alario, A. (1999). Television-viewing habits and sleep disturbance in school children. *Pediatrics, 104* (3), 552.

[19] Gentile, D. A., & Walsh, D. A. (1999). *MediaQuotient*™: National survey of family media habits, knowledge, and attitudes. Minneapolis, MN: National Institute on Media and the Family.

[20] Harrison, K., & Cantor, J. (1999). Tales from the screen: Enduring fright reactions to scary media. *Media Psychology, 1,* 97–116.

[21] Hoekstra, S. J., Harris, R. J., & Helmick, A. L. (1999). Autobiographical memories about the experience of seeing frightening movies in childhood. *Media Psychology, 1,* 117–140.

[22] Cantor, J. (1998). *"Mommy, I'm scared": How TV and movies frighten children and what we can do to protect them.* San Diego, CA: Harvest/Harcourt.

often find it hard to predict children's fright reactions to television and films because a child's level of cognitive development influences how he or she perceives and responds to media stimuli. My associates and I have conducted a program of research to explore developmental differences in media-induced fright reactions based on theories and findings in cognitive development.[23, 24] This research shows that as children mature cognitively, some media images and events become less likely to disturb them, whereas other things become potentially more upsetting.

As a first generalization, the importance of appearance decreases as a child's age increases. Both experimental[25] and our survey[26] research supports the generalization that preschool children (approximately 3 to 5 years old) are more likely to be frightened by something that looks scary but is actually harmless (like E.T., the kindly but weird-looking extra-terrestrial) than by something that looks attractive but is actually harmful; for older elementary school children (approximately 9 to 11 years), appearance carries much less weight, relative to the behavior or destructive potential of a character, animal, or object. A second generalization is that as children mature, they become more disturbed by realistic, and less responsive to fantastic dangers depicted in the media. This change results from developmental trends in children's understanding of the fantasy-reality distinction.[27, 28] Because of this, older elementary school children begin to be especially susceptible to fear produced by the news and other realistic presentations. A third generalization is that as children get older, they become frightened by media depictions involving increasingly abstract concepts, such as world problems and invisible environmental threats.[29, 30] The media's constant showing of the events of September 11th and their aftermath had something to frighten viewers of all ages, but different-aged children most likely responded to different features of the presentations. Prior research suggests that preschoolers most likely responded to images of bloodied victims and expressions of emotional distress; older elementary school children most likely responded to the idea of their own and their family's vulnerability to attack; teenagers, like adults, were able to grasp the enormity of the events and the long-term implications they presented for civilized society.[31]

What Can Be Done and Why It's So Difficult

The research I've described above provides overwhelming evidence that growing up with unrestricted access to media violence is, in the least, very unhealthy for young people. Nonetheless, media violence comes into our homes automatically through television, and is actively marketed to children and adolescents (even when the content is labeled as appropriate only for "mature" audiences).[32] Moreover, it is extremely difficult to disseminate the message of media violence's harms. An important component of this difficulty is the fact that violent entertainment is a highly lucrative business and the entertainment industry is loath to communicate information suggesting that its products are harmful. An intriguing analysis by Bushman and Anderson, comparing the cumulative scientific evidence to the way the issue has been reported in the press, revealed that as the evidence for the aggression-promoting effect of media violence has become stronger, news coverage has implied that the relationship was weaker and weaker.[33] Parents have been given tools, such as

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[23] Cantor, J. (1998). *"Mommy, I'm scared": How TV and movies frighten children and what we can do to protect them.* San Diego, CA: Harvest/Harcourt.

[24] Cantor, J. (2002). Fright reactions to mass media. In J. Bryant & D. Zillmann (Eds.), *Media effects: Advances in theory and research.* (2d Ed.) (pp. 287–306). Mahwah, NJ: Erlbaum.

[25] Hoffner, C., & Cantor, J. (1985). Developmental differences in responses to a television character's appearance and behavior. *Developmental Psychology, 21,* 1065–1074.

[26] Cantor, J., & Sparks, G. G. (1984). Children's fear responses to mass media: Testing some Piagetian predictions. *Journal of Communication, 34,* (2), 90–103.

[27] Cantor, J., & Sparks, G. G. (1984). Children's fear responses to mass media: Testing some Piagetian predictions. *Journal of Communication, 34,* (2), 90–103.

[28] Cantor, J., & Nathanson, A. (1996). Children's fright reactions to television news. *Journal of Communication, 46* (4), 139–152.

[29] Cantor, J., Wilson, B. J., & Hoffner, C. (1986). Emotional responses to a televised nuclear holocaust film. *Communication Research, 13,* 257–277.

[30] Cantor, J., Mares, M. L., & Oliver, M. B. (1993). Parents' and children's emotional reactions to televised coverage of the Gulf War. In B. Greenberg & W. Gantz (Eds.), *Desert storm and the mass media* (pp. 325–340). Cresskill, NJ: Hampton Press.

[31] Cantor, J. (2001). Helping children cope: Advice in the aftermath of the terrorist attacks on America. *http://joannecantor.com/terror—adv.htm.*

[32] Federal Trade Commission (2000). *Marketing violence to children: A review of self-regulation and industry practices in the motion picture, music recording, & electronic game* industries. Washington, D.C.: Federal Trade Commission.

[33] Bushman, B. J., & Anderson, C. A. (2001). Media violence and the American public: Scientific facts versus media misinformation. *American Psychologist, 56,* 477–489.

media ratings and filtering devices like the V-chip, but publicity for these tools has been so sporadic that parents have little understanding of what they are or how to use them.[34] Parents need to receive better information about the effects of media violence, and they need more convenient and reliable means of understanding what to expect in a television program, movie, or video game.

Parents also need information on parenting strategies that will help them counteract some of the negative effects of media violence on their children. Research in cognitive development, for example, has explored effective ways to reassure children who have been frightened by media threats.[35] Strategies for coping with media-induced fears need to be tailored to the age of the child. Up to the age of about seven, nonverbal coping strategies work the best.[36] These include removing children from the scary situation, distracting them, giving them attention and warmth, and desensitization.[37, 38] Eight-year-olds and older can benefit from hearing logical explanations of why they are safe. If what they saw is fantasy, it helps children in this age group to be reminded that what they have seen could never happen.[39] If the program depicts frightening events that can possibly occur, however, it may help to give older children information about why what they have seen cannot happen to them[40] or to give them empowering instructions on how to prevent it from occurring.[41]

As for reducing the aggression-promoting effect of media violence, research is just beginning to explore mediation strategies that can be used by parents and teachers. In a study published in 2000,[42] we tested means of counteracting the effects of classic cartoons, a genre involving nonstop slapstick violence that trivializes the consequences to the victim. This study showed not only that watching a Woody Woodpecker cartoon could increase boys' endorsement of aggressive solutions to problems, but that empathy-promoting instructions could intervene in this effect. Second-through sixth-grade boys were randomly assigned to one of three groups: (1) a no-mediation group, who watched the cartoon without instructions; (2) a mediation group who were asked, before viewing, to keep in mind the feelings of the man in the cartoon (this was the tree surgeon who was the target of Woody's attacks); and (3) a control group, who didn't see a cartoon. As is usually found in such studies, the children who had just seen the violent cartoon without instructions scored higher on pro-violence attitudes than those in the control condition (showing stronger agreement with statements like, "Sometimes fighting is a good way to get what you want"). However, the children who were asked to think about the victim's feelings showed no such increase in pro-violence attitudes. As a side-effect, this empathy-promoting intervention reduced the degree to which the children found the cartoon funny. An empathy-promoting intervention may therefore have a dual benefit—intervening in the direct effect of viewing and perhaps reducing future choices of similar fare. More research is needed to explore other ways to intervene in the negative effects of media violence.

In conclusion, media violence has many unhealthy effects on children and adolescents. Even though violence has been and will continue to be a staple of our media environment, it is appropriate to speak out when especially problematic presentations are aired in contexts in which children are likely to see them and when inappropriate programming is actively marketed to vulnerable young people.[43] Although the entertainment industries are mostly concerned with profits, they some-

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[34] Bushman, B. J., & Cantor, J. (2002). *Media ratings for violence and sex: Implications for policymakers and parents.* Manuscript submitted for publication.

[35] Cantor, J. (1998). *"Mommy, I'm scared": How TV and movies frighten children and what we can do to protect them.* San Diego, CA: Harcourt Brace.

[36] Wilson, B. J., Hoffner, C., & Cantor, J. (1987). Children's perceptions of the effectiveness of techniques to reduce fear from mass media. *Journal of Applied Developmental Psychology, 8,* 39–52.

[37] Wilson, B. J. (1989). Desensitizing children's emotional reactions to the mass media. *Communication Research, 16,* 723–745.

[38] Cantor, J. (2004). *Teddy's TV Troubles.* Madison, WI: Goblin Fern Press.

[39] Cantor, J., & Wilson, B. J. (1984). Modifying fear responses to mass media in preschool and elementary school children. *Journal of Broadcasting, 28,* 431–443.

[40] Cantor, J., & Hoffner, C. (1990). Children's fear reactions to a televised film as a function of perceived immediacy of depicted threat. *Journal of Broadcasting & Electronic Media, 34,* 421–442.

[41] Cantor, J., & Omdahl, B. (1999). Children's acceptance of safety guidelines after exposure to televised dramas depicting accidents. *Western Journal of Communication, 63* (1), 1–15.

[42] Nathanson A.I., & Cantor, J. (2000). Reducing the aggression-promoting effect of violent cartoons by increasing children's fictional involvement with the victim. *Journal of Broadcasting & Electronic Media, 44,* 125–142.

[43] A current campaign asks Toys 'R' Us to stop selling WWF-related merchandize. See *http://www.bicp.org/bicp1.html*

times react to large-scale criticism, and sponsors and local television stations prefer to avoid public censure.

Beyond complaining about media practices, researchers and advocates for the welfare of children can work to diminish the negative influence of media violence by providing better public education about media effects, by developing and promoting more useful content labels and filters, and by exploring effective intervention strategies based on research findings. We also need to expand media literacy education for children, including helping them place what they see in perspective, and encouraging them to engage in a critical analysis of their own media choices.

Mr. SMITH. Mr. McIntyre?

STATEMENT OF JEFF J. McINTYRE, SENIOR LEGISLATIVE AND FEDERAL AFFAIRS OFFICER, AMERICAN PSYCHOLOGICAL ASSOCIATION

Mr. MCINTYRE. Good morning, Mr. Chairman and Members of the House Judiciary Subcommittee on Courts, the Internet, and Intellectual Property. I'm Jeff McIntyre and honored to be here to represent the American Psychological Association.

I have conducted years of research related—or years of work related to children and the media as a negotiator for the development of a television rating system, as an advisor to the Federal Communications Commission's V-Chip Task Force, and as a member of an informal White House Task Force on Navigating the New Media, as a member of the Steering Committee for the Decade of Behavior Conference on Digital Childhood, and most importantly as a representative of the research and concerns of the over 150,000 members and affiliates of the American Psychological Association.

At the heart of this issue of children and the media is a matter long addressed by psychological research, the effects of repeated exposure of children to violence. The media violence issue made its official debut on Capitol Hill in 1952 with the first of a series of Congressional hearings. That particular hearing was held in the House of Representatives before the Commerce Committee. The following year, in 1953, the first major Senate hearing was held before the Senate Subcommittee on Juvenile Delinquency, who convened a panel to inquire into the impact of television violence on juvenile delinquency.

There have been many hearings since the 1950's, but there has only been limited change until recently. Media violence reduction is fraught with legal complications. Nevertheless, our knowledge base has improved over time with the publication of significant and landmark reviews, and based on these research findings, several concerns emerge when violent material is aggressively marketed to children.

Foremost, the conclusions drawn on the basis of over 30 years of research contributed by American Psychological Association members, including the Surgeon General's report in 1972, the National Institute of Mental Health's report in 1982, and the industry-funded 3-year national television violence study in the 1990's showed that the repeated exposure of violence in the mass media places children at risk for increases in aggression, desensitization to acts of violence, and unrealistic increases in fear of becoming a victim of violence, which results in the development of other negative characteristics, such as a mistrust of others.

If this sounds familiar, it is because this is the foundation upon which the representatives of the public health community, comprised of the American Psychological Association, the American Academy of Pediatrics, and the American Medical Association, issued a joint consensus statement in 2000 on what we absolutely know to be true regarding children's exposure to violence in the media.

Certain psychological facts remained and are well established in this debate. As APA member Dr. Rowell Huesmann stated before the Senate Commerce Committee, just as every cigarette you smoke increases the chances that some day you will get cancer, every exposure to violence increases the chances that someday a child will behave more violently than they otherwise would.

Hundreds of studies have confirmed that exposing our children to a steady diet of violence in the media makes our children more violence-prone. The psychological processes here are not mysterious. Children learn by observing others. Mass media and the advertising world provide a very attractive window for these observations.

The excellent children's programming, such as "Sesame Street," and pro-social marketing, such as that around bicycle helmets, that exists is to be commended and supported. Psychological research shows that what is responsible for the effectiveness of good children's programming and pro-social marketing is that children learn from their media environment. If kids can learn positive behaviors via this medium, they can learn the harmful ones, as well.

The role of ratings systems in this discussion merits attention. There continues to be concern over the ambiguity and implementation of current ratings systems. It appears that ratings systems are undermined by the marketing efforts of the very groups responsible for their implementation and effectiveness. That, Chairman Smith and Members of the Subcommittee, displays a significant lack of accountability and should be considered when proposals for industry self-regulation are discussed.

Also undermined here are parents and American families. As the industry has shown a lack of accountability in the implementation of the existing ratings system, parents have struggled to manage their families' media diet against misleading and contradictory information, for instance, the marketing of an R-rated film to children under the age of 17.

While the industry has made some information regarding the ratings available, more information regarding content needs to be made more available. As with nutritional information, the content labeling should be available on the product and not hidden on websites or in the occasional pamphlet.

Generally speaking, most adults see advertising as a relatively harmless annoyance. However, advertising directed at children, especially at young children, that features violence generates concern. The average child is exposed to approximately 20,000 commercials per year, and this is only for television. It does not include print or the Internet. Much of this is during weekend morning or weekday afternoon programming. Most of the concern stems not from the sheer number of commercial appeals, but from the inability of some children to appreciate and defend against the persua-

sive intent of marketing, especially advertising featuring violent product.

The Federal Trade Commission report on the marketing of violence to children heightens these concerns. As a result of the Children's Online Privacy Protection Act, the Federal Trade Commission has ruled that parents have a right to protect their children's privacy from the unwanted solicitation of their child's personal information. We would argue that based on the years of psychological research on violence prevention and clinical practice and violence intervention, parents have the right to protect their children from material that puts them at risk of harm.

With these considerations in place for children's privacy, the precedent is well established about children's health and safety. Decades of psychological research bear witness to the potential harmful effects on our children and our nation if these practices continue.

Chairman Smith and Subcommittee Members, thank you for your time. Please regard the American Psychological Association as a resource to your Committee as you consider this and other issues.

Mr. SMITH. Thank you, Mr. McIntyre.

[The prepared statement of Mr. McIntyre follows:]

PREPARED STATEMENT OF JEFF J. MCINTYRE

Good morning, Mr. Chairman and Members of the House Judiciary Subcommittee on Courts, the Internet, and Intellectual Property. I am Jeff McIntyre and am honored to be here to represent the American Psychological Association.

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At the heart of the issue of children and the media is a matter long addressed by psychological research—the effects of repeated exposure of children to violence. The media violence issue made its official debut on Capitol Hill in 1952 with the first of a series of congressional hearings. That particular hearing was held in the House of Representatives before the Commerce Committee. The following year, in 1953, the first major Senate hearing was held before the Senate Subcommittee on Juvenile Delinquency, then headed by Senator Estes Kefauver, who convened a panel to inquire into the impact of television violence on juvenile delinquency.

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Foremost, the conclusions drawn on the basis of over 30 years of research contributed by American Psychological Association members—including the Surgeon General's report in 1972, the National Institute of Mental Health's report in 1982, and the industry funded, three-year National Television Violence Study in the 1990's—show that the repeated exposure to violence in the mass media places children at risk for:

- increases in aggression;
- desensitization to acts of violence;
- and unrealistic increases in fear of becoming a victim of violence, which results in the development of other negative characteristics, such as mistrust of others.

If this sounds familiar, it is because this is the foundation upon which representatives of the public health community—comprised of the American Psychological Association, the American Academy of Pediatrics, and the American Medical Associa-

tion issued a joint consensus statement in 2000 on what we absolutely know to be true regarding children's exposure to violence in the media.

Certain psychological facts remain are well established in this debate. As APA member Dr. Rowell Huesmann stated before the Senate Commerce Committee, just as every cigarette you smoke increases the chances that someday you will get cancer, every exposure to violence increases the chances that, some day, a child will behave more violently than they otherwise would.

Hundreds of studies have confirmed that exposing our children to a steady diet of violence in the media makes our children more violence prone. The psychological processes here are not mysterious. Children learn by observing others. Mass media and the advertising world provide a very attractive window for these observations.

The excellent children's programming (such as Sesame Street) and pro-social marketing (such as that around bicycle helmets) that exists is to be commended and supported. Psychological research shows that what is responsible for the effectiveness of good children's programming and pro-social marketing is that children learn from their media environment. If kids can learn positive behaviors via this medium, they can learn the harmful ones as well.

The role of ratings systems in this discussion merits attention. There continues to be concern over the ambiguity and implementation of current ratings systems. It appears that ratings systems are undermined by the marketing efforts of the very groups responsible for their implementation and effectiveness. That, Chairman Smith and members of the Subcommittee, displays a significant lack of accountability and should be considered when proposals for industry self-regulation are discussed.

Also undermined here are parents and American families. As the industry has shown a lack of accountability in the implementation of the existing ratings system, parents have struggled to manage their family's media diet against misleading and contradictory information. (For instance, marketing an R rated film to children under 17.) While the industry has made some information regarding the ratings available, more information regarding content needs to be made more accessible. As with nutritional information, the content labeling should be available on the product and not hidden on websites or in the occasional pamphlet.

Generally speaking, most adults see advertising as a relatively harmless annoyance. However, advertising directed at children, especially at young children, that features violence generates concern. The average child is exposed to approximately 20,000 commercials per year. This is only for television and does not include print or the Internet. Much of this is during weekend morning or weekday afternoon programming. Most of the concern stems not from the sheer number of commercial appeals but from the inability of some children to appreciate and defend against the persuasive intent of marketing, especially advertising featuring violent product.

A recent Federal Trade Commission report on the Marketing of Violence to Children heightens these concerns. As a result of the "Children's On-Line Privacy Protection Act" the Federal Trade Commission has ruled that parents have a right to protect their children's privacy from the unwanted solicitation of their children's personal information. We would argue that, based on the years of psychological research on violence prevention and clinical practice in violence intervention, parents also have the right to protect their children from material that puts them at risk of harm. With the considerations in place for children's privacy, the precedent for concern about children's health and safety is well established.

Decades of psychological research bear witness to the potential harmful effects on our children and our nation if these practices continue. Chairman Smith and Subcommittee members, thank you for your time. Please regard the American Psychological Association as a resource to the committee as you consider this and other issues.

Mr. SMITH. Mr. Aho?

STATEMENT OF BILL AHO, CHIEF EXECUTIVE OFFICER, CLEARPLAY, INC.

Mr. AHO. Good morning, Chairman Smith, Ranking Subcommittee Member Berman, and Members of the Committee. Thank you for inviting me to testify today on this important issue.

My name is Bill Aho and I'm the Chief Executive Officer of ClearPlay, a small but vibrant business with a positive mission and, unfortunate, daunting opposition. ClearPlay is based on the belief that families have the right to watch movies in the privacy

of their homes any way they choose. ClearPlay's technology provides families the choice to watch movies with less graphic violence, nudity, explicit sex, and profanity.

This is the choice that many families desire. Many see it as a useful parenting tool that will be beneficial to their children. We believe that it is not in the best interests of society for the movie industry, in an effort to extend its artistic control, to take actions that would eliminate this choice for families.

ClearPlay's parental controls are a feature available for DVD players or for any consumer electronics device that plays movies. It works with ClearPlay movie filters, which are uniquely created for each movie as it is released on DVD. These filters identify or tag specific content, such as graphic violence, nudity, or different kinds of profanity. The customer then chooses how to watch the movie, either with ClearPlay off or using any combination of the 14 ClearPlay filters, for 16,000 different potential settings.

ClearPlay's frame-accurate technology seamlessly skips and mutes over objectionable material. It does not add or dub content. ClearPlay works with standard studio-issued DVDs which are purchased or rented at normal retail outlets.

This is a solution that American families want and Americans overwhelmingly believe that it should be the right of the family. In a 2003 poll of over 17,000 respondents conducted by MSN, 82 percent said that consumers should be able to use products like ClearPlay to skip over unwanted scenes or language. Further, ClearPlay's research shows that a majority of U.S. households want the option to filter DVD movies of content they might find concerning for their families, especially those with children.

In late 2002, the Director's Guild of America, 15 prominent movie directors and eight movie studios filed suit against ClearPlay, along with other companies with related products in our field. And while our opponents like to lump all the companies together, I would like to emphasize the important difference between ClearPlay and most of the other companies involved in this sector.

Most of these companies make copies of DVDs that they resell as edited versions. Now, in contrast, ClearPlay neither copies nor edits DVDs. ClearPlay's technology is more like an automated fast-forward or mute button on your remote control or the technological equivalent of covering your eyes during disturbing scenes, except that we do it in a seamless, consumer-friendly manner.

I would like to leave the Committee with two overriding ideas as it considers the potential of this technology and appropriate actions for the future. First, ClearPlay's good for families. I respect and appreciate the testimony of the other witnesses. They echo an overwhelming body of evidence which declares with conviction and concern that the media can have a powerful influence on children's behavior. But no stack of statistics is more compelling to me than my personal feelings as a father, and there's no doubt in my mind that if I can reduce my children's exposure to graphic violence or explicit sex, that's a good thing.

Second, it's a fundamental matter of rights. Whose right is it to decide what I watch in my home with my family? I would respectfully submit to this Committee that that choice is a personal one to be made by parents. It's their right, their choice. It's not

ClearPlay's choice. We simply provide the tools and the options. It's not the directors' choice and it certainly isn't the movie studios' choice. It's the right of the parent, plain and simple, to do what is best for their children, and if that means skipping some blood or gore in a PG-13 movie, then we are there to help.

Quite simply, ClearPlay respects and supports the rights of parents. Thank you.

Mr. SMITH. Thank you, Mr. Aho.

[The prepared statement of Mr. Aho follows:]

PREPARED STATEMENT OF BILL AHO

ClearPlay is founded on the belief that families have the right to watch movies in the privacy of their homes any way they choose. ClearPlay parental controls provide families the choice to filter movies of graphic violence, nudity, explicit sex and profanity. This is a choice that many families desire. Many see it as a useful parenting tool that will be beneficial to their children. We believe that it is not in the best interest of society for the movie industry, in an effort to extend its artistic control over the experience of viewers, to take actions that would eliminate this choice for families.

ClearPlay parental controls are a feature available on DVD players, or on any consumer electronics device that plays movies. They work with ClearPlay Movie Filters, which are uniquely created for each movie as it is released on DVD. These filters identify, or tag, frames that have specific content, such as graphic violence, nudity or different kinds of profanity. The customer chooses how to watch the movie-either with ClearPlay off or with ClearPlay on, using any combination of the 14 ClearPlay Filters, for over 16,000 different potential settings. ClearPlay's frame-accurate technology seamlessly skips and mutes over objectionable content. It does not dub or add content. ClearPlay parental control works with standard, studio-authorized DVD's which are purchased or rented at normal retail outlets.

ClearPlay provides parental controls that American families want. Americans also overwhelmingly believe that they should have the right to use these parental controls within their own homes. In a 2003 poll of 17,000 respondents conducted by MSN, 82% said that consumers should be able to use products like ClearPlay to skip over unwanted scenes or languages. .Further, ClearPlay's research shows that a majority of U.S. households want the option to filter DVD movies of content they find offensive—especially families with children.

ClearPlay does not violate copyright or trademark laws. Indeed it doesn't copy or alter any of the works themselves, and it doesn't use anyone else's "trademarks" or distribute anyone else's products. ClearPlay merely automates certain skipping and muting functions of a DVD player, functions that could be performed less conveniently with a conventional remote control. Trademark and copyright laws were never intended to deprive families of choices in how they watch, in the privacy of their own homes, DVDs they have lawfully bought or rented.

In late 2002, the Directors Guild of America, 16 prominent movie directors and eight movie studios filed suit against ClearPlay, along with other companies that either sold edited VHS tapes or DVD's or claimed technology that would add or dub new content onto DVD's.

The Directors rely on the Lanham Act to claim trademark infringement to vindicate "moral rights" that are not recognized in the United States or elsewhere. It is a relatively weak case, which by the DGA's own admission is not likely to prevail. The studios' case is more intricate, and is based on what we feel is a substantial extension of the copyright law that was never intended by Congress.

These lawsuits have succeeded in delaying American consumers from having access to advanced parental controls for more than a year. When the lawsuits were first filed, a major DVD manufacturer that had already completed integration of ClearPlay's parental controls dropped the feature just weeks before production. They told us that they chose to remove ClearPlay parental controls not because they feared the eventual outcome of the lawsuits, but rather because they did not want to be involved in litigation with the studios.

These lawsuits have also succeeded in putting an enormous financial burden on ClearPlay and making it extremely difficult for our company to generate investment. No one likes to invest money to pay lawyers. As a result, the management of the company has had to make substantial personal sacrifices to be able to realize our vision and bring this product to market.

Over the past eight months, we have made every effort to find an amicable solution with the DGA and the studios. We have taken the initiative to schedule 25 meetings—all held at the studio offices in Los Angeles. We have voluntarily explained our business, shared our research, given models of our product and put forth multiple proposals for settlement, all in an effort to find a solution where ClearPlay can maintain a viable business and satisfy its customers—the American families.

Despite these efforts, there remains a substantial gap between what we believe are the rights of consumers, and what the studios as copyright holders will allow. I would like to outline these:

ISSUE #1: WHAT CONTENT SHOULD FAMILIES BE ALLOWED TO FILTER?

We believe that consumers should have the right to filter any graphic violence, disturbing sexual content, or offensive language that they choose for their families in their homes. The DGA has suggested that they would only allow ClearPlay parental controls to filter whatever content is altered in airline or TV versions.

There are several problems with this idea:

a. No written standards exist for airline or TV versions.

b. Airline and TV standards are a moving target, and become more lenient over time.

c. Based on our research, airline and TV standards are not consistent with either ClearPlay's filter categories or the interests of many of our consumers.

We have suggested various compromises. We could make an airline or TV equivalent the default, but allow consumers to override. We could allow directors to review the filters and make suggestions. Or we could come up with agreed-to definitions of ClearPlay categories, some of which might include content not removed from airline or TV versions.

ISSUE #2: WHAT MOVIES SHOULD FAMILIES BE ALLOWED TO FILTER?

Again, we believe it is the right of families to watch any movie they choose with or without ClearPlay. The DGA has said that they want ClearPlay parental controls to work only with movies that have airline or TV versions. Further, the DGA has said that ClearPlay would have to get special permission from all "Final Cut" directors—prominent directors that negotiate personal services contracts that may supersede standard DGA contracts. Again, there are significant problems with this:

a. The timing of TV versions really isn't relevant to DVD consumers. TV versions can often lag the release of the DVD by a year or more.

b. Airline versions are limited. It is unclear exactly what movies have airline versions. We know that there are numerous prominent films that don't. Many independent films do not. And there are other reasons as well, for instance, if there are integral scenes featuring airplane crises.

c. Final Cut directors are often involved in prominent movies that are highly desired by the public and our customers. Despite our requests, we have been unable to secure information from all the studios about what movies would or would not be available as a result of Final Cut contracts.

d. There appears to be no protection for a proliferation of new special agreement contracts specifically prohibiting ClearPlay parental controls.

We have shown a willingness to be flexible. But we would hope that the industry could present a proposal that would guarantee consumers the right to filter most, if not all movies.

ISSUE #3: HOW LONG CAN CLEARPLAY PROVIDE FILTERS TO CONSUMERS?

We believe the rights should be interminable, and not subject to studio contracts or collective bargaining timetables. The DGA has suggested that after December 2005, all rights would expire. In effect, this would give Hollywood the opportunity to instigate a new round of litigation in 2006. Naturally, this is unacceptable, and we believe at least a 10-year term is reasonable. We have yet to hear a response from the industry on this issue.

Perhaps these issues can be resolved through more settlement discussions. But if the committee agrees that families should have the right to filter movies within their own homes of unwanted violence or sex, then I think it would be useful at these hearings to explore these issues. If it becomes apparent that the movie industry either can not, or is not willing to come to a settlement that is favorable to the

American consumer, then I would respectfully request that we seek a legislative solution as expeditiously as possible.

Thank you.

Mr. SMITH. Ms. Heins?

STATEMENT OF MARJORIE HEINS, FELLOW, BRENNAN CENTER FOR JUSTICE, NEW YORK UNIVERSITY SCHOOL OF LAW, AND FOUNDING DIRECTOR, FREE EXPRESSION POLICY PROJECT

Ms. HEINS. Thank you, Mr. Smith and Members of the Subcommittee. Thank you very much for giving me the opportunity to talk to you today about movie filtering, the first amendment, and the whole issue of media effects on young people.

I first got interested in this subject about a decade ago when I was a first amendment attorney at the ACLU and I discovered that the most common justification for censoring art is the assumed adverse effect that sexual or violent content will have on impressionable youth. Ultimately, I wrote a book, Not in Front of the Children, which examines the underpinnings of this widespread assumption of harm to minors. The book concludes that not only is the harm unproven, but that it is probably unprovable and that, ironically, censoring the young may have actually some ill effects on their imaginations, their psychological growth, and their ability to confront and understand troubling aspects of human life.

Now, some of you may be troubled by my references to censorship. It's a kind of hot-button word, so let me explain that I use the term simply to describe any effort to suppress expression that is considered inappropriate or unacceptable. Some say that filtering technologies are simply a way for parents or others who object to sex or violence or profane language in movies to control what is viewed in their home. That's fair enough, but it is still a form of censorship.

Now, it's true that the manufacture and use of this technology doesn't violate the first amendment, which generally only applies to the Government. But if Congress were to endorse the technology through law, it would create first amendment problems. Singling out constitutionally protected expression for adverse treatment under the law, in this instance scenes and dialogues from films that a private company has decided contain unacceptable levels of sex or some other topic, is precisely what the first amendment says Congress cannot do.

Moreover, just as a matter of policy, this technology is a bad idea because it reflects a simplistic and erroneous view of how art affects human beings. It suggests that the way to protect our children and adolescents from controversial or troubling media content is to censor rather than educate them. But on the contrary, education and media literacy skills is far more likely than filters, V-chips, or censorship laws to produce healthy, non-violent and sexually responsible adults.

As the National Research Council wrote in a 2002 report on the related subject of Internet filters, "media literacy provides children with skills in critically evaluating the content inherent in media messages. A child with these skills is less likely to stumble across

inappropriate material and more likely to be better able to put it into context if and when he or she does."

And they made the analogy to swimming pools. They can be dangerous for children. To protect them, one can install locks, put up fences, and deploy pool alarms. All of these measures are helpful, but by far, the most important thing one can do for one's children is to teach them how to swim.

In the time remaining, let me just address the claims that are so frequently made and that you've heard here today that social science research has proved media violence to cause aggressive behavior. I was perfectly willing to accept this conventional wisdom when I began research for Not in Front of the Children, but what I discovered, like so many independent researchers before me, was that, number one, most of the research has actually produced null results.

Number two, claimed positive results are often based on manipulation of statistics or flawed measures of aggression, such as punching a Bobo doll, which is an acceptable form of play aggression, recognizing aggressive words on computer screens, or one of my favorites, popping a balloon.

There is no uniformity in research results, the first requirement for scientific validity. Some studies have found children more aggressive after watching "Sesame Street" or "Mr. Rogers." Joanne Cantor's book, Mommy, I'm Scared, documents anxiety reactions among children exposed to such relatively non-violent fare as "Little House on the Prairie," "Sleeping Beauty," and "Alice in Wonderland." No filter V-chip or censorship law can identify what from the vast array of art and literature might frighten a particular child.

Even correlational research, which can be suggestive but certainly does not show causation, is inconclusive. Violent crime rates, as I'm sure you know, for youth have been declining in the last decade, even as media violence has become more intense. In 1986, one researcher found negative correlations between exposure to violent TV and violent crime in 281 metropolitan areas. He stated, "the data consistently indicate that high levels of exposure to violent television content are accompanied by relatively low rates of violent crime."

Finally, there's no uniform definition of media violence in either experimental or correlational studies. Some researchers use cartoons, some use Batman, Superman, fight scenes in movies. Even the American Psychological Association, which speaks usually more guardedly than Mr. McIntyre did today, in terms of risks rather than proof, acknowledges that "violence, per se, is not the problem. It is the manner in which most violence on television is shown that should concern us." Yet social science studies rarely test the context in which violence is shown or the artistic merit of the work. Certainly, movie filters don't make these distinctions.

We don't have time to go into much more detail about the media violence literature now. I have, however, attached to my testimony a brief Friend of the Court brief in a case—one of the cases that Professor Cantor referred to, challenging a law restricting minors' access to video games. The brief from these 33 media scholars explains in detail why, despite decades of studies, there is no credible

evidence of a causative relation between fantasy violence and the real thing.

As our own Federal Trade Commission reported, no firm conclusions about adverse effects can be drawn from media violence research, and similarly, in 1999, the British medical journal the Lancet criticized U.S. medical——

Mr. SMITH. Ms. Heins, are you getting to the end of your testimony?

Ms. HEINS. Yes, sir.

Mr. SMITH. Okay.

Ms. HEINS.—associations for falsely claiming that thousands of studies have proven adverse effects. The editors wrote, "it is inaccurate to imply that the published work strongly indicates a causal link between virtual and actual violence."

Now, no doubt, there is common sense appeal to the notion that impressionable viewers will imitate what they see on screen, and I don't think anybody doubts that media has powerful effects. It's just not clear that scientific studies can ever prove what they are, and they tend to vary.

But to address these concerns, education is far more effective than privately manufactured filters which are marketed to families on the false premise that a blunt and mechanical censorship tool will keep their children safe. Ultimately, filters, like other forms of censorship, are a distraction from the more difficult and less sensational work of educating kids and fighting the real causes of violence in society, including poverty, firearms, drugs, alcohol, peer pressures, and domestic abuse.

Thank you very much.

Mr. SMITH. Thank you, Ms. Heins.

[The prepared statement of Ms. Heins follows:]

PREPARED STATEMENT OF MARJORIE HEINS

Good morning, and thank you for the opportunity to address you today regarding movie filtering, the First Amendment, and the whole issue of "media effects" on young people.

I became intrigued by this subject a decade ago, when, as a First Amendment attorney at the ACLU, I discovered that the most common justification for censoring art is the assumed adverse effect that sexual or violent content will have on impressionable youth. Ultimately, I wrote a book, *Not in Front of the Children,* which examines the cultural and legal underpinnings of this widespread assumption of "harm to minors." The book concludes not only that the harm is unproven, but that it is probably unprovable, and that, ironically, censoring the young may actually have ill effects on their imaginations, their psychological growth, and their ability to confront and understand troubling aspects of human life.

After finishing *Not in Front of the Children,* I created the Free Expression Policy Project—or FEPP, for short—whose goal is to provide research and analysis on difficult censorship issues. Just a few weeks ago, FEPP became part of the Brennan Center for Justice at NYU School of Law.

Some of you may be troubled by my references to "censorship," so let me explain that I use the term simply to describe any effort to suppress expression that is considered inappropriate or unacceptable. Some say that filtering is simply a way for parents or others who object to sex, violence, or profane language in movies to control what is viewed in their home. Fair enough; but it is a form of censorship nonetheless.

It's true that the manufacture and use of this technology does not violate the First Amendment, which generally applies only to the government. (Whether it violates copyright law is another matter.) But if Congress were to endorse the technology through law, it *would* create First Amendment problems. Singling out constitutionally protected expression for adverse treatment under the law—in this instance,

scenes and dialogue from films that a private company has decided contain unacceptable levels of sex or violence—is precisely what the First Amendment condemns.

Moreover, this technology is a bad idea, because it reflects a simplistic and erroneous view of how art affects human beings. It suggests that the way to protect our children and adolescents from controversial or troubling media content is to censor rather than educate them. But on the contrary, education in media literacy skills—understanding moviemaking methods, identifying racial and gender stereotypes, and testing media messages against community values—is far more likely than filters, v-chips, or censorship laws to produce healthy, nonviolent, and sexually responsible adults.

As the National Research Council, a part of the National Academies, wrote in a 2002 report (on the related subject of Internet filters):

> "Information and media literacy provide children with skills in . . . critically evaluating the content inherent in media messages. A child with these skills is less likely to stumble across inappropriate material and more likely to be better able to put it into context if and when he or she does. . . .
>
> "Swimming pools can be dangerous for children. To protect them, one can install locks, put up fences, and deploy pool alarms. All of these measures are helpful, but by far the most important thing that one can do for one's children is teach them to swim." [1]

FEPP's recent report, *Media Literacy: An Alternative to Censorship,*[2] describes the work that has been done in America and elsewhere to advance this productive and non-censorial approach to concerns about popular culture.

In the time remaining, let me address the claims that are so frequently made that social science research has proved "media violence" to cause aggressive behavior. I was quite willing to accept this conventional wisdom when I began research for *Not in Front of the Children,* but I what discovered, like many independent reviewers before me, was that:

(1) Most of the research has actually produced "null" results.

(2) Claimed positive results are often based on manipulation of statistics, or flawed measures of aggression, such as punching a Bobo doll (a socially accepted form of play aggression), recognizing "aggressive words" on a computer screen, or popping a balloon.

(3) There is no uniformity in research results—the first requirement for scientific validity. Some studies have found children more aggressive after watching *Sesame Street* and *Mr. Rogers' Neighborhood.* Joanne Cantor's book, *Mommy, I'm Scared,* documented anxiety reactions among children exposed to such relatively nonviolent TV fare as *Little House on the Prairie, Sleeping Beauty,* and *Alice in Wonderland.*[3] No filter, v-chip, or censorship law can identify what, from the vast array of art and literature, might frighten a particular child. (When my now-grown son was 6 or 7 years old, he became frightened while watching the opening scene of *Treasure Island* and hearing the scary music.)

(4) Even correlational research—which can be suggestive, but does not show causation—is inconclusive. Violent crime rates for youth have been declining even as media violence has become more intense. In 1986, one researcher found *negative correlations* between exposure to violent TV and violent crime in 281 metropolitan areas. He stated: "The data consistently indicate that high levels of exposure to violent television content are accompanied by relatively low rates of violent crime." [4]

(5) There is no uniform definition of "media violence" in either experimental or correlational studies. Some researchers use cartoons; others use *Batman, Superman,* or fight scenes in movies. Indeed, some studies simply look for relationships between "aggressive behavior" and general TV viewing, not violent viewing. Even the American Psychological Association, which speaks guardedly in terms of "risks" rather than proof, acknowledges that "violence *per se* is not the problem; it is the manner in which most violence on tele-

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[1] National Research Council, *Youth, Pornography, and the Internet* (2002), http://bob.nap.edu/html/youth—internet, Executive Summary.

[2] Available at http://www.fepproject.org/policyreports/medialiteracy.pdf.

[3] Joanne Cantor, *Mommy, I'm Scared* (New York: Harcourt Brace, 1988).

[4] Steven Messner, "Television Violence and Violent Crime," 33(3) *Social Problems* 218, 228 (1986).

vision is shown that should concern us."[5] Yet social science studies rarely test the context in which violence is shown: Is used by a villain or a hero? Is it used in self-defense? Does it have outstanding artistic value? Certainly, movie filters do not make these distinctions.

We do not have time today to go into additional detail about the media effects research. I have, however, attached to this testimony a "friend of the court" brief on behalf of 33 media scholars in a recent case challenging a law restricting minors' access to video games containing violence. The brief explains in detail why, despite several decades of studies, there is no credible evidence of a causative relation between fantasy violence and the real thing.

As a 2000 study by our own Federal Trade Commission reported, no firm conclusions about adverse effects can be drawn from media violence research.[6] Similarly, in 1999, the British medical journal *The Lancet* criticized U.S. medical associations for falsely claiming that thousands of studies had proven adverse effects. The editors wrote: "it is inaccurate to imply that the published work strongly indicates a causal link between virtual and actual violence."[7]

No doubt, there is common-sense appeal to the notion that impressionable viewers will imitate what they see onscreen. It may be that some forms of media violence do have harmful effects, even though social-science studies are unlikely to prove it. But to address these concerns, education is far more effective than privately manufactured filters which are marketed to families on the false premise that a blunt and mechanical censorship tool will keep their children safe.

Ultimately, movie filters, like other forms of censorship, are a distraction from the more difficult, and less sensational, work of educating kids to be discriminating viewers, and fighting the real causes of violence in society, including poverty, firearms, drugs, alcohol, peer pressures, and domestic abuse.

---

[5] Comments of the American Psychological Association in FCC No. 97–55, Apr. 8, 1997 (proceedings on the v-chip), quoted in *Not in Front of the Children,* p. 196.

[6] Federal Trade Comm'n, *Marketing Entertainment Violence to Children,* Appendix A, "A Review of Research on the Impact of Violence in Entertainment Media" (2000).

[7] "Guns, Lies, and Videotape," 354(9178) *The Lancet* 525 (1999).

ATTACHMENT

No. 02-3010

In the
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

INTERACTIVE DIGITAL SOFTWARE ASS'N, et al.,
Plaintiffs - Appellants,

v.

ST. LOUIS COUNTY, et al.,
Defendants - Appellees

On Appeal From a Judgment of the United States District Court
for the Eastern District of Missouri, Eastern Division

BRIEF *AMICI CURIAE* OF THIRTY-THREE MEDIA SCHOLARS IN SUPPORT OF APPELLANTS, AND SUPPORTING REVERSAL*

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Cases

American Amusement Machine Ass'n v. Kendrick, 244 F.3d 572 (7th Cir. 2001) 6

Eclipse Enterprises v. Gulotta, 134 F.3d 63 (2nd Cir. 1997) 12

Other Authorities

Anderson, Craig & Brad Bushman, "Effects of Violent Video Games on Aggressive Behavior, Aggressive Cognition, Aggressive Affect, Physiological Arousal, and Prosocial Behavior: A Meta-Analytic Review of the Scientific Literature," 12 *Psych. Science* 353 (Sept. 2001) 5

Anderson, Craig, & Karen Dill, "Video Games and Aggressive Thoughts, Feelings, and Behavior in the Laboratory and in Life," 78(4) *J. Pers. & Soc. Psych.* 772 (2000) 5, 14

Arnett, Jeffrey, "The Soundtrack of Restlessness - Musical Preferences and Reckless Behavior Among Adolescents," 7 *J. Adol. Rsrch* 313 (1992) 16

Arnett, Jeffrey, "Adolescents and Heavy Metal Music: From the Mouths of Metalheads," 23 *Youth & Society* 76 (1991) 16

Bandura, Albert, *et al.*, "Imitation of Film-Mediated Aggressive Models," 66 *J. Abnormal & Soc. Psych.* 3 (1963) 7

Bandura, Albert, "What TV Violence Can Do to Your Child," *Look*, Oct. 22, 1963 7

Berkowitz, Leonard, *et al.,* "Film Violence and Subsequent Aggressive Tendencies," 27 *Public Opin. Q.* 217 (1973) 13

Bensley, Lillian & Juliet Van Eenwyk, "Video Games and Real-Life Aggression: Review of the Literature," 29 *J. Adolescent Health* 244 (2001) 4

Bettelheim, Bruno, *The Uses of Enchantment* (1975) 17

Black, Gregory, *Hollywood Censored* (1994) 6

Blanchard, Margaret, "The American Urge to Censor," 22 *Wm. & Mary L.Rev.* 741 (1992) 6

Bloom, Richard, "On Media Violence: Whose Facts? Whose Misinformation?" 57(6-7) *Amer. Psychologist* 447 (2002) 5

Blum, David, "Embracing Fear as Fun To Practice for Reality: Why People Like to Terrify Themselves," *New York Times*, Oct. 30, 1999 17

Buckingham, David, "Electronic Child Abuse? Rethinking the Media's Effects on Children," in *Ill Effects: The Media Violence Debate* (M. Barker & J. Petley, eds.) (1997) 15

Cantor, Joanne, "Children's Attraction to Violent Television Programming," in *Why We Watch: The Attractions of Violent Entertainment* (J. Goldstein, ed.) (1998) 17

Centerwall, Brandon, "Television and Violence: The Scale of the Problem and Where to Go From Here," 267(22) *J.A.M.A.* 3059 (1992) 10

Cook, Thomas, *et al.*, "The Implicit Assumptions of Television Research: An Analysis of the 1982 NIMH Report on *Television and Behavior*," 47 *Pub. Opin. Q.* 161 (1983) 10

Cumberbatch, Guy, "Video Violence: Villain or Victim?" (Video Standards Council, UK, 2001), www.videostandards.org.uk/video_violence.htm (accessed 9/13/02) 2, 4, 15

Douglas, John, & Mark Olshaker, *The Anatomy of Motive* (1999) 16

Durkin, Kevin, *Computer Games - Their Effects on Young People* (Australia Office of Film & Literature Classification, 1995) 4

Durkin, Kevin, *Computer Games and Australians Today* (Australia Office of Film & Literature Classification, 1999) 4

Elias, Norbert, & Eric Dunning, *Quest for Excitement: Sport and Leisure in the Civilizing Process* (1986) 17

Emes, Craig, "Is Mr. Pac Man Eating Our Children? A Review of the Effect of Video Games on Children," 42 *Can. J. Psychiatry* 409 (1997) 14

Eron, Leonard, *et al.*, "Does Television Violence Cause Aggression?" 27 *Am. Psychologist* 253 (1972) 9

Federal Bureau of Investigation, *Uniform Crime Report* (2000) 3

Federal Trade Commission, *Marketing Violent Entertainment to Children*, Appendix A, "A Review of Research on the Impact of Violence in Entertainment Media" (2000) 12

Ferguson, Christopher J., "Media Violence, Media Causality," 57(6-7) *Amer. Psychologist* 446 (2002) 5

Fischoff, Stuart, "Psychology's Quixotic Quest for the Media-Violence Connection," 4(4) *J. Media Psychology* (1999), http://www.calstatela.edu/faculty/sfischo/violence.html (accessed 9/20/02) 7, 14

Fowles, Jib, *The Case for Television Violence* (1999) 3

Freedman, Jonathan, *Media Violence and Its Effect on Aggression: Assessing the Scientific Evidence* (2002) 12, 13, 15

Freedman, Jonathan, "Effect of Television Violence on Aggression," 96(2) *Psych. Bull.* 227 (1984) 8

Freedman, Jonathan, "Viewing Television Violence Does Not Make People More Aggressive," 22 *Hofstra L. Rev.* 833 (1994) 8, 11

Friedrich, Lynette, & Aletha Stein, "Aggressive and Prosocial Television Programs and the Natural Behavior of Preschool Children," 38(4) *Monographs of the Society for Research in Child Development* (1973) 8

Fromm, Erich, *The Anatomy of Human Destructiveness* (1973) 15

Gadow, Kenneth, & Joyce Sprafkin, "Field Experiments of Television Violence with Children: Evidence for an Environmental Hazard?" 83 *Pediatrics* 399 (1989) 11

Goldberg, Vicki, "Death Takes a Holiday, Sort Of," in *Why We Watch: The Attractions of Violent Entertainment* (J. Goldstein, ed.) (1998) 17

Goldstein, Jeffrey, "Why We Watch," in *Why We Watch: The Attractions of Violent Entertainment* (J. Goldstein, ed.) (1998) 16

Goldstein, Jeffrey, "Does Playing Video Games Cause Aggressive Behavior?" Paper presented at University of Chicago "Playing By the Rules" Conference, Oct. 27, 2001 (to be published as "Violence and Video Games," in the *Handbook of Computer Game Studies* (J. Raessens & J. Goldstein, eds.) (forthcoming, 2003) 14, 20

Gould, Stephen Jay, *The Mismeasure of Man* (1981) 21

"Guns, Lies, and Videotape," 354(9178) *The Lancet* 525 (1999) 10

Griffiths, Mark, "Violent Video Games and Aggression: A Review of the Literature," 4 *Aggression & Violent Behav.* 203 (1999) 4, 14

Gunter, Barrie, *The Effects of Video Games on Children: The Myth Unmasked* (1998) 4

Herz, J.C., *Joystick Nation* (1997) 19

Huesmann, L. Rowell, *et al.*, "The Stability of Aggression Over Time and Generations," 20 *Devel. Psych.* 1120 (1984) 10

Jenkins, Henry, "Professor Jenkins Goes to Washington," *Harper's*, July 1999 15

Jenkins, Henry , "Lessons From Littleton: What Congress Doesn't Want to Hear About Youth and Media," *Independent School,* Winter 2000, http://www.nais.org/pubs/ismag.cfm?file_id=537&ismag_id=14 (accessed 9/19/02) 15

Jones, Gerard, *Killing Monsters: Why Children Need Fantasy, Super Heroes, and Make-Believe Violence* (2002) 18-19

Kellerman, Jonathan, *Savage Spawn - Reflections on Violent Children* (1999) 15

Kurdek, Lawrence, "Gender Differences in the Psychological Symptomatology and Coping Strategies of Young Adolescents," 7 *J. Early Adol.* 395 (1987) 16

Lorenz, Konrad, *On Aggression* (1963) 15

Males, Mike A., *Framing Youth: Ten Myths About the Next Generation* (1999) 3

May, Rollo, *Power and Innocence - A Search for the Sources of Violence* (1972) 15

McCauley, Clark, "When Screen Violence is Not Attractive," in *Why We Watch: The Attractions of Violent Entertainment* (J. Goldstein, ed.) (1998) 17

McGuire, William, "The Myth of Massive Media Impact: Savagings and Salvagings," in *Public Communication and Behavior* (G. Comstock, ed.) (1986) 10

Messner, Steven, "Television Violence and Violent Crime: An Aggregate Analysis," 33(3) *Social Problems* 218 (1986) 11

Moore, David, *Statistics - Concepts and Controversies* (4th ed.) (1997) 13

National Research Council, National Academy of Sciences, *Understanding and Preventing Violence* (A. Reiss, Jr. & J. Roth, eds.) (1993) 16

National Institute of Mental Health, *Television and Behavior - Ten Years of Scientific Progress and Implications for the Eighties* (1982) 9

Niehoff, Debra, *The Biology of Violence* (1999) 15

Pearce, Celia, "Beyond Shoot Your Friends: A Call to Arms in the Battle Against Violence," in *Digital Illusion: Entertaining the Future With High Technology* (C. Dodsworth, Jr., ed.) (1998) 17

Quart, Alissa , "Child's Play," *Lingua Franca*, Oct. 2001 19

Rhodes, Richard, "The Media- Violence Myth," *Rolling Stone*, Nov. 23, 2000 9

Rowland, Willard, Jr., *The Politics of TV Violence* (1983) 7

Rowland, Willard, Jr., "Television Violence Redux: The Continuing Mythology of Effects," in *Ill Effects: The Media Violence Debate* (M. Baker & J. Petley, eds.) (1997) 9

Savage, Joanne, "The Criminologist's Perspective," in *Violence and the Media* (Freedom Forum, 2001) 15

Saxe, Joel, "Violence in Videogames: What are the Pleasures?" Paper presented at the International Conference on Violence in the Media, St. John's University, New York, Oct. 1994 (reprinted in 2(1) *CommOddities - A Journal of Communication and Culture*, July 1995) 19, 20

Schauer, Frederick, "Causation Theory and the Causes of Sexual Violence," 4 *Am. Bar Fdtn Rsrch J.* 737 (1987) 13

Sørensen, Birgitte Holm & Carsten Jessen, "It Isn't Real: Children, Computer Games, Violence and Reality," in *Children in the New Media Landscape* (C. Von Feilitzen & U. Carlsson, eds.) (2000) 19, 20

Sprafkin, Joyce, *et al.*, "Effects of Viewing Aggressive Cartoons on the Behavior of Learning Disabled Children," 28 *J. Child Psych. & Psychiatry* 387 (1987) 11

Sprafkin, Joyce, Testimony in *Eclipse Enterprises v. Gulotta* (CV-92-3416) (E.D.N.Y., Mar. 28, 1994) 11

Surgeon General's Advisory Comm. on Television & Social Behavior, *Television and Growing Up: The Impact of Televised Violence* (1972) 7

Thrasher, Frederic, "The Comics and Delinquency: Cause or Scapegoat," 23 *J. Educ. Sociology* 195 (1949) 6

Tierney, John, "Here Come the Alpha Pups," *New York Times Magazine*, Aug. 5, 2001 19

Twomey, John, "The Citizens' Committee and Comic Book Control," 20 *Law & Contemp. Probs.* 621 (1955) 6

"Violent Crime Fell 9% in '01, Victim Survey Shows," *New York Times*, Sept. 9, 2002 3

Wiegman, Oene, *et al.*, *Television Viewing Related to Aggressive and Prosocial Behavior* (1986) 11

Wiegman, Oene, *et al.*, "A Longitudinal Study of the Effects of Television Viewing on Aggressive and Prosocial Behaviors," 31 *Brit. J. Social Psych.* 147 (1992) 11

Ellen Wolock, "Is There a Reasonable Approach to Handling Violence in Video Games?" *Children's Software Revue*, July/Aug. 2002 14

Zimring, Franklin, & Gordon Hawkins, *Crime is Not the Problem - Lethal Violence in America* (1997) 10

No. 02-3010

In the
United States Court of Appeals for the Eighth Circuit

INTERACTIVE DIGITAL SOFTWARE ASS'N, et al.,
Plaintiffs - Appellants,

v.

ST. LOUIS COUNTY, et al.,
Defendants - Appellees

BRIEF *AMICI CURIAE* OF THIRTY-THREE MEDIA SCHOLARS IN SUPPORT OF APPELLANTS, AND SUPPORTING REVERSAL

INTEREST OF THE *AMICI CURIAE*

Amici are scholars in the fields of media, psychology, and culture. They view the relationship between entertainment and human behavior as multi-faceted and complex. They are concerned when, as in this case, a court relies on commonly held but mistaken beliefs about a proven causative link between violent entertainment and violent behavior to uphold a censorship law. They file this brief pursuant to F.R.A.P. 29, in an effort to assist the court in understanding the "media effects" debate.[1]

SUMMARY OF ARGUMENT

Both the St. Louis County Council, in passing Ordinance #20.193, and the district court, in upholding it, relied on the assumption that video games containing "graphic violence" cause violent behavior. The Council heard testimony from psychologist Craig Anderson that playing violent video games "for as short as 10 to 15 minutes" causes "aggressive behavior" and, more

[1] See Appendix for biographies of the *amici*. All parties have consented to the filing of this brief.

broadly, that "there is a causal connection between viewing violent movies and TV programs and violent acts." J.A. 3, 4. The trial court relied on these statements, adding that according to Anderson, video games are "addictive" and "provide a complete learning environment for aggression." J.A. 772-73.

Both the County Council and the court were mistaken. Most studies and experiments on video games containing violent content have not found adverse effects. Researchers who do report positive results have generally relied on small statistical differences and used dubious "proxies" for aggression, such as recognizing "aggressive words" on a computer screen. Indeed, research on media violence more generally has also failed to prove that it causes – or is even a "risk factor" for – actual violent behavior. As psychologist Guy Cumberbatch has noted:

> The real puzzle is that anyone looking at the research evidence in this field could draw any conclusions about the pattern, let alone argue with such confidence and even passion that it demonstrates the harm of violence on television, in film and in video games. While tests of statistical significance are a vital tool of the social sciences, they seem to have been more often used in this field as instruments of torture on the data until it confesses something which could justify publication in a scientific journal. If one conclusion is possible, it is that the jury is not still out. It's never been in. Media violence has been subjected to lynch mob mentality with almost any evidence used to prove guilt.[2]

This torturing of research data on media effects has been driven by a "causal hypothesis" held by some psychologists, that youngsters will imitate fantasy violence. There is some common-sense appeal to this hypothesis. But seemingly common-sense notions do not always turn out to be correct. And researchers' attempts to reduce the myriad effects of art and entertainment to numerical measurements and artificial laboratory experiments are not likely to yield useful insights about the way that viewers actually use popular culture. Likewise, in a field as complex

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[2] Guy Cumberbatch, "Video Violence: Villain or Victim?" (Video Standards Council, UK, 2001), www.videostandards.org.uk/video_violence.htm (accessed 9/13/02).

as human aggression, it is questionable whether quantitative studies can ever provide an adequately nuanced description of the interacting influences that cause some people to become violent.

Violent crime rates across the United States have fallen significantly in the past decade, even while fantasy violence in entertainment has increased – and while video games, especially violent ones, have become a staggeringly popular form of entertainment. Youth violence in particular has seen dramatic reductions.[3] This does not mean that youth violence is not a serious problem – or for that matter, that media messages do not have powerful effects. But those effects are much more diverse and difficult to quantify than believers in the causal hypothesis generally acknowledge. And efforts to address real-world violence by censoring entertainment are profoundly misguided.

ARGUMENT

I. RESEARCH ON VIOLENT VIDEO GAMES HAS NOT DEMONSTRATED REAL-WORLD HARM

Psychologist Kevin Durkin, who reviewed the research on violent video games in 1995, reported that studies had found "either no or minimal effects." Indeed, he added: "some very tentative evidence indicates that aggressive game play may be cathartic (promote the release of aggressive tensions) for some individuals." Durkin reported in a 1999 follow-up survey that "early fears of pervasively negative effects" from video games "are not supported"; "several well

[3] Mike Males, *Framing Youth* (1999), pp. 5-6, 28-70; Jib Fowles, *The Case for Television Violence* (1999), pp. 52-53; Federal Bureau of Investigation, *Uniform Crime Report* (2000) (rates of violent crime for youths aged 10-17 at their lowest level since 1987; between 1990-2000, juvenile violence arrest rates fell 27%, including a record 68% drop in homicides); "Violent Crime Fell 9% in '01, Victim Survey Shows," *New York Times*, Sept. 9, 2002, p. A18.

designed studies conducted by proponents of the theory that computer games would promote aggression in the young have found no such effects."[4] His findings were echoed by other scholars.[5]

One proponent of the causal hypothesis, however, continued to search for evidence of harmful effects. In 2000, Craig Anderson and a colleague reported on a lab experiment and a correlational study they had conducted.[6] In the experiment, they had college students play part of either a violent or a nonviolent video game, then tested them for aggression or "aggressive cognition" by asking them to give "noise blasts" to a game opponents or recognize "aggressive words" on a computer screen. A somewhat larger number of the subjects who played the violent game excerpt gave slightly longer noise blasts or recognized the words slightly more quickly. The differences were in fractions of seconds. In addition, it was highly questionable whether word recognition or noise blasts demonstrated anything realistic about actual intent to harm another person.[7] Nevertheless, Anderson concluded that exposure to "a graphically violent video

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[4] Kevin Durkin, *Computer Games - Their Effects on Young People* (Australia Office of Film & Literature Classification, 1995), p. 2; Kevin Durkin, *Computer Games and Australians Today* (Australia Office of Film & Literature Classification, 1999), p. 3.

[5] *E.g.,* Barrie Gunter, *The Effects of Video Games on Children: The Myth Unmasked* (1998), pp. 94-109; Lillian Bensley & Juliet Van Eenwyk, "Video Games and Real-Life Aggression: Review of the Literature," 29(4) *J. Adolescent Health* 244, 256 (2001) (findings "not supportive of a major public concern that violent video games lead to real-life violence"); Mark Griffiths, "Violent Video Games and Aggression: A Review of the Literature," 4 *Aggression & Violent Behav.* 203 (1999) (studies' results are "consistent with the catharsis hypothesis" that fantasy aggression "releases the energy that would otherwise be expressed in aggressive behavior").

[6] A correlation between two characteristics, such as aggressive behavior and attraction to violent entertainment, gives no clue as to which causes the other, or whether one or more independent factors – such as a violent home, predisposition, or parental neglect – accounts for both the aggression and the preference for violent media.

[7] Cumberbatch, "Video Violence," *supra.*

game increased aggressive thoughts and behavior."[8]

In the same article, Anderson reviewed previous video game research. Of four experiments that found "weak" support for the causal hypothesis, he acknowledged that none had ruled out "the possibility that key variables such as excitement, difficulty, or enjoyment created the observed increase in aggression." Other experiments were negative or yielded "mixed results" and "little evidence" of adverse effect. Yet the following year, Anderson and a colleague reported on a new "meta-analysis" that they conducted, averaging the results of 33 separate studies on violent video games. Now, they concluded that the studies showed violent games "increase aggressive behavior in children and young adults."[9]

Scholars critiqued Anderson's new calculations as well as his interpretation of the underlying studies.[10] As they pointed out, if experiments with dubious results are incorrectly interpreted as supportive of the causal hypothesis, the resulting meta-analysis will only magnify the error.

In 2000, Indianapolis passed an ordinance restricting minors' access to violent video games in arcades. The city relied on Anderson's "aggressive word"/noise blast experiment to assert that a causal connection had been established between violent games and aggressive behavior. The Court of Appeals stuck down the ordinance, ruling that Anderson did not show that "video games have ever caused anyone to commit a violent act," or "have caused the average level of violence

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[8] Craig Anderson & Karen Dill, "Video Games and Aggressive Thoughts, Feelings, and Behavior in the Laboratory and in Life," 78(4) *J. of Personality & Social Psych.* 772 (2000).

[9] Craig Anderson & Brad Bushman, "Effects of Violent Video Games on Aggressive Behavior, Aggressive Cognition, Aggressive Affect, Physiological Arousal, and Prosocial Behavior: A Meta-Analytic Review of the Scientific Literature," 12(5) *Psych. Science* 353 (2001).

[10] Christopher J. Ferguson, "Media Violence, Media Causality," 57(6-7) *Amer. Psychologist* 446 (2002); see also, *e.g.*, Richard Bloom, "On Media Violence: Whose Facts? Whose Misinformation?" 57(6-7) *Amer. Psychologist* 447 (2002).

to increase anywhere." The court noted that violent themes have always been part of children's literature; to shield youngsters from the subject "would not only be quixotic, but deforming."[11]

II. MEDIA-EFFECTS RESEARCH OVERALL HAS NOT DEMONSTRATED THAT VIOLENT ENTERTAINMENT CAUSES REAL-WORLD HARM

A. Most Studies Have Negative Results

Fantasy violence has been a theme in art, literature, and entertainment since the beginning of civilization, but attempts to prove through science that it has adverse effects are less than a century old. In 1928, the Payne Fund commissioned sociologists to gather data on the effects of cinema violence through surveys and interviews. The process took four years, and resulted in multiple published volumes. The conclusions were guarded and equivocal, but caution was forgotten in a one-volume summary, *Our Movie Made Children*, which became a best-seller and claimed the studies had proved harmful effects.[12]

In the 1950s, psychiatrist Fredric Wertham asserted that his informal research with juvenile delinquents proved violent comic books to cause crime. Wertham's methods were anecdotal; he had no control groups; and he mistakenly relied on correlations as proof of causation. But his assertions resonated with a public eager for answers to concerns about crime.[13]

The next subject of study was television. Soon after TV's emergence, politicians began to stoke public anxieties about violent content. At the same time, a new field of psychology, social learning theory, posited that children imitate media violence. These psychologists believed,

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[11] *American Amusement Machine Ass'n v. Kendrick*, 244 F.3d 572, 577-79 (7th Cir. 2001).

[12] See Gregory Black, *Hollywood Censored* (1994), pp. 151-54.

[13] See Margaret Blanchard, "The American Urge to Censor," 22 *Wm. & Mary L.Rev.* 741 (1992); John Twomey, "The Citizens' Committee and Comic Book Control," 20 *Law & Contemp. Probs.* 621 (1955); Frederic Thrasher, "The Comics and Delinquency: Cause or Scapegoat," 23 *J. Educ. Sociology* 195 (1949).

moreover, that such effects could be measured through laboratory experiments. Albert Bandura, leader of the social learning school, conducted experiments demonstrating that some children shown films of adults hitting Bobo dolls will imitate the behavior immediately afterward.[14] Even though Bobo dolls are meant to be hit, and aggressive *play* is far different from real-world intent to harm, Bandura announced that he had proved adverse effects from media violence. The announcement resonated politically, and the federal government was soon funding other studies.

The first major result of this funding was a 1972 Surgeon General's report that noted a "preliminary and tentative indication" of a causal link between TV violence and real-world behavior, but cautioned that this possible effect was "small," and only in children already predisposed to aggression.[15] As historian Willard Rowland recounts, however, legislators misrepresented the report's cautious conclusions, claiming that a definitive link had been proven.[16]

Psychologist Jonathan Freedman, who began studying media-effects research in the early 1980s, was astounded at the disparity between the claims being made and the actual results. In a 1984 article, he reported that although there is a small statistical *correlation* between preference for TV violence and aggressive behavior, there is no evidence of a causal link. Likewise, he said, laboratory experiments, which can show a short-term imitation effect, are too artificial to offer

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[14] Albert Bandura *et al.*, "Imitation of Film-Mediated Aggressive Models," 66 *J. Abnormal & Soc. Psych.* 3 (1963). Bandura popularized his claims in *Look* magazine: "What TV Violence Can Do to Your Child," *Look*, Oct. 22, 1963, p. 46.

[15] Surgeon General's Advisory Comm. on Television & Social Behavior, *Television and Growing Up: The Impact of Televised Violence* (1972), pp. 4, 7, 67. Psychologist Stuart Fischoff notes that it was almost impossible in these years to get government funding for media research unless one was looking for harmful effects. Fischoff, "Psychology's Quixotic Quest for the Media-Violence Connection," 4(4) *J. Media Psych.* (1999), http://www.calstatela.edu/faculty/sfischo/violence.html (accessed 9/20/02).

[16] Willard Rowland, Jr., *The Politics of TV Violence* (1983), pp. 135-96.

much guidance on TV's real-world impact. And field experiments, more realistic attempts to gauge media-violence influence, had wholly inconclusive results.[17]

Freedman found many instances of researchers manipulating results to bolster their theories. A field experiment in 1973, for example, widely cited in support the causal hypothesis, had numerous measures of aggression, all of which failed to produce any finding of adverse effects. Not satisfied, the researchers divided the children into "initially high aggression" and "initially low aggression" categories, and again compared results. Still there were no indications of harm from viewing violent programs ("Batman" and "Superman"). The initially high-aggression group, for example, became somewhat less aggressive after the experiment, no matter which programs they watched. But after more number-crunching, the researchers found that the initially high-aggression children who were shown violent programs "decreased *less* in aggressiveness" than the initially high-aggression children who watched neutral programs. They seized upon this one finding to claim they had found support for the causal hypothesis.[18]

Probably the most widely cited research project in these years was a "longitudinal" study – tracking correlations over time – to determine whether early preferences for violent entertainment correlate with aggressiveness later in life. The researchers found no correlation between violent TV viewing at age 8 and aggressive behavior at age 18 for two out of three measures of aggression. But there was a correlation for boys on a third measure of aggression – peer reports.

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[17] Jonathan Freedman, "Effect of Television Violence on Aggression," 96(2) *Psych. Bull.* 227 (1984).

[18] Jonathan Freedman, "Viewing Television Violence Does Not Make People More Aggressive," 22 *Hofstra L. Rev.* 833, 843-46 (1994). The study was Lynette Friedrich & Aletha Stein, "Aggressive and Prosocial Television Programs and the Natural Behavior of Preschool Children," 38(4) *Monographs of the Society for Research in Child Development* (1973).

They seized upon this finding, and claimed proof of harm from TV violence.[19]

They also later claimed a correlation between violent TV viewing in childhood and violent crime at age 30. Oddly, however, they did not disclose the actual numbers of violent criminals on whom they based their conclusions, and their published report did not mention a link between early violent viewing and adult crime at all. Nevertheless, one of the researchers, Rowell Huesmann, testified in 1986 before the U.S. Senate using a bar graph purportedly showing how violent TV causes violent crime. When, years later, author Richard Rhodes asked for the actual numbers, Huesmann acknowledged that the correlation shown in his dramatic bar graph was based on just three individuals who committed violent crimes.[20]

Huesmann went on to write a pivotal article on media violence in the next major government report, released in 1982.[21] It was an opportunity, as Rowland observes, to "provide a resurgent call to arms" by those "disappointed in the cautious tone" of the 1972 report.[22] But many scholars disputed its claim that harmful effects had been proven.[23] Yale professor William McGuire, for example, wrote that despite the hype, two decades of media-effects research had

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[19] This phase of the study was reported in Leonard Eron *et al.*, "Does Television Violence Cause Aggression?" 27 *Am. Psychologist* 253 (1972).

[20] Richard Rhodes, "The Media-Violence Myth," *Rolling Stone*, Nov. 23, 2000, p. 55; e-mail from Huesmann to Rhodes, Mar. 13, 2000. The follow-up study was reported in L. Rowell Huesmann *et al.*, "The Stability of Aggression Over Time and Generations," 20 *Devel. Psych.* 1120 (1984)

[21] National Institute of Mental Health, *Television and Behavior - Ten Years of Scientific Progress and Implications for the Eighties* (1982).

[22] Willard Rowland, Jr., "Television Violence Redux: The Continuing Mythology of Effects," in *Ill Effects: The Media Violence Debate* (M. Baker & J. Petley, eds.) (1997), p. 113.

[23] *E.g.*, Thomas Cook *et al.*, "The Implicit Assumptions of Television Research: An Analysis of the 1982 NIMH Report on *Television and Behavior*," 47 *Pub. Opin. Q.* 161, 181-82 (1983) ("the field experiments on television violence produce little consistent evidence of effects, despite claims to the contrary"); see also "Guns, Lies, and Videotape," 354(9178) *The Lancet* 525 (1999) ("it is inaccurate to imply that the published work strongly indicates a causal link between virtual and actual violence").

found little or no real-world behavioral impact from violent entertainment.[24]

Other researchers used correlation studies rather than experiments to test the causal hypothesis. One much-publicized study of this type found a correlation between the introduction of television in three countries and subsequent homicide rates. Without considering either the level of violent content in early TV, or other, more likely, explanations for the increased homicides, the researcher announced that "the introduction of television in the 1950s caused a subsequent doubling of the homicide rate."[25] Many scholars disputed his claims, most notably two criminologists who reported in 1996 that homicide rates in many countries including the U.S. had decreased over the previous two decades despite increases in media violence.[26]

Some correlation research flatly undermined the causal hypothesis. In 1986, for example, Steven Messner reported *negative* correlations between exposure to violent TV and violent crime in 281 metropolitan areas. Messner stated: "The data consistently indicate that high levels of exposure to violent television content are accompanied by relatively low rates of violent crime."[27]

Similarly, an ambitious cross-national study coordinated by Huesmann and his colleague Leonard Eron found no significant correlations over time between children's media violence viewing and aggressive behavior in Australia, Finland, the Netherlands, Poland, the U.S., or Kibbutz children in Israel. The only strong correlations were for two groups of Israeli city

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[24] William McGuire, "The Myth of Massive Media Impact: Savagings and Salvagings," in *Public Communication and Behavior* (G. Comstock, ed.) (1986), p. 174.

[25] Brandon Centerwall, "Television and Violence: The Scale of the Problem and Where to Go From Here," 267(22) *J.A.M.A.* 3059, 3061 (1992).

[26] Franklin Zimring & Gordon Hawkins, *Crime is Not the Problem - Lethal Violence in America* (1997), pp. 133-34, 239-43.

[27] Steven Messner, "Television Violence and Violent Crime," 33(3) *Social Problems* 218, 228 (1986).

dwellers. Yet in this case, as Freedman recounts, most of the researchers "tried to put the best face on it that they could" in the book that resulted. "They hedged, did other analyses, and tried to make it sound as if the results supported the initial prediction that television violence would increase aggression." The Dutch researchers, however, did not hedge. "Their write-up came right out and said that there was no evidence of any effect." Huesmann and Eron refused to publish their chapter unless they revised their conclusions.[28]

Some experiments, meanwhile, found more aggressive behavior associated with nonviolent shows like "Sesame Street" and "Mr. Rogers' Neighborhood." Joyce Sprafkin, who conducted some of these studies, later described her reaction: "I decided to look back carefully at the field and say, well, what have other people really found?" For pre-school children, the field studies simply "did not support a special significance for aggressive television."[29]

This year, Jonathan Freedman published a thorough review of some 200 experiments or studies – all that he could locate – attempting to test the causal hypothesis. He found that most had negative results, even accepting as positive some experiments that used poor, almost ridiculous, proxies for aggression. Of 87 lab experiments, 37% supported the causal hypothesis; 22% had mixed results, and 41% were nonsupportive. After Freedman factored out experiments using "the most doubtful measures of aggression," only 28% of the results were supportive, 16%

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[28] Freedman, "Viewing Television Violence," *supra,* 22 *Hofstra L. Rev.* at 849-51. The Dutch researchers published their report separately; see Oene Wiegman *et al.*, *Television Viewing Related to Aggressive and Prosocial behavior* (1986); Oene Wiegman *et al.*, "A Longitudinal Study of the Effects of Television Viewing on Aggressive and Prosocial Behaviors," 31 *Brit. J. Social Psych.* 147 (1992).

[29] Sprafkin testimony in *Eclipse Enterprises v. Gulotta* (CV-92-3416) (E.D.N.Y. Mar. 28, 1994), pp. 112-13; see also Joyce Sprafkin *et al.*, "Effects of Viewing Aggressive Cartoons on the Behavior of Learning Disabled Children," 28 *J. Child Psych. & Psychiatry* 387 (1987); Kenneth Gadow & Joyce Sprafkin, "Field Experiments of Television Violence with Children: Evidence for an Environmental Hazard?" 83 *Pediatrics* 399 (1989).

were mixed, and 55% were non-supportive of the causal hypothesis.[30]

Freedman was hardly alone. A 2000 review of media-violence research by the Federal Trade Commission reported that no firm conclusions about adverse effects can be drawn.[31]

In 1994, a federal court in New York heard expert testimony on media-effects research. The case involved a county ordinance that barred dissemination to minors of any "trading card" that depicts a "heinous crime" or a "heinous criminal," and is "harmful to minors." Expert testimony from Jonathan Freedman and Joyce Sprafkin made clear that, contrary to popular belief, research on the effects of media violence has yielded inconclusive results. The court held that the county had not justified the ordinance with any evidence of harm from "heinous crime" trading cards.[32]

B. Occasional Positive Results Do Not Establish Real-World Harm

Despite the overall failure of media-effects researchers to prove harmful effects, some studies have reported positive findings. There are a number of reasons why these occasional positive results do not support the hypothesis that fantasy violence has adverse real-world effects.

The first reason relates to a fundamental but often-forgotten fact about social science research. Its results are "probabilistic." That is, the "identification of a causal relationship" through lab or field experiments "does not entail the conclusion that the identified cause

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[30] Jonathan Freedman, *Media Violence and Its Effect on Aggression* (2002), pp. 56, 62-63. For field experiments, the percent of negative results was higher: "only three of the ten studies obtained even slightly supportive results,"and even this weak showing gave "a more favorable picture than is justified," for several of the studies with null results "actually consisted of many separate studies." Counting the results of these separate studies, three field experiments found some support; 20 did not. *Id.*, pp. 106-07.

[31] Federal Trade Comm'n, *Marketing Entertainment Violence to Children*, Appendix A, "A Review of Research on the Impact of Violence in Entertainment Media" (2000).

[32] *Eclipse Enterprises v. Gulotta*, 134 F.3d 63 (2nd Cir. 1997).

produces the effect in all, a majority, or even a very large proportion of cases."[33] Thus, even studies that show a "statistically significant" link between violent entertainment and aggressive behavior do not mean that the link exists for most, or even a substantial minority of, individuals. "Significant" in the statistical sense "does not mean 'important.' It means simply 'not likely to happen just by chance.'"[34]

Another problem with drawing real-world conclusions from quantitative media-effects research is that both "violence" and "aggression" are very broad concepts. Researchers have used vastly different examples of violent content in the cartoons, film clips, or games that they study. Generalizations about all violence (or all "graphic violence") from these differing examples are not trustworthy, and fail to account for the many different contexts in which works of art or entertainment present violence.

Yet another problem is that experimenters have not always made their nonviolent excerpts equivalent to their violent ones in respect to other variables such as general level of interest or excitement. Freedman gives a striking example – an early, much-cited experiment that compared subjects' behavior after watching either an exciting film clip of a prizefight or a soporific clip about canal boats. Since the canal boat film was not nearly as exciting as the prizefight film, it was probably the subjects' general arousal level, not their imitation of violence onscreen, that accounted for a statistical difference in their subsequent lab behavior.[35]

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[33] Frederick Schauer, "Causation Theory and the Causes of Sexual Violence," 4 *Am. Bar Fdtn Rsrch J.* 737, 752-53 (1987).

[34] David Moore, *Statistics - Concepts and Controversies* 486-90 (4th ed.) (1997).

[35] Freedman, *Media Violence and Its Effect on Aggression, supra,* p. 78. The study was Leonard Berkowitz *et al.*, "Film Violence and Subsequent Aggressive Tendencies," 27 *Public Opin. Q.* 217 (1973).

Measuring "aggression" is a further problem. For one thing, not all aggression is socially disapproved. For another, aggressive attitudes or "cognition" are not the same as aggressive behavior. Proxies for aggression in lab experiments range from dubious (noise blasts; Bobo dolls; "killing" characters in a video game) to ludicrous (popping balloons; interpreting ambiguous stories in a way that coders consider "more hostile"; recommending a grant termination).[36]

Moreover, aggressive *play*, whether in a lab or in the real world, is far different from real aggression intended to hurt another person.[37] Indeed, aggressive play provides a socially approved outlet for impulses that otherwise might take dangerous forms. Thus, the argument that the statistical link between media violence and aggression is as strong as the link between cigarette smoking and cancer (or other physiological analogues that are often used), even if it were true empirically, would be meaningless, because while scientists can measure the presence or absence of disease, psychologists cannot measure real aggression through the proxies used in lab experiments.

A final problem is the "experimenter demand" factor. Not only are behaviors permitted and encouraged in experiments that would be disapproved outside the lab, but subjects generally

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[36] The grant termination example is from Fischoff, *supra*; the "more hostile" interpretation example is from Anderson & Dill, *supra*. See also Ellen Wolock, "Is There a Reasonable Approach to Handling Violence in Video Games?" *Children's Software Revue*, July/Aug. 2002 (occasional findings of short-term effects are questionable, given how "aggressivity" is measured – "increase in heart rate and blood pressure, negative responses on questionnaires, toy choice, etc."); Craig Emes, "Is Mr. Pac Man Eating Our Children? A Review of the Effect of Video Games on Children," 42 *Can. J. Psychiatry* 409, 413 (1997) (reliability and validity of procedures used to measure aggression "are questionable").

[37] Goldstein, "Does Playing Violent Video Games Cause Aggressive Behavior?" Paper presented at U. of Chicago "Playing By the Rules" Conference, Oct. 27, 2001, p. 5. Goldstein notes that "in the rare study that measures both aggressive *play* and aggressive *behavior*, violent video games affect the former and not the latter." *Id.* See also Griffiths, "Violent Video Games," *supra* (questioning whether aggressive free play observed in a lab is useful predictor of anti-social aggression).

know what the researcher is looking for. Numerous scholars have noted this problem.[38]

III. THE FUNCTIONS OF FANTASY VIOLENCE

The causal hypothesis has been popular within one branch of psychology. Other scholars take more nuanced and less simplistic approaches to both media effects and human aggression.[39] They look, as Professor David Buckingham puts it, at "the diverse and active ways in which children and young people use the media for different social and psychological purposes."[40] MIT's Henry Jenkins summed up this approach when he wrote that many young people "move nomadically across the media landscape, cobbling together a personal mythology of symbols and stories, and investing those appropriated materials with various personal and subcultural meanings." Because of this wide variety of responses, "universalizing claims are fundamentally inadequate in accounting for media's social and cultural impact."[41] The National Academy of Sciences has likewise pointed out that the causal hypothesis is simplistic because it fails to consider either how different individuals respond to identical stimuli, or how different

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[38] *E.g.*, Freedman, *Media Violence and Its Effect on Aggression, supra*, 49-51, 80-83; Cumberbatch, *supra* (quoting "one shrewd four year-old who, on arriving at the laboratory, ... was heard to whisper to her mother, 'Look mummy! There's the doll we have to hit!'"); Joanne Savage, "The Criminologist's Perspective," in *Violence and the Media* (Freedom Forum, 2001), p. 28 ("it is possible that showing subjects violent material creates an atmosphere of permissiveness and encourages them to be more aggressive").

[39] Other theories of aggression look to social conditions, family environment, brain chemistry, and variations in human character. *E.g.*, Debra Niehoff, *The Biology of Violence* (1999); Jonathan Kellerman, *Savage Spawn - Reflections on Violent Children* (1999); Rollo May, *Power and Innocence - A Search for the Sources of Violence* (1972); Erich Fromm, *The Anatomy of Human Destructiveness* (1973); Konrad Lorenz, *On Aggression* (1963).

[40] David Buckingham, "Electronic Child Abuse? Rethinking the Media's Effects on Children," in *Ill Effects: The Media Violence Debate* (M. Barker & J. Petley, eds.) (1997), p. 34.

[41] Henry Jenkins, "Professor Jenkins Goes to Washington," *Harper's*, July 1999, p. 23; Henry Jenkins, "Lessons From Littleton: What Congress Doesn't Want to Hear About Youth and Media," *Independent School*, Winter 2000, http://www.nais.org/pubs/ismag.cfm?file_id=537&ismag_id=14 (accessed 9/19/02).

individuals' psychosocial, neurological, and hormonal characteristics interact to produce behavior.[42]

Art and entertainment influence different individuals in varying ways, depending upon their characters, intelligence, upbringing, and social situation. For a relatively few predisposed youths, the *modus operandi* of a crime depicted in a film might inspire them to incorporate those details into a violent act.[43] For a far greater number, the same violent work will be relaxing, cathartic, or simply entertaining.

Jenkins describes at least four functions of violent entertainment: offering youngsters "fantasies of empowerment," "fantasies of transgression," "intensification of emotional experience," and "an acknowledgment that the world is not all sweetness and light."[44] Similarly, psychologist Jeffrey Arnett, studying a correlation between adolescents' reckless behavior and preference for violent music, found "sensation seeking" to be the independent factor that accounts for both the preference and the behavior. He reported that "adolescents who like heavy metal music listen to it especially when they are angry and that the music has the effect of calming them down and dissipating their anger."[45]

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[42] National Research Council, Nat'l Academy of Sciences, *Understanding and Preventing Violence* (A. Reiss, Jr. & J. Roth, eds.) (1993), pp. 101-02.

[43] See John Douglas & Mark Olshaker, *The Anatomy of Motive* (1999), pp. 82-87 (media can provide "modus operandi and signature elements" to criminals, but do not cause law-abiding people to commit violent acts); Fischoff, *supra* (same).

[44] Jenkins, "Lessons From Littleton," *supra*; see also Jeffrey Goldstein, "Why We Watch," in *Why We Watch, supra*. pp. 216-20 (appeals of violent entertainment include mood management, sensation-seeking and excitement, emotional expression, and the state of "flow" one experiences when immersed in an activity).

[45] Jeffrey Arnett, "The Soundtrack of Restlessness - Musical Preferences and Reckless Behavior Among Adolescents," 7 *J. Adol. Rsrch* 313, 328 (1992); Jeffrey Arnett, "Adolescents and Heavy Metal Music: From the Mouths of Metalheads," 23 *Youth & Society* 76 (1991); see also Lawrence Kurdek, "Gender Differences in the Psychological Symptomatology and Coping Strategies of Young Adolescents," 7 *J.*

Experts on childhood and adolescence have long recognized the importance of violent fantasy play in overcoming anxieties, processing anger, and providing outlets for aggression. Bruno Bettelheim was a pioneer in describing these responses in the context of violent fairy tales.[46] As film historian Jon Lewis explains, Bettelheim understood that children have "terrible struggles, terrible fears"; they are "small, and fully aware that they have no power." Violent stories "offer a safe opportunity to fantasize about having some power in a world that otherwise seems prepared to crush them."[47]

Media scholars, eschewing artificial laboratory experiments and using real-world research methods such as interviews and observation, have explored why young enthusiasts are drawn to violent entertainment. Contributors to the anthology *Why We Watch* report that some children "seek out violent programming that features heroes triumphing over villains in an effort to control their anxieties," and observe that historically, as real-world violence in daily life has decreased, "representations" have "supplanted actual experience" as a way for youngsters to cope with their fears.[48]

Early Adol. 395 (1987) (heavy metal music is useful to adolescents in purging anger).

[46] Bruno Bettelheim, *The Uses of Enchantment* (1975); see also David Blum, "Embracing Fear as Fun To Practice for Reality: Why People Like to Terrify Themselves," *New York Times*, Oct. 30, 1999, p. B11 (many children and adults enjoy horror movies because they can "experience fear without real danger to themselves" and thereby "tame its effects on the psyche").

[47] E-mail to Free Expression Policy Project, Sept. 2, 2002.

[48] Joanne Cantor, "Children's Attraction to Violent Television Programming"; Clark McCauley, "When Screen Violence is Not Attractive"; Vicki Goldberg, "Death Takes a Holiday, Sort Of," in *Why We Watch, supra*, pp. 113, 149, 28. See also Celia Pearce, "Beyond Shoot Your Friends: A Call to Arms in the Battle Against Violence," in *Digital Illusion: Entertaining the Future With High Technology* (C. Dodsworth, Jr., ed.) (1998), p. 218 (as actual violence in society, especially as a form of public entertainment, has decreased (beheadings, mutiliations, etc.), we have, perhaps, "evolved to the point where more of our violence is vicarious than actual"); Norbert Elias & Eric Dunning, *Quest for Excitement: Sport and Leisure in the Civilizing Process* (1986) (seeking pleasurable excitement from violent entertainment is part of the civilizing process).

Author Gerard Jones recently interviewed psychiatrists, pediatricians, therapists, teachers, and parents on the attractions of fantasy violence. "I gathered hundreds of stories of young people who had benefitted from superhero comics, action movies, cartoons, shoot-'em-up video games, and angry rap and rock songs," he writes. For the most part, he found young people "using fantasies of combat in order to feel stronger, to access their emotions, to take control of their anxieties, [and] to calm themselves down in the face of real danger." Jones notes that one function of play is to explore, "in a safe and controlled context, what is impossible or too dangerous or forbidden" in reality.

In "focusing so intently on the literal," Jones says, many media critics "overlook the *emotional* meaning of stories and images."

> The most peaceful, empathetic, conscientious children are often excited by the most aggressive entertainment. Young people who reject violence, guns, and bigotry in every form can sift through the literal contents of a movie, game, or song and still embrace the emotional power at its heart. Children need to feel strong. They need to feel powerful in the face of a scary, uncontrollable world. Superheroes, video-game warriors, rappers, and movie gunmen are symbols of strength.[49]

These attractions of fantasy violence are especially pertinent to video games. In 1995, communications scholar Joel Saxe used in-depth interviews "to assess a full range of player preferences and interpretations related to video games." He found that gamers express a "deep sense of thrill" in response to the "highly exaggerated, on-screen violent fantasy play." Transgression, rebellion, and the ability to defy the "formal rules of civility" in a fantasy world all contributed to the appeal. "As players elaborate the meaning of the gaming experience," Saxe says, they interpret the fantasy play as a "healthy outlet," providing "a means of releasing feelings

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[49] Gerard Jones, *Killing Monsters* (2002), pp. 6, 11. Jones quotes child development specialist Donna Mitroff ("children have a deep need, an almost physical need, for these archetypes of power and heroism"), and psychiatrist Lenore Terr (like toy guns in the pre-electronic era,, fantasy violence is "one of the best tools they have for dealing with their aggressions"). *Id.*, pp. 73, 54.

of aggression." The play "is also linked to feelings of positive accomplishment," given the competitive format of the games, and the level of skill required.[50]

Similarly, researchers in Denmark, using "qualitative methods such as in-depth interviews and observations," found "competition, challenge, and achievement" to be particular attractions of video games. "The violent elements in computer games are attractive as spectacular effects," and because "they prompt excitement and thrill." They are "in line with genres known from the film industry," such as action films and animation, and thus have inherited violence from other media that emphasize spectacular effects. The element of exaggeration "is fully recognized by children." In fact, children see the violence in video games as less anxiety-provoking than movies and television, because it is more clearly fantastic. The children in the investigation, some as young as five, were fully aware of the difference between reality and the exaggerated fiction of computer games.[51]

Part of video games' appeal is their communal character. Often they are played in groups, and even when played alone, the iconography of the games forms a bond among many youngsters. A number of authors have described the elaborate communities associated with video games.[52] Saxe notes: "even though the screen fantasy play revolves around brute violence,

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[50] Joel Saxe, "Violence in Videogames: What are the Pleasures?" Paper presented at the Int'l Conference on Violence in the Media, St. John's University, Oct. 1994, pp. 2, 8, 10 (reprinted in 2(1) *CommOddities - A Journal of Communication and Culture,* July 1995).

[51] Birgitte Holm Sørensen & Carsten Jessen, "It Isn't Real: Children, Computer Games, Violence and Reality," in *Children in the New Media Landscape* (C. Von Feilitzen & U. Carlsson, eds.) (2000), pp. 119-21. Similarly, David Buckingham reports that children often describe horror films "as 'unrealistic' and even as laughable ... Many [are] keen to draw attention to the liberal use of 'tomato ketchup' and 'make-up.'" Alissa Quart, "Child's Play," *Lingua Franca*, Oct. 2001, p. 55.

[52] *E.g.,* J.C. Herz, *Joystick Nation* (1997); John Tierney, "Here Come the Alpha Pups," *New York Times Magazine*, Aug. 5, 2001, p. 38.

the actual relations among players in the immediate play area are cooperative, if not amiable."[53]

Researchers who rely on lab experiments or statistical correlations fail to take account of this social context. As psychologist Jeffrey Goldstein explains, young people bring their entertainment choices to bear on "questions of identity, belonging and independence." Their taste in clothes, music, and video games "has a social purpose."

> Until researchers look, not at isolated individuals forced to play a video game for a few minutes as part of a laboratory experiment, but at game players as members of social groups, we are unlikely to come to terms with violent, or any other, entertainment.[54]

Likewise, the Danish researchers found that "children's fascination with violent computer games cannot be understood without considering these social aspects. The violent elements fascinate some children, but this fascination should not be mistaken for a fascination with violence in the real world. On the contrary, all children in the investigation repudiated real-life violence."[55]

It is true, of course, that many aggressive youths are attracted to violent video games. It is also true that many non-aggressive youths are drawn to violent games. For them, the games provide fantasies of empowerment, excitement, feelings of competence, and membership in a community. Jones observes: "heavy gamers as a population are overwhelmingly non-confrontational geeks."[56]

Games researcher Celia Pearce sums up the humanist understanding of violent fantasy games: "Most of the alarmism about violence," she writes, "is based on a profound misunderstanding about the social and emotional function of games. Games allow people who are midway between

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[53] Saxe, *supra*, p. 11.

[54] Goldstein, "Does Playing Violent Video Games Cause Aggressive Behavior?" *supra*, p. 7.

[55] Sørensen & Jessen, *supra*, p. 120.

[56] E-mail to Free Expression Policy Project, Sept. 12, 2002.

childhood and adulthood to engage in fantasies of power to compensate for their own feelings of personal powerlessness. This role-playing function is important for children of all ages"[57]

CONCLUSION

Stephen Jay Gould observed that efforts to invoke science to "validate a social preference" can distort both science and public policy; the risk is greatest when "topics are invested with enormous social importance but blessed with very little reliable information."[58] Censorship laws based on bogus claims that science has proved harm from violent entertainment deflect attention from the real causes of violence and, given the positive uses of violent fantasy, may be counterproductive. For these reasons, the lower court's reliance on assumptions about adverse effects from violent video games should be rejected, and the judgment below should be reversed.

Respectfully submitted,

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[57] E-mail to Free Expression Policy Project, Aug. 15, 2002.

[58] Stephen Jay Gould, *The Mismeasure of Man* (1981), pp. 22-23.

APPENDIX

SARAH BANET-WEISER is Assistant Professor of Communication at the Annenberg School for Communication at the University of Southern California. She specializes in media and cultural studies, and focuses on issues of gender, race, and nationalism. She is the author of *The Most Beautiful Girl in the World: Beauty Pageants and National Identity*, and has written several recent articles on children, technology and citizenship. She is currently working on a book on the social history of the children's television network, Nickelodeon.

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STUART FISCHOFF is Professor of Media Psychology at California State University - Los Angeles, founding president of Division 46 (Media) of the American Psychological Association (APA), and a Fellow in the APA. He is the author of numerous articles in professional journals, including "Psychology's Quixotic Quest for the Media-Violence Connection," in the *Journal of Media Psychology* and "Gangsta' Rap and A Murder in Bakersfield," in the *Journal of Applied Social Psychology*. He has appeared on numerous television and radio shows and in print discussing the dubious relationship between media violence and real-life violence.

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TODD GITLIN is the author or editor of twelve books, of which four are widely assigned texts in media studies: *The Whole World is Watching*, *Inside Prime Time*, *Watching Television (ed.)*, *and Media Unlimited*. He has been invited to lecture on the social impact of media in Canada, Franc Great Britain, Germany, Spain, Greece, Israel, Hong Kong, and Japan. He was a professor of sociology and founding director of the mass communications program at the University of California, Berkeley, and then taught in the departments of culture and communication, journalism, and sociology at New York University before taking up his current position at Columbia University.

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ELLEN WOLOCK, Ed.D., is Managing Editor of the *Children's Software Revue* and *New Media Revue*. Her recent review of the social science research on the effects of video game violence, "Is There a Reasonable Approach to Handling Violence in Video Games?" was published in the July/August 2002 issue of *Children's Software Revue*.

CERTIFICATE OF COMPLIANCE

Pursuant to F.R.A.P. 32(a)(7) and Eighth Circuit Rule 28A(c), I hereby certify that this brief was prepared in the Corel Word Perfect 8 word processing program, complies with the applicable type-volume limitations, and contains 6,749 words, exclusive of the table of contents, table of authorities, certificates of compliance and of service, list of signers, signature block, and appendix. This certificate was prepared in reliance on the word count of the Corel Word Perfect 8 word processing program.

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Marjorie Heins

CERTIFICATE OF SERVICE

I certify that I served the foregoing Brief *Amici Curiae* of Thirty-Three Media Scholars in Support of Appellants and Supporting Reversal on all parties by mailing two copies via federal express, as well as a virus-free diskette (which has been scanned for viruses) containing the full text of the brief, on September 24, 2002 to:

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Marjorie Heins

Mr. SMITH. Ms. Cantor and Mr. McIntyre, let me address my first question to you all, and obviously you disagree with Ms. Heins's conclusions. But I want to make the point, and Ms. Cantor, you did in your testimony, make a point about the difference between cause and contribute. You made the point that the sex and violence and profanity that children hear or see doesn't necessarily cause but often contributes to behavior along the same lines later on. Mr. McIntyre, you pointed specifically to studies, current studies that indicate that there are harmful effects on children as a result of seeing and watching the violence and the sex and profanity.

Is this just a disagreement between current studies? Ms. Heins says no study shows that. You all say multiple studies have shown it for the last 30 years. What's the disconnect here? Ms. Cantor?

Ms. CANTOR. I'm not sure what research Ms. Heins is referring to. A lot of the research she has referred to in terms of the Bobo doll studies and the popping the balloon, these were done—the very first studies done in the '60's. I mean, studies now are much more sophisticated and they involve a whole range of violent behaviors that are encouraged and contributed to by media violence.

There are many people who have—there are some people who have reviewed the literature who have, I would say, a different perspective. One of the most frequently—one of the most frequently quoted person on the other side is Jonathan Freedman, who is at the University of Toronto. He wrote a book which I reviewed, I have reviewed, and the review's on my website. He was funded by the Motion Picture Association of America in writing this book and he acknowledges that funding in the preface of the book.

I mean, there are ways of looking at the research and trying to minimize its significance, but the majority of researchers who are independent and work at universities have looked at this research in a very scientific way and have found overwhelming evidence that media violence contributes to all of these negative outcomes.

Also, if you're talking about nightmares and anxieties, the causal consequences are very direct and immediate and obvious.

Mr. SMITH. Thank you, Ms. Cantor.

Mr. McIntyre, do you agree with that?

Mr. MCINTYRE. Absolutely, sir. I think it's roughly analogous to the research that's been done on cigarette smoking and lung cancer, that there's not a proven direct one-to-one relationship. If I smoke a cigarette, I'm not doomed to immediately sprout lung cancer. But we know that the more cigarettes I smoke, the more likely I become at risk for lung cancer later on in life.

We see that with media violence, that certainly watching one show may not be causal in the strict definition of that, but for children that have repeated exposure to violence in any capacity, the more they have that exposure to violence, the more they learn it. It's really not complicated in terms of the science. Kids learn what they see.

Mr. SMITH. Thank you, Mr. McIntyre.

Ms. HEINS. Might I add a note?

Mr. SMITH. Ms. Heins, I'm going to recognize you in just a minute. I have a question for Mr. Aho first, and that is that I agree with what you consider to be the issue at hand and I do, as well. I mentioned it in my opening statement, and that is that parents

should be able to choose what their children see and hear, whether it's on a movie, whether it's on TV or whatever it might be. You made the good point that you're not tampering with the original product. You're skipping over. You're muting. In my judgment, you're doing it electronically and with high tech what parents did manually a generation ago.

I also want to make the point and make sure that you agree with it that whatever skipping over is done, whatever muting is done, and whether it's the violence in "Saving Private Ryan" or the sex in another movie or the profanity in another movie, that's all irrelevant. It's the right of parents to delete or skip over or mute whatever they want to for what they consider to be the benefit of their children, isn't that the case?

Mr. AHO. Yes, I think that is the case, Mr. Chairman, and I think that's consistent with first amendment. We certainly think that there is a high demand from parents and families to skip over content that they might find harmful to their children, but it would be their right to skip over the entire movie if they'd prefer.

Mr. SMITH. Okay, good. Ms. Heins, a couple of questions for you. Don't you think that parents should be able to choose what their children see on TV?

Ms. HEINS. Well, they certainly don't have to rent any movie that they don't want their children to see.

Mr. SMITH. No, but as I mentioned in my opening statement, you can't monitor a child 24 hours a day. But do you support the use of the V-chip, for example?

Ms. HEINS. Well, no.

Mr. SMITH. That's the most minor——

Ms. HEINS. No, and putting aside legalities, the reason is that it misleads parents. It is not really helpful to parents. It is a quick fix that is not a fix at all.

Mr. SMITH. But don't you think it's——

Ms. HEINS. They're not really educating their children——

Mr. SMITH. Ms. Heins, don't you——

Ms. HEINS.—or protecting their children.

Mr. SMITH. Don't you think—I appreciate your point about educating children, but don't you think it's really up to the parents to determine what their children see and hear?

Ms. HEINS. Yes, although as children mature, obviously parents don't have complete control.

Mr. SMITH. No, no. Right.

Ms. HEINS. Adolescents still have first amendment rights——

Mr. SMITH. Would you favor a 5-year-old watching the Playboy Channel, for example?

Ms. HEINS. Personally, I don't think a 5-year-old would be very interested in the Playboy Channel.

Mr. SMITH. No, but would you——

Ms. HEINS. And I don't think it will harm them. I don't favor it, but I don't think that we need legislation——

Mr. SMITH. Do you think a parent should be able to prevent a child from watching the Playboy Channel?

Ms. HEINS. Certainly, but the question becomes what kind of legislation is appropriate, and one thing we have to understand is that the tools are very blunt, filtering tools——

Mr. SMITH. I understand that, and I'm glad you answered the question the way you did.

One last quick question. This goes to an article you wrote in 1998 which sounds to me like you didn't back then, at least, think that this technology was bad. You said commercial filtering products, they at least have the virtue of being voluntary. That is, the private companies do the classifying. Then you said, technology that can accommodate multiple self-ratings or third-party ratings of Internet, parents can choose a labeling system that mirrors their own views.

There wasn't anything negative about that context. Have you changed your mind since 1998?

Ms. HEINS. Boy. What's the article? [Laughter.]

Mr. SMITH. I'm happy to. It's called "Print Friendly Versions, Screening Out Sex," by Marjorie Heins. I assume that that is you.

Ms. HEINS. That's me. I'm having trouble placing the context. I mean——

Mr. SMITH. Well, my time is up. I'll give you a copy of the article.

Ms. HEINS. Yes. Maybe it was the American Prospect article.

Mr. SMITH. Whatever it was——

Ms. HEINS. Well, the descriptive material you're quoting sounds more or less accurate, but I think if you read the whole article, you'll see that it's fundamentally——

Mr. SMITH. The rest of the article is about the education, not about the technology, but anyway, thank you, Ms. Heins.

The gentleman from California, Mr. Berman——

Ms. HEINS. If I might just respond to a few points that——

Mr. SMITH. I'll let Mr. Berman give you that opportunity.

Ms. HEINS. Okay. Thanks.

Mr. BERMAN. Mr. Aho, I created a Berman filter and I took the first and fourth paragraphs of your testimony and I didn't alter it, I just pressed the mute button and I heard you say, ClearPlay controls provide graphic violence, nudity, explicit sex, and profanity. This is a choice that many families desire. Many see it as beneficial to their children. We believe that it is not in the best interests of society to eliminate this choice for parents.

Words in your fourth paragraph, through the Berman filter, came out as, ClearPlay does violate copyright laws. Indeed, it does copy or alter the works themselves and it does use trademarks. Trademark and copyright laws were intended to deprive families of choices.

I don't think you like my edits and I don't think they leave an accurate representation of the meaning of your statement. Do you—can you understand why directors might likewise oppose letting you alter the message of their movies? If a ClearPlay competitor distributed the document-reading utility specifically designed to cause your statement to appear this way on a reader's computer screen, would you consider suing them for trademark infringement, libel, or defamation?

And Mr. Chairman, I would like the edited copies of Mr. Aho's statement to be a part of the record. [Laughter.]

Mr. AHO. Was that a question, Mr. Congressman?

Mr. BERMAN. Not particularly. [Laughter.]

But I noticed in one of the press articles that you decided not to provide a filter for "Saving Private Ryan." We know this has very vivid, graphic scenes of violence in the opening scenes related to the Normandy invasion, and you chose not to market a filter for that movie. Did I understand that correctly?

Mr. AHO. That's correct.

Mr. BERMAN. Why?

Mr. AHO. We make our filters according to consumer demand. We have not heard from consumers, nor in our discussions with consumers is there a demand to see "Saving Private Ryan" without the violence. I think most consumers would, based upon the feedback that we get from them, that wasn't something they wanted.

Mr. BERMAN. In other words, your only reason was it didn't make economic sense to spend time on doing that because no one would want to utilize filters of violence for that?

Mr. AHO. The primary driver of what filters we supply is what parents want or what families want or what individuals want.

Mr. BERMAN. Do you think there's anything wrong with filters for—to knock out the violence of that Normandy invasion from "Saving Private Ryan"?

Mr. AHO. Well, no, I don't think that it violates anybody's rights. I think if somebody wanted to watch a movie in their home any way that they wanted to, no, I don't think that that's wrong. I think that's within their rights.

Mr. BERMAN. I noticed in another one of the articles I read that you put out a filter for "As Good As It Gets," and that there's a, I think I recall, there's a scene in there where two fully-clothed males embrace and kiss each other and that you, when called on, why did you filter that scene out? You apologized you said you had the person who did that no longer works for you and that you would no longer market that particular filter. Is that a fair recollection of the article that I read?

Mr. AHO. Congressman, no, I don't believe it is. In fact, I think quite the opposite. I think that the scene that you're referring to was a scene with the actors, Greg Kinnear and Cuba Gooding, Jr., and they embraced and there was an affectionate kiss and that was not filtered. I believe that that's the scene that you're referring to. So no, I——

Mr. BERMAN. Shouldn't parents have a right to have that filtered out?

Mr. AHO. Well, if they would choose to, they can. Congressman, our job is not to provide an unlimited array of filters for whatever anybody may prefer. What we try to provide is a set of options that are most desired by parents. Now, that may or may not be consistent with someone's personal interests.

You make the comment of editing my comments for your own personal interest. Well, if you chose to do that in your home, I think that that's your right. And if you chose to read it for whatever purposes in the privacy of your home, that would be your right. Now, we would not provide that filter to do that kind of work because it's not our business and we don't think that there's a marketplace demand for it.

Mr. BERMAN. But your competitors might.

Mr. AHO. I can't speak for any hypothetical——

Mr. BERMAN. No, they might want to filter your comments.

Mr. AHO. Well, certainly——

Mr. BERMAN. To serve their purposes.

Mr. AHO. Certainly some of your constituents might, Congressman.

Mr. BERMAN. I guess my time has expired. I hope we'll have a chance for a second round.

Mr. SMITH. Thank you, Mr. Berman.

The gentleman from Florida, Mr. Keller, is recognized.

Mr. KELLER. Thank you, Mr. Chairman.

Ms. Heins, all I can say is when I was 12 years old, I wish you were my mom. [Laughter.]

I can watch Playboy as much as I want. You're one of the cool moms, you know. [Laughter.]

Let me start with Mr. Aho. When Mr. Conyers was here, he was saying Mr. Ay-ho. What's the——

Mr. AHO. It's Aho.

Mr. KELLER. Usually when Conyers talks about Ay-ho, I think he's talking about me usually, so I'm—— [Laughter.]

I want to clarify that.

Mr. SMITH. We're going to filter that out.

Mr. KELLER. Okay.

Mr. SMITH. The gentleman continues to be recognized.

Mr. KELLER. Okay. Let me go next, Mr. McIntyre, I'm sympathetic to your concern about seeing these questionable things, especially in the minds of young children, seeing profanity and partial nudity and graphic violence. But just to play devil's advocate, when I go to the Blockbuster, and I have a 5-year-old and an 8-year-old, I look there and it says PG-13 or it says R and it would say, partial nudity or graphic violence. Isn't that enough for parents to make the call? I mean, I can—for example, with my 8-year-old, I can pretty well make the decision. I'm not going to let him see any sex stuff or nudity, but if it says "hell" or "damn," you know, maybe I might let him see it. I mean, isn't that enough for parents?

Mr. MCINTYRE. Well, it's certainly going to depend on the parent and it has been our experience that the ratings that have been applied for motion picture films have been, shall I say, a bit fickle in their application. What one film may be considered to have violence is not consistently applied to a standard over a variety of films. Where PG-13 may give you a certain amount of information, as a Psychological Association, as a public health association, we want to know who's qualified at that association to make the call that that is a picture that is okay for someone that's at the 13-year-old developmental level.

Mr. KELLER. But, I mean, are there examples like where it doesn't say "nudity" on the voluntary label there and then you watch the movie and it, in fact, has nudity?

Mr. MCINTYRE. I am sure there is. However, I'm unprepared to give specific examples.

Mr. KELLER. All right. Mr. Aho, in terms of—I'm trying to figure out what the strike zone of reasonableness is. I mean, I can understand if I was the creator of "Jaws" and I'm the screenwriter or director, I don't want you taking out the cool "Jaws" scene just be-

cause somebody might think it's violent. I'm sympathetic to that side, and yet I understand the family side, as well.

In terms of getting this in the strike zone, what if as a reasonable compromise the studios say, well, here are the airline versions of our movies, which are relatively clean. Why don't you just follow those prescriptions and just skip over those parts that we have deleted in the airline versions? Why wouldn't that be a reasonable compromise for a company like yours?

Mr. AHO. I think it's something that's worth exploring. One of the challenges to really fully evaluate that is that the airline—the standards for the airline versions are not published and so it's difficult to evaluate whether they're acceptable to a broad array of consumers or families or not. Were they to be published and were we able to document them, then I think I could better answer that question.

Mr. KELLER. And I wish somebody from the movie industry was here—I understand that we did have a chance to have studio folks here and the Director's Guild, but some of them declined—because it would seem to me, Mr. Aho, if I'm in the business of making money as a big movie studio, maybe I would want a clean version out at the Blockbuster so for parents like me who might think the movie is great but they don't want to show their kid an R movie, to have a PG version of it. I'd want it out there. I'd want the airline version out there, mass distributed. Why isn't that an industry practice?

Mr. AHO. Well, I think you'd have to speak to the industry and ask them about that, but I concur with you, Congressman Keller, that ultimately, this kind of benefit is good for the industry. If it causes people to watch—more people to watch more movies and enjoy them more, it seems to me that that can only be beneficial to Hollywood and the studios, both economically but also just from a relationship to the American consumer and to families.

Mr. KELLER. Thank you, Mr. Chairman. I'll yield back.

Mr. SMITH. Thank you, Mr. Keller.

The gentlewoman from California, Ms. Lofgren, is recognized for her questions.

Ms. LOFGREN. Thank you, Mr. Chairman.

I'm interested, Mr. Aho, in the technology that ClearPlay utilizes. In your testimony, you mention that ClearPlay does not alter the underlying DVD. It merely, according to you, skips and mutes over objectionable content. Technologically, how does the product do that?

Mr. AHO. Well, we take certain events in the movie and identify them and then the consumer chooses how they want to experience the movie. Now, when it comes to—so when the DVD is interpreting those bits and bytes and comes to one of those frames, on a time-coded basis, it says "mute from this frame to that frame" or "skip from this one to that one"——

Ms. LOFGREN. Okay.

Mr. AHO.—based upon the preferences that you've established.

Ms. LOFGREN. So you don't have to defeat the encryption that is protecting these DVDs, for example, although I guess theoretically the movie industry could go to the next phase of encryption, which would then require you to defeat that scheme.

Mr. AHO. We have not ever nor ever contemplated any decryption measures. That's not part of our business practice.

Ms. LOFGREN. I know it isn't now, but depending on the reaction to what you're doing, it could become necessary for you to look at that.

Mr. AHO. I can't comment on that.

Ms. LOFGREN. All right. Okay. You know, I am interested in this. The focus of the hearing, I think, has been on the—on children and the impact of sex and violence on children, which is obviously of interest and concern to all of us and especially those of us who are parents. But I really think there's a broader issue here, which is artists are free to create and express, but consumers who lawfully purchase or rent are not required to look at all of it.

I mean, if you've got a DVD, you can't force the person to not go to the kitchen and get a Coke during part of it or not to take a trip to the restroom or to cover your eyes. I mean, the fact that you have a right to express does not require consumers to accept the full panoply of what has been created.

And it seems to me that the issue is much broader than children. The issue is, what rights do consumers have to utilize technology to not experience some of what they bought? And it seems to me that once you've lawfully purchased something, you have a right to watch some of it, all of it. It's your choice. And if you use technology to assist you in making that choice, it's still fundamentally your choice on what to see. The fact that you can produce a book doesn't mean I have to read the book, and it's the same thing with movies. Isn't that really what ClearPlay is doing here?

Mr. AHO. Well, I think that's exactly right, in the same way that if you own a CD and you choose to play it back in a different order through your device, or if you buy a book and choose to read only certain chapters of it. Yes, it is merely a matter of us helping you to have a broad array of choices.

Ms. LOFGREN. Now, it seems to me that a distinction could be drawn between the agreement that is made—let's say you make a movie and you're showing that movie at a movie theater and charging admission. I mean, there is an implied, I think, deal between the movie that you're going to show this artistic work for sale and that you're holding it out to be what the artist created. That is a little bit different than in the privacy of my own home, I bought the book and I'm skipping chapter ten, or I bought the DVD and I'm skipping the first 30 minutes. Do you see that distinction?

Mr. AHO. No, I think it's a very important distinction. I mean, let's understand what a consumer has to do. They have to buy a DVD player with the ClearPlay feature on it and then they have to go in and turn ClearPlay on. They have to put in a password and turn it on and create their settings. It comes with ClearPlay off. So someone has to want to do this and take those overt measures to make the product work. It's not something that could be confused with sort of a public presentation of a movie that I sort of stumbled into and misinterpreted.

Ms. LOFGREN. Now, let me ask you just technologically how your product differs from, say, TiVo, where you can also zap out stuff that you don't want to see.

Mr. AHO. I'm not an expert on the TiVo technology, but TiVo records——

Ms. LOFGREN. Right.

Mr. AHO.—and I think that's probably the most fundamental difference, is that as a person with a digital video recorder, it actually makes a copy of the presentation or buffers it, then for you to go back and make changes and take parts out. Probably the most fundamental difference is that we do not record. We do not make a copy. What ClearPlay does is simply skip and mute over parts that you decide to omit.

Ms. LOFGREN. I see my time has expired. Thank you, Mr. Chairman.

Ms. HEINS. I wonder if I could respond to your question in a somewhat more——

Mr. SMITH. The gentlewoman from California is recognized for an additional minute, without objection. That will give Ms. Heins a chance to respond.

Ms. HEINS. Since Mr. Aho pretty much agreed with everything you said, let me just suggest another response, and preface it by saying that, in general, I completely agree with your view that copyright law at this point has tipped too far in favor of the copyright holders and legislation like the Digital Millennium Copyright Act really does undermine fair use rights of the public.

But in this instance, I would think—I would suggest that the written testimony that's been submitted by the Director's Guild, I think is very powerful because it gives examples of movies such as "Traffic," which is a very powerful movie showing the devastation caused by drug addiction and the way in which that movie has been distorted and mutilated. "Schindler's List" is another example, the editing, the creation of essentially a new work which totally undermines and downplays the atrocities of the Nazi era.

These are very powerful examples of interference with the essence of creative works that I would say, even though we agree that copyright balance in general has tipped too far in favor of——

Ms. LOFGREN. Well, let me ask you this——

Ms. HEINS. In this instance, I think——

Ms. LOFGREN. Because I do think if you, and I'm not unsympathetic to the artists. I mean, they have produced a work that is a whole in their mind, that is of value because it's of a whole. But you also, I think, as the producer have to understand that if you're going to provide that piece of work and then hand it so that a consumer controls it in the privacy of their own home, you're going to have a different relationship with the viewer than you will in a theater. And if you're that much of an artist, maybe you don't put it out on a DVD. Maybe you show it only the way you want it to be held, because you can't stop people from going to the bathroom and skipping over that——

Ms. HEINS. Right, or fast-forwarding through the commercials——

Mr. SMITH. The gentlewoman's time is expiring and, in fact, has expired.

Before I recognize the gentleman from Virginia, without objection, what I'd like to do is submit some written questions[1] to our panelists today from Congressman Cannon, who, as I mentioned a while ago, has a strong interest in the subject. He's not a Member of the Subcommittee but he is a Member of the full Committee and would like for you all to respond to his questions within 2 weeks, and we'll get them to you immediately. Thank you.

The gentleman from Virginia, Mr. Forbes, is recognized for questions.

Mr. FORBES. Thank you, Mr. Chairman. Mr. Chairman, I wish that Mr. Berman could give me the right to keep the media from taking my statements out of context or that they would be forced to print them in the context in which they were made. But I can assure you they do not and they constantly proclaim the right to cut and paste however they want.

It just seems that when we flip that right over to parents, everybody gets excited, and today we've heard a debate about whether objectionable material is good or bad for children, and that's a good debate to have, but my real concern kind of follows on what the gentlewoman from California was raising, and that is what a parent's right is in their home in determining what they want their children to see or not see.

Ms. Heins, since you seem to take a little different perspective than our other witnesses and didn't have full time to elaborate on some of your positions, I just want to see where we draw the line in the sand and ask you, if you can, to be concise because I'm limited on my time. But do you believe that as a parent, I have the right in my home to skip objectionable material on a DVD or that's coming in on the TV if I feel that I don't want my children to see that? Do I have that right.

Ms. HEINS. Yes. I think the question here is really to what extent can commercial manufacturers of technology distort a work or interfere with——

Mr. FORBES. And Ms. Heins, they may be questions——

Ms. HEINS.—intellectual freedom rights in order to——

Mr. FORBES. They may be questions somebody else will want to ask, but I want to draw the line and just see where you are on it. But you would agree that as a parent, I would have the right to skip that objectionable material for my children?

Ms. HEINS. Sure.

Mr. FORBES. Suppose that I wasn't going to be home and I hired a 17-year-old babysitter to come over and watch my children but I told her, I want you to skip this material when it came on. Would I have the right to do that and would she have the right to do that at my request?

Ms. HEINS. I see I'm in the hands of an expert cross-examiner.

Mr. FORBES. Just asking.

Ms. HEINS. Yes.

Mr. FORBES. The third question I would ask is, most of the kids that I know that are teenagers know far more about the DVDs and the computers than I'll ever hope to know. Suppose I bring the

[1] The questions offered by Mr. Cannon were not submitted to the witnesses as they were answered at another time during the hearing.

same student home and I ask them, will you program my DVD for me and my church Sunday School class so that this material will not come up? Would they have the right to do that, not changing the disk, just programming my DVD.

Ms. HEINS. For a church Sunday School class?

Mr. FORBES. For me or the church Sunday School class, the community group, whatever that was there.

Ms. HEINS. I think it might make a difference whether it's for public or private viewing.

Mr. FORBES. Okay. Tell me why that would make a difference.

Ms. HEINS. Because when it's for public viewing, you start to encroach, I think, more on the artistic interests of the creators, and so the balance starts to shift a little more——

Mr. FORBES. What if she said, I am——

Ms. HEINS.—away from the privacy rights.

Mr. FORBES. What if she said, I have programmed this particular chip, disk, whatever, so that you can put it in your DVD and it will skip those materials automatically and you don't have to be there to do it. Would that be appropriate for her to do?

Ms. HEINS. I think you get into some very difficult questions of whether that is creation of a derivative work in violation of copyright.

Mr. FORBES. Mr. Aho, would you respond to that? Is there any difference there, if I'm not altering the material in any capacity or any way.

Mr. AHO. Yes, I think there's a substantial difference. I think the fact that a product is not altered has been—and I'm not an expert on copyright law, but I think it's been a fairly fundamental tenet of—I think the principle is fixation or something, that to simply change your own personal viewing experience, I think strikes me and apparently most Americans as a fundamental right, like I would be offended if somebody told me I could not do that.

Mr. FORBES. Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Forbes.

The gentleman from Massachusetts, Mr. Delahunt, is recognized for questions.

Mr. DELAHUNT. Thank you, Mr. Chairman. I find it an interesting discussion, and I think there's unanimity. We all, I think from the panel and I'm sure on this side of this panel sitting at the dais, that the parent does have a right. I don't think there's any contradiction.

Again, there's obviously such a thing as the maturing process and the acquisition, if you will, of certain rights by individuals as they mature. But clearly, for an immature child, I don't think there's any question.

But I think what we're talking about here is, is this a violation of trademark/copyright law, and I presume this is what the litigation is about and that a court will make that determination.

I think the questioning by Mr. Forbes was correct in the sense of once the work leaves the home, I would—I can envision a shifting in the balance, if you will, from privacy to a whole different set of conditions which create, if you will, a more stronger argument that the copyright itself is being encroached.

What's the status of the litigation at this point in time? I'm sure it's wending its way through the courts. Are you in a circuit court of appeals or——

Mr. AHO. Are you asking me, Congressman?

Mr. DELAHUNT. Yes, I am.

Mr. AHO. We have filed for a, or made a motion for a summary judgment. All the briefs from both sides have——

Mr. DELAHUNT. Where is it, anyhow?

Mr. AHO. It's in the Tenth Circuit.

Mr. DELAHUNT. It's in the circuit court.

Ms. HEINS. It's in the district court.

Mr. AHO. Tenth District, I'm sorry.

Mr. DELAHUNT. It's in the Tenth District. So this—I think the Committee will find it interesting to observe the progress of the litigation, and clearly at some point in time, I would anticipate whether it's you, sir, or the plaintiffs in the case, there would be a decision that we can all review.

Getting back to the technology, maybe I just don't quite understand it, but it's ClearChannel that makes the decision as to——

Mr. AHO. ClearPlay.

Mr. DELAHUNT. I'm sorry?

Mr. AHO. ClearPlay.

Mr. DELAHUNT. ClearPlay, ClearChannel—— [Laughter.]

I'm lucky to use the remote control, so, I mean, this is all way over my——

Mr. BERMAN. ClearPlay isn't quite as dominant yet in this market as ClearChannel is in their market.

Mr. AHO. You're correct, Congressman.

Mr. DELAHUNT. ClearPlay. You identify those scenes. ClearPlay identifies the scenes denoting violence, sex, whatever, am I correct?

Mr. AHO. Yes, that's correct. We identify them and then the consumer chooses——

Mr. DELAHUNT. How do you go about identifying them?

Mr. AHO. I think it would be, Congressman, in the same sort of way that when someone approached it to make an airline version or a television version would do so. They would sit down and look at the film. They would know what standards——

Mr. DELAHUNT. I mean, do you have a team that do this?

Mr. AHO. Yes.

Mr. DELAHUNT. So two or three people might sit down and they—for example, Congressman Lofgren talked, or someone alluded to "Schindler's List." Now, there's nudity in "Schindler's List," but it's clearly a very important piece of that movie, not because of the sexual nature of it but because of the degradation of humanity there. I mean, how—what's the conversation? How do you make those kinds of decisions?

Mr. AHO. Well, I can't comment on "Schindler's List." We have not done a filter for that movie.

Mr. DELAHUNT. You've seen the movie, though, I presume.

Mr. AHO. I have seen the movie, yes. But I will tell you that, overall, it's a process that starts, again, like an airline version or like a TV version. Somebody sits down——

Mr. DELAHUNT. Is it one person or two people or——

Mr. AHO. Well, we have a team of people and——

Mr. DELAHUNT. Who are these people? [Laughter.]

I mean——

Mr. AHO. I'm not sure if you're looking for—are you looking for their names?

Mr. DELAHUNT. No. I'm looking for—I mean, are they sociologists? Are they psychologists? Do they have any—or are they just citizens like——

Mr. AHO. They're ClearPlay——

Mr. DELAHUNT.—people sitting on this side of the dais?

Mr. AHO. They're ClearPlay employees that are——

Mr. DELAHUNT. But do they have any—so they just operate on the basis of their own personal taste, is that——

Mr. AHO. No, not at all. I think that would be a mischaracterization. Our standards are published, unlike, I might mention, the MPA standards or the airline version standards or TV, cable or network. We publish our standards so that consumers can look and make the choice for themselves.

So it's not arbitrary. It's not personal. We have standards that we attempt to make as specific as possible——

Mr. DELAHUNT. For example, in terms of sexual content, I mean, just the display of a woman's breasts, let's say. Is that included in part of the standard?

Mr. AHO. That would be in the nudity filter, yes.

Mr. DELAHUNT. And so let me just—can I just have another minute, Mr. Chairman? He's not paying any attention, so we'll just go on. [Laughter.]

I got the minute.

Mr. SMITH. Thank you, Mr. Delahunt.

The gentleman from—— [Laughter.]

I'm sorry.

Mr. DELAHUNT. See? [Laughter.]

Give me just another minute.

Mr. SMITH. I was talking to my Ranking Member here. I apologize. What was the question?

Mr. DELAHUNT. I just need another minute. I just want to——

Mr. SMITH. Without objection, the individual is recognized for another minute.

Mr. DELAHUNT. As a parent, I hear what you're saying about the nudity, for example. But in "Schindler's List," if I had a 10- or 11-year-old, I might reach a different decision as to nudity in a, say, in a more risque or less serious movie. This is the problem that I'm dealing with in terms of how you make those kind of decisions, or is it just simply any kind of nudity? Do you see my—as far as how you create your standard?

Mr. AHO. No, I—but I think those are the same challenges, Congressman, that everyone that creates an airline version creates. I think it's the same challenges that the MPA goes through when they try to determine, does this make it an R or a PG-13? It is difficult to specifically define all the points on that line, but you do your best based upon your standards.

Now, I can't comment on "Schindler's List" because we don't—we have not created a filter for that movie. But I think that from a consumer behavior standpoint, it's probably the same nature of the same decision that a parent might make when they choose not to

see a movie in the theater, but when it comes on on television, they may choose to see it. Is it the same experience? No, but it's an experience that at this point they choose and they find preferable.

Mr. SMITH. The gentleman's second time has expired.

The gentleman from Texas, Mr. Carter, is recognized for his questions.

Mr. CARTER. Mr. Aho, as I understand it, you're producing a tool——

Mr. AHO. I'm sorry?

Mr. CARTER. You're producing an electronic tool of some sort that allows a parent or any person that wants to to insert your tool and, without altering the copyrighted material whatsoever, it just allows them to stop and start and eliminate certain parts of it that you, as a parent or the purchaser, choose to have eliminated in your free will of choice, right?

Mr. AHO. Yes, to skip and mute.

Mr. CARTER. So if we're going to say that a person shouldn't be able to be entitled to have those tools, then how far are we going to expand this? Does the "stop" button have to go off of my VCR? Does the "fast-forward" have to be taken off because I might skip some copyrighted material by using some of those things in my home because I don't want my kids to watch it?

That, to me, I think—I wonder what the argument is here. If I choose to make "Schindler's List" into musical comedy in my own home and I have the electronic ability to do so and it's only for the viewing of my family, how have I harmed the copyright if it's not being published to anybody but myself?

Mr. AHO. I think that that's a—I think that that's a good analogy. Another one would be, say, for instance, using the picture-in-picture button on my television. I've certainly altered the visual representation of what I'm watching, but if I choose to watch the NBA playoffs while I'm watching a movie, that would be my right and not something the director would have, say, control or jurisdiction or rights.

Mr. CARTER. We've actually seen, at least I think I've seen on very humorous shows like the old "Laugh In" show and some of those shows like that where they've actually taken movie clips and put them in inappropriately to make them bizarre parts of an overall performance that doesn't fit the original context of that movie and nobody seems to get real upset about that. And yet it seems to me people are getting upset what a parent chooses to do in their opinion as to what's good for their child.

I personally think that I would never take a historical film where the violence fit the historical pattern of the history and take the violence out because it's part of the history and I think we ought to have accurate history presented.

An interesting thing happened in our family. My wife is from the Netherlands. The first time we went to a movie in the United States, we went to see "The Good, the Bad, and the Ugly," and she was absolutely appalled that there were children under the age of 18 watching that movie because of the violence. I'm from Texas. I thought, what's the problem? [Laughter.]

But the movie "Ten," which had a lot of sexual—not—in today's standards, very mild, but in those days, pretty sexual content, I

would have thought you wouldn't bring your child to that movie and my wife saw nothing wrong with that at all because Holland has a very liberal view of nudity and I was from Texas and we didn't in 1968, okay.

But that had to be resolved by us as parents when we have children and decide how we would filter out those things, and that's the tools you offer to us as parents, right?

Mr. AHO. That's correct. It is a tool and a set of choices that you make individually.

Mr. CARTER. Ms. Heins, let me ask you now. And you think that those tools should be eliminated, I shouldn't have the ability to have those tools?

Ms. HEINS. Well, let me just address the difference between the parody example you gave, which would be a fair use because it's transformative, and a filter which is not creative, it's not transformative, it's not trying to make a comment on the work. It's simply distorting and mutilating the work.

Does it violate copyright law? As Congressman Delahunt indicated, the Federal District Court will soon decide that. Is it good as a matter of policy? No. Do parents have the right to do it? Yes. Do for-profit corporations have the right to provide a range of technologies to enable parents to not make their own judgments, but essentially adopt the judgments of the filtering company? That's the question before the court.

But what I would say is, should the court decide this is a violation of copyright, that it would not be a great idea for Congress to step in and start rewriting copyright law in order to support and encourage and legitimize what is a very crude tool, a tool that I think is misguided in terms of the education of children.

Mr. CARTER. As long as it takes your view. Of course, if it takes these folks' view, then you're opposed to it. But if the tool would turn around and take your view, that would be a good tool.

Ms. HEINS. We'll, I'm here to try to persuade you.

Mr. CARTER. And the truth is, what's the Government's business in going in and getting involved in this thing? The Government doesn't have any business getting involved in this thing. This is between parents and their children and a man offers a tool.

Ms. HEINS. The case is between the creative community and some manufacturers who decided to play on and exacerbate parental concerns and sell them a product which I don't think is a very good product.

Mr. CARTER. Well, I was in that case business for 20 years and there's a lot more to it than just the case, but I won't go into that today. Thank you.

Mr. SMITH. Thank you, Mr. Carter.

The gentleman from Florida, Mr. Wexler, is recognized for questions.

Mr. WEXLER. Thank you, Mr. Chairman. In listening to the comments as it relates to the notion of parental choice, it seems to me to a certain degree that argument is exaggerated in this context in that the ultimate choice is for a parent to permit his or her child to watch the movie in the first place. What your technology permits is not parental choice. It really just provides yet an additional category of choice, which is a parent then has the choice, or greater

choice, to permit their child to view a movie which they otherwise would have found objectionable in a different or altered form.

I'm curious, if we are to assume that third party editing and the technology that goes with it is permissible, I assume the "Nightly News," as violent as it is, would be equally subject to such editing, wouldn't it?

Mr. AHO. Congressman, ClearPlay only works with pre-recorded movies, and so the "Nightly News" or really any television broadcasting would not be something that we would deal with.

Mr. WEXLER. That's the technology today in terms of pre-recorded. But the principle is the same, is it not? "Nightly News" is too violent for my 11-year-old son to watch. Strike it out.

Mr. AHO. I think if you're looking for an analogy, I would say that it is like at times when I've seen the news where there's been a warning and someone has said, we're going to show something very graphic now. You may want to modify your decision because of this part of the "Nightly News." And it seems to me that that's roughly analogous. That's what we're doing. We're saying, there's going to be something in this movie that you may choose not to watch.

Mr. WEXLER. No, actually, though, I think the analogy—that analogy applies to the rating that the movie has that warns the parent beforehand and says, there is graphic violence or explicit sexual behavior in the movie. You may not want your child to watch it.

Now you're imposing then yet another factor, which is regardless of the warning, I'm now going to change the work so as to provide it in a different form.

Today's Washington Post, above the fold on the front page, has a fairly graphic picture of a Palestinian man carrying a Palestinian child who is very graphically injured. God knows how many tens of thousands of children are going to see that picture today. I presume that as the technology advances, it would be, under the same principle, fair to strike out the element of blood or the facial expressions of anger or pain and just have a picture of the Palestinian man carrying a Palestinian child who was unhurt. Why not?

Mr. AHO. Is that a question for me?

Mr. WEXLER. I guess so. Please. I mean, isn't it the same principle? Why is it different? This is your view of what the 8-year-old or the 12-year-old should be looking at.

Mr. AHO. I really think that probably the word "impose" is not a good one, because we certainly don't impose any decisions upon anybody, nor, I think, do we—I think it would be incorrect to suggest that we suggest to someone what their world view ought to be or what they ought to watch.

There's over 16,000 different settings with ClearPlay. You can watch it the way that you would like. You can create the setting that you're most comfortable with. Again, I think it's probably analogous to you may not want to watching something when it came out in the movie, or in the theater, but you want to watch it when it comes out on television. Why is that? Because it's more consistent with your standards.

You've made a choice. You've been given an option and you've made a choice. Was it the networks that told you that this was the

way you ought to watch a movie? No. No. But you understand that the networks have a different set of standards and you're more comfortable with it and so you make that choice for your family. You may say to your kids, I don't want you to watch "The Patriot" or another movie in the theaters because of some of the, say, particularly violent content, but I'm okay with you watching it, say, on television.

Mr. WEXLER. Under what authority do you argue that you or anyone else has the right to take this artistic work and alter it in the fashion in which you are altering it?

Mr. AHO. Well, I don't think we really alter anything. We never change the DVD. We never—we actually never even touch the DVD. So I think it would probably not be accurate to say that we alter any artistic work at all.

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

Mr. WEXLER. Thank you.

Mr. SMITH. Thank you, Mr. Wexler.

Without objection, the gentleman from California, Mr. Berman, will be recognized for one additional minute.

Mr. BERMAN. I have a number of questions and I'd like permission to submit them to the panel, actually all of them. There are many interesting issues that we've, that I haven't, at least, had a chance to explore the way I'd like to.

I do want to make just a couple of discombobulated comments. There is a real benefit to the technology in facilitating parental choice. I see that. The question is to what extent should the creators be involved in the decisions?

Mr. Wexler, ratings help to promote parental choice. Decisions by studios in consultation with the directors and others producing airline versions and television versions help to facilitate parental choice. The question is whether you, you and a for-profit company, should be able to market things not involving them by getting some change in the law.

And this distinction between we don't alter the product because you have a filtering that comes—that doesn't touch the film versus somebody who is not able to buy the DVD and is still stuck with the VHS format, and that somehow that person—the underlying principle, if it's a fair principle, it should apply to all things. It shouldn't just provide the people with the newest technologies. You should be able to get into the VHS tape and make the alterations to eliminate the offensive scenes.

I don't buy your answer that you didn't do "Schindler's List" or "Saving Private Ryan" because there's not a market. I believe there was something in your decision making that thought, you know something? If they're going to see that movie, they should see the whole thing, or we're not going to try and sustain the argument that that should be—someone else who's your competitor won't make that decision.

And if you're going to push this through legislatively and technology neutral and not—somebody else is going to say, I'm going to disrobe the female actresses or make Laura Croft into a topless video game or go the other way to give parents the choice of letting Rick Keller's ideal mom show him a different version than the creator actually intended to be shown in that video game.

So yes, working this technology through with the consultations and involvement of the people who created the original product to facilitate parental choice seems good. Ramming through a piece of legislation that says, Steven Spielberg can't make a decision that he wants "Schindler's List" to be seen, this is what his vision was, and if you want to see a movie about the Holocaust or about concentration camps or Nazi war crimes and you don't like the scenes in that, go see "Judgment at Nuremberg" or any of the other movies that don't portray things so graphically for that teaching lesson.

But if you're going to depict somebody else's creation, get them involved in the ways in which you're going to depict it, the process.

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

We're going to move on, but I think Mr. Aho has already responded to a couple of points you made, Mr. Berman. They don't change the format. They don't clothe people who are nude. They are simply muting and skipping over, which is an entirely different proposition from some of the examples that you gave. We're not going to debate it now——

Mr. BERMAN. Well, let me just say——

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

Mr. BERMAN. No, but let me just add, it's a distinction without a difference. In other words——

Mr. SMITH. Mr. Berman, it's a big difference to me. The gentlewoman from California, Ms. Waters, is recognized for her questions.

Ms. WATERS. I yield to the gentleman one additional minute.

Mr. BERMAN. My only point is, because you can do what you're doing without touching the DVD or breaking the encryption code, as apparently one of your competitors does do, may be a difference in terms of copyright law, I don't know and the courts will determine that. But the underlying philosophical distinction isn't very compelling to me. If you can do this, why shouldn't they be able to do that? And if you can eliminate certain scenes and change the method, what's the distinction really between eliminating those scenes or adding your own scenes?

What's the underlying philosophical thing that says, in order to facilitate parental choice, I can only go this far, but I can't go this far? I just—I'm not sure I see something there that in its——

Mr. SMITH. Mr. Aho, would you like to respond?

Mr. AHO. Well, I think there's a big difference both philosophically and legally, probably legally, in subtractive versus additive content. I think consumers certainly——

Mr. BERMAN. I totally twisted your statement around by just taking what you said and not adding a word and giving it an opposite meaning from what you intended. Was that a big difference?

Mr. AHO. Congressman, I think there's a point that needs to be made here and that's that we create these sort of hypotheticals of things that could be done to, say, mangle a movie or change its intent. If, in fact, ClearPlay is in the business of destroying movies and of changing the experience in such a way so that people are baffled by it or that it's a very different film, I think there won't be a demand for the product. People don't want that.

Ms. WATERS. Okay, reclaiming my time—— [Laughter.]

Mr. SMITH. The gentlewoman reclaims her time.

Ms. WATERS. I'm over in the Financial Services Committee, but I was anxious to break away—we have a markup going on—to come over because I'm basically torn on this issue and I'm usually pretty clear in my defense of freedom of speech and protection of intellectual properties, et cetera.

I'm looking for examples of ways by which we alter products in our society that would be the same as or synonymous to what's being described here. I know that we have equipment that we buy that we change, we alter to make it more convenient for us to use in different ways, but what's different about this and changes that we make in other ways with other products? Is it the altering of the intellectual property itself to distort the intent of the producer? Is that what the real problem is here? I don't know who can answer this, anybody.

Ms. HEINS. I would say yes, that there is a big difference between altering a toaster and altering a work of art.

Ms. WATERS. Where is Jack Valenti? He could make this plainer. Where is Jack? Is he testifying today? [Laughter.]

No? Yes, ma'am.

Ms. CANTOR. I was trying to think about that myself earlier and I thought, what if somebody is selling art, original works of art, and saying this is the frame that was suggested by the artist, but here's an—I think actually you might consider that it looks better if the glass is tinted blue. So I'm going to give you a choice of buying it with the original frame or a frame with the glass tinted blue, making it clear which one the artist created and which—I don't know, would that violate the artist's rights?

Mr. AHO. Can I come up with another example?

Ms. HEINS. No, but if you started cutting up the picture, it would.

Ms. CANTOR. Well, we're not cutting up. It's not analogous to cutting up a picture.

Ms. HEINS. Well, I——

Ms. CANTOR. Supposing you had a frame that actually came into the picture a little bit and cut off a corner and you said, I think this——

Ms. WATERS. Once you bought the picture, you could change the frame. You could alter the frame——

Ms. CANTOR. Absolutely.

Ms. WATERS.—you could get a different color frame. We do it all the time.

Ms. CANTOR. Right.

Mr. AHO. Further, we're not talking about an original, we're talking about buying an Andy Warhol poster and maybe resizing it to fit the frame that you want. I mean, this is——

Ms. WATERS. No, we're talking about an original. I buy an original, I can do what I want to do with it, including destroy it.

Ms. HEINS. There is actually an Artists' Rights Act. There are limited moral rights in this country and they apply to original works of visual art.

Ms. WATERS. I beg your pardon?

Ms. HEINS. There are some—there is some protection in Federal law and in some State law in the United States similar to the European conception of moral rights, where even if you own an origi-

nal work of art, it does not mean you can destroy it or mutilate it, unlike——

Ms. WATERS. I've not seen that protection in law.

Ms. CANTOR. But this is a copy we're talking about here. We're talking about a copy.

Ms. WATERS. Okay. Are you talking about copies? Yes?

Mr. AHO. I was just going to comment that you may have that right on the original, but that would be a significant extension to what we're suggesting here, which is that the original is never altered. Any one of millions of Americans can still see the movie as it was released in the theater, as it was released on DVD. This is simply an alteration in your viewing experience in your home.

Ms. WATERS. Why shouldn't the owner of that art be able to sell you altered versions of it just like I think, when I read the information like they do on the airplane, where you get altered versions of the original movie, but they are in control of the product.

Mr. AHO. They do have that right, Congresswoman. I think—I believe that—I mean, of course, these are negotiated rights between directors and studios and all movies are different, but certainly the copyright holders would have those rights.

Ms. WATERS. Thank you.

Mr. SMITH. The gentlewoman's time has expired.

I thank all the Members for their interest and attendance today and thank the panelists for their very informative testimony, as well. This has been interesting.

I would like to insert in the record written statements provided by Taylor Hackford on behalf of the Director's Guild of America; the American Medical Association; and Rick Bray, Chief Executive Officer, Principle Solutions, Inc. and TVG Vision, LLC.

[The prepared statement of Mr. Hackford follows:]

PREPARED STATEMENT OF TAYLOR HACKFORD

My name is Taylor Hackford and I am submitting this statement on behalf of the Directors Guild of America (DGA), of which I am a National Board member and the Co-Chair of the DGA Social Responsibility Task Force.

Founded in 1936 by the most prominent directors of the period, the Directors Guild today represents over 12,800 directors and members of the directorial team who work in feature film, television, commercials, documentaries and news. The DGA's mission is to protect the creative and economic rights of directors and the directorial team—working to advance our artistic freedom and ensure fair compensation for our work.

I submit this statement as a filmmaker, a parent, and a representative of the directors who create the movies that many members of this subcommittee have seen and I hope enjoyed. We want to share with the subcommittee our great concern about giving someone the legal ability to alter, in any way they choose, for any purpose, and for profit, the content of a film that we have made, which carries our names, and which is associated with one of us. When this is done without directors' knowledge or authorization, and without the knowledge or authorizations of the studios that own the copyrights in these films, consumers are misled and the artistic and economic rights of directors are harmed.

Today there are a plethora of companies making multiple unauthorized versions of the same motion pictures based on criteria ranging from "sanitization" to thematic mutilation. These companies are in the business of making a profit from marketing these unauthorized, edited versions created by our members. Depending on the action of this subcommittee, what is now occurring with respect to motion pictures could be extended to books, music, magazines, newspapers, and all other forms of speech. And the unimpeded, unauthorized editing could have consequences far beyond what you envision today. What is at stake is the ability of any author, creator, and copyright owner to protect the content associated with their name. Legislation simply opens the door to all of this, but it cannot regulate the consequences.

THE ROLE OF THE DIRECTOR IN THE FILMMAKING PROCESS

Film is truly an indigenous American art form, and the work of filmmakers—in collaboration with other creative artists in our industry—has documented, reflected upon, and portrayed the American experience for almost 100 years. With no disrespect to other great art forms, we think it is fair to say that motion pictures played a very unique role in popular culture during the 20th Century, and they continue to be enjoyed daily by billions of people around the world. Those of us who work in film feel fortunate and privileged to earn our living contributing our talents to a craft we love.

The films we directors create tell the story of people's lives, be they in the present or the past, in our country or in a foreign culture. In telling our stories—and creating accurate depictions of life on a reel of film—filmmakers seek to capture not only who we are, but also who we want to be. Directors may not always hit the mark with every film but we try to seek the truth in the story we are telling, whether as a serious drama or a lighthearted comedy. We create pictures to make people laugh, cry or be afraid because that is what the audience wants.

The process that goes into making a film is understandably unknown to those outside our industry. During the making of a film, directors are actually running a massive project, involving hundreds of people and a myriad of details and decisions that have to be made each day to keep the production on schedule and on budget. Whether it is the crafting of a single scene or the visual creation of a character from the written page, the director is always working to create a compelling narrative that shapes the story.

Directors have to reflect on the realities of life and determine if, how, and in what way they might put them into their film. The director, and his or her collaborators—the writer, the actor, the cinematographer, the art director, and the film editor—make these decisions constantly. Choices are made before the production begins, during shooting, and in the post-production room where the film is edited.

Despite this collaborative process, it is the director who is associated with the film in the end. The director receives the most prominent, final credit in a film, indicating to the audience that the film was "Directed By" him or her. But, as the members of this Subcommittee are aware, under American law, directors do not have a copyright interest in the films they create. The copyright is held by the production company or studio, and the director's contribution is a "work for hire."

Instead, the rights and interests of the director in a film are protected by a collective bargaining agreement between the DGA and the studios and production companies. That collective bargaining agreement—along with the specific director services agreement negotiated for each film—protects the creative rights of directors, including the director's right to make the first edit or "cut" of a film that is delivered to the studios:

> The Director shall be responsible for the presentation of his or her cut of the motion picture (herein referred to as the "Director's Cut") and it is understood that his or her assignment is not complete until he or she has presented the Director's Cut to the Employer. . . .
>
> [N]o one other than the Director may supervise the editing of the first cut of the film following completion of the editor's assembly. . . .
>
> No one shall be allowed to interfere with the Director of the film during the period of the Director's Cut.
>
> (DGA Basic Agreement, §§ 7–501, 7–504).

In addition, many directors receive even greater control over the editing of their motion pictures, and earn the much-coveted position of being a "final cut" director. These directors, through their creative and commercial success, earn the right to have the final say over the form of their film, by making the final edit of their movies. These much sought-after rights are bargained for separately by individual directors who achieve this status.

Directors specifically plan for the fact that their movies may be shown outside the intended theatrical context. Directors shoot and prepare alternate footage and audio to create alternative versions which remain true to each director's vision, but which will fit the needs of the particular airline or broadcast network. Directors do this because they understand that airline and television versions are often viewed by audiences not originally intended for the theatrical version.

We want to make sure this Subcommittee understands how motion pictures are edited for television or airline viewing. That too is specifically governed by the DGA's collective bargaining agreement, which provides directors with the right to edit movies for television and airline versions (when the studio is doing the editing),

and in all other cases, requires that the director be consulted on the editing of films for television or airline use.

Directors put their full vision and often years of hard work into the creation of a film. That film is not only their vision, but it carries their name and reflects on their reputation. Their ability to have their names used to identify and market their films is of great economic consequence. No matter how many warnings or disclaimers someone puts on the film, it still has the director's name on it. So directors have great passion about protecting their work, which is their signature and brand identification, against unauthorized editing, and an abiding belief that contracts and the law will prevent others from illegally profiting from or altering their work.

UNAUTHORIZED EDITING OF MOTION PICTURES DOES GREAT DAMAGE TO THE CREATIVE RIGHTS AND REPUTATIONS OF DIRECTORS

Because directors and their names are inextricably and prominently linked with the movies they direct, the conduct of companies that sell unauthorized software filters or edited versions of movies is particularly harmful to directors. These companies are undoing, undermining and superseding the artistic work in which a director has invested a great deal of effort, and become closely associated by the public. Removing scenes and dialogue from films interferes with the story a director is trying to tell, and in so doing, can take away from the narrative structure and overall vision that audiences associate with a director. This editing can make movies into nonsense, completely changing their meaning. The director's reputation is likely to suffer when people viewing the film may believe they are watching a version of the film that has been edited and authorized for release by the director.

Currently there are at least ten companies in this business—three of which are electronic editing companies, undoubtedly with more to come. Together they are today making thousands of unauthorized versions of movies. So for example, there may be multiple unauthorized versions of my 2000 film *Proof of Life.*

To illustrate the problem, here are a few concrete examples of what these products have done to directors' artistic visions and the power of the story directors seek to tell.

Proof of Life, starring Meg Ryan and Russell Crowe, told the story of an American oil executive who was kidnapped for ransom by insurgents in a fictional South American country. At its core, this movie centered on the kidnapping, the struggles of the kidnapped executive, and the impact of the event on his wife (Ryan) and his would-be rescuer (Crowe).

Despite the utter centrality of the kidnapping to the story, I was amazed to learn that at least one company, without any authorization or contractual right to alter the film, removed the entire kidnapping scene when it created a filter specifically designed to alter the viewing of this film. It is important to note that this scene was shown on television and airline versions virtually in its entirety, with only eleven seconds removed. These types of minor, authorized edits are acceptable, because, as the film's director, I agreed to them for a particular use.

In this case, the company had no authorization from the studio or me, yet they unilaterally removed the entire kidnapping scene and altered my film in a way that was extremely harmful to the basic telling of the story. It also was harmful to the way viewers perceive me as a director. This unauthorized version may lead viewers to believe Taylor Hackford directs movies that just don't make sense. Let me explain why.

First, the subject of kidnapping for ransom is pivotal to the film, and as the film's director, I went to great lengths to portray it as realistically as possible. In the theatrical, airline, and television version of the film, the audience sees how the abduction was carried out, and witnesses the organizational skill of the abductors and the depth of their cruelty. All of these essential details, and the overall tension and desperation of the scene, have been ripped from the film.

Second, the kidnapping scene, which takes place early in the movie, establishes the foundation for the entire story that follows, and is crucial to the overall dramatic purposes of the film. This scene enables the audience to empathize with an ordinary person, who is driving to work thinking about everyday problems on the job and at home. This "everyman" suddenly is wrenched from his daily life and plunged into a nightmare that he had never imagined possible. Removing this scene in its entirety leaves the audience unable to understand the context and meaning of the story, and renders the audience unable to connect emotionally to the character's plight. In short, removing the early kidnapping scene, from a movie about a kidnapping, changes the basic nature of the movie.

One of the film editing parties has created its own version of Steven Soderbergh's Oscar-winning film *Traffic.* That company has cut a number of scenes that are crit-

ical to this film about the pervasiveness of drugs across our society, and how the use and trafficking of drugs cuts through all classes of society. In one pivotal scene, the daughter of the White House Drug Czar (played by Michael Douglas) engages in drug use with other wealthy teens after school. In particular, her boyfriend exposes her to the smoking or "freebasing" of cocaine. In editing Mr. Soderbergh's film without authorization, the company removed key portions of this scene, which show Douglas's daughter beginning what will become a freefall into the abyss of drug abuse. Not only does this render much of the movie unintelligible, it completely undermines one of the key themes of the movie: That the highest-ranking law enforcement official in the war on drugs is wholly unaware that his daughter is becoming a drug addict. In addition, the company edits out numerous harsh realities associated with drug use in America; highlighting these realities is key to the heart of Mr. Soderbergh's film about the drug problem in America. The unauthorized editing of this movie minimizes the horrors of drug abuse.

Norman Jewison's highly acclaimed film *The Hurricane* is based on the true life story of Rubin "Hurricane" Carter, an African-American boxer wrongly imprisoned for murder, and his struggle to prove his innocence. The theme of racism and its impact on Carter's life is a core concept in the film, which is made clear in the conclusion of the film when a Federal judge frees Carter after twenty-two years of incarceration on the basis that "the conviction was predicated on an appeal to racism rather than reason . . ."

One of the software filtering companies has its own version of *The Hurricane,* which skips and mutes core storyline content, presumably because of the strong racial overtones. For example, in an early scene, a scared and stuttering eleven-year-old Rubin Carter is being interrogated by two white police officers who, during the process of the interrogation, utter racist remarks toward the young boy. The company removes these lines from the interrogation scene. However, it is through this racist and threatening language that the audience connects with the intimidation that the young Carter must feel and the racism he is encountering from the law enforcement authorities. Moreover, one of these officers is central to the scheme to wrongfully convict Carter years later. With the racist and threatening comments of the police officer removed, the audience is unable to connect emotionally to Carter's terrifying encounter with the racist officer and power structure. As such, their role in the wrongful conviction and incarceration of Carter is diminished. Much of the meaning, and historical accuracy of the film are therefore lost.

Yet another software filtering company has created an altered version of the movie *LA. Confidential,* which received two Academy Award nominations in 1997: Best Picture and Best Director. This edited version of *L.A. Confidential* is so choppy and discontinuous that the movie is virtually unwatchable. In any film, discontinuities of this sort which are created by these unauthorized edits would undermine an audience's ability to suspend disbelief, and suggests incompetence by the filmmaker. In the instance of *L.A. Confidential,* the damage goes to the core of the film's subject matter. *L.A. Confidential* is a period piece set in the 1950s that revolves around corruption in the Los Angeles Police Department, set against the background of life in classical Hollywood. Because of the period nature of the film and the subject matter associated with Hollywood, director Curtis Hanson intentionally created a film that was in the spirit of classical Hollywood film—*i.e.,* seamlessly edited and stylistically impeccable. The film's content is embodied in its aesthetic and so too is the reputation of its director. The application of the software filter to the playback of *LA. Confidential* creates a continuous series of jittery, strobe-like, edits that ruin the dialogue, destroy the credibility of the scenes, undermine the film's content, and mutilate and distort the work of Curtis Hanson.

These are just a few examples of the effect that unauthorized editing has on directors and their artistic vision for motion pictures. While it is bad enough to have the stories severely weakened, it is simply wrong for these companies to profit by removing content from films and thereby changing their meaning without the permission of directors or the studios that are the copyright holders.

Directors take great care in making motion pictures and are faced with a multitude of creative choices during the filmmaking process. Moreover, for many movies, directors also work hard during production and editing to create alternative versions that are suitable for television and airlines. And unlike these companies who simply cut, skip, or mute the films, directors have tools at their disposal to add alternate scenes, takes, and dialog to the airline and television versions. These tools allow directors to create alternate versions of their films that remain true to each director's vision, so that in appropriate circumstances these films can be shown to audiences for whom they were not originally intended.

Sometimes, the director and the studio determine that a movie should *not* be edited for television or an airline, because of its content and subject matter. As an ex-

ample, Steven Spielberg's *Schindler's List* has never been edited for television or airplane exhibition. In fact, *Schindler's List* was shown on television in the full, uncut theatrical version, and was accompanied by numerous viewer warnings throughout the showing regarding the appropriateness of its content for certain viewers.

Despite this fact, I have seen a version of *Schindler's List* heavily edited by one of the film editing companies. This version edits out much of the Holocaust brutality, profane dialogue, and any scene deemed too disturbing in the judgment of the editor. In short, it cuts deeply into the horror the film seeks to document. Deleted are many crucial scenes that directly illustrate the brutality of the Nazis and their assault on the Jews of Poland. For example, there is an early scene illustrating Goeth's insanity, where he randomly shoots prisoners from his villa balcony. There is another scene in which Goeth berates a line-up of prisoners that again shows his imbalance and in turn the depravity of the Nazi leadership. Both scenes are deleted. These missing scenes are vital to accurately illustrating the Nazi party and all the atrocities its leaders committed and got away with for so long. This version also cuts some of the most horrifying camp scenes involving dead bodies. In addition, this version substantially removes a critical scene in which Jews disembark from trains and are herded into a concentration camp. With Steven Spielberg's masterful touch, these scenes captured the Nazis' highly regimented approach to their evil deeds. With these scenes removed, the edited version leaves viewers with a sanitized, inaccurate view of the worst abuses of Nazism, and stands out as one of the most disturbing examples yet of how much a film, its story, its heart, and indeed its sole purpose, can be affected by random edits.

I am sure the unauthorized editors of this particular scene were not attempting to minimize the horrors of Nazism, but another company, in another context, could easily do just that to suit their own viewpoint. Amending the copyright law to permit this historical revision would just be wrong.

Initially, many software filtering and film editing companies claimed that they would not market versions of movies that were wholly unsuitable for young or sensitive viewers, such as *Saving Private Ryan, The Passion of the Christ,* or *Schindler's List.* Recently however, we have seen certain companies offer these films that clearly are intended for adult viewers. If you go to the website of one such company, you can now reserve an edited version of *The Passion of the Christ,* a film with serious subject matter and content that may not be suitable for young viewers.

LEGISLATION

The DGA understands that some members of this Subcommittee are concerned about the current dispute between movie filtering companies and the motion picture industry over the legality of altering films. We understand that there is consideration of pursuing legislation that would amend the copyright laws to deal with this. At least one draft that has been circulating would permit software that enables unauthorized skipping and muting of any digital version of a copyrighted matter. That legislation would enable these companies to do this for their own commercial purposes, without the director's knowledge, and in a way that interferes with the director's artistic vision for his or her films.

This kind of activity is precisely why our founding fathers envisioned copyright protection for creative works, and why Congress has created a system that protects those works. Amending the copyright laws to authorize these products would allow companies to ignore copyright protections created by Congress, and to destroy someone else's property rights and reputation, all in the name of profit. This is particularly troubling in a digital era, where creative works can so easily be destroyed or distorted by others. That is the very reason that copyright protection is fundamental to artists and to consumers, who assume when they see a film that it is the one the director intended to make and present under his or her name. Never was this protection more important that today, when a motion picture can so easily be *illegally* copied, edited, and transmitted to millions of people through digital means.

We appreciate the concerns of parents and families about exposing their children to unwholesome entertainment. We know that parents face many hurdles in protecting their children. As filmmakers and parents, we know when we make a film whether it was intended for children or not. Simply put, we do not expect children to see a film that was not made for them, unless their parents want them to. Ultimately consumers and parents have the choice; they can decide whether or not to purchase or rent a videotape or DVD of a particular film. That is the purpose of the movie rating system; to distinguish the content of films and identify what the appropriate audience is for that film.

The DGA's Social Responsibility Task Force—which I co-chair—has been active in promoting the importance of the film rating system, and we work closely with the MPAA and the National Organization of Theater Owners to strengthen that system by increasing awareness and providing consumers with information about movies. We are parents, and we assume that, like us, parents will be guided by the ratings system and will make sure that young children are not shown films that are not appropriate for them, and which the director did not intend for children to see.

Amending the copyright laws to permit the use of digital content filters simply is not the way to deal with this issue. Such legislation opens the door to many unintended manipulations of movies or other copyrighted material that we all would agree are improper. Indeed, this legislation would not, and could not, discriminate between editing for benign, "family friendly," purposes, on the one hand, and other more nefarious purposes, on the other hand. For example, we presume that this Subcommittee does not intend to authorize people to use filtering technology to change the political content of copyrighted works, such as editorial columns or political statements. However, this is precisely one of the unintended effects that this legislation would have.

It could also lead to the development of an industry to market without authorization abridged versions of movies, books, magazine articles, and other copyrighted material.

Nevertheless, and in spite of our overwhelming concern about the protection of our work, the DGA has gone to extraordinary lengths to try to resolve this matter. The DGA wants to assure this Subcommittee that it takes your concerns very seriously. Our leadership and lawyers have been working with lawyers for the studios and some of the parties that make these products. I understand that there has been considerable progress towards a resolution.

As this Subcommittee is aware, directors do not typically own the copyright in their motion pictures; our movies generally are works for hire. As a result, the motion picture studios typically have the dominant voice in how motion pictures are treated after the director completes and edits the film.

Because the DGA's collective bargaining agreement with the studios protects the artistic rights of directors, and gives directors a key role in the creation of alternate versions of motion pictures for television and airline use, the DGA has worked to permit the studios to reach agreements with these companies. While we have, as expressed here, strong views about the unauthorized editing of films, we are also well aware of the concerns of the members of this subcommittee. We have made great effort to seek a solution that would make available versions of movies with director and studio involvement.

[The prepared statement of the American Medical Association follows:]

PREPARED STATEMENT OF THE AMERICAN MEDICAL ASSOCIATION

The American Medical Association (AMA) is pleased to submit this statement for the record which focuses on the effect of media violence on children's health. For the past several decades, the physician and medical student members of the AMA have been increasingly concerned that exposure to violence in media, including television, movies, music and video games, is a significant risk to the physical and mental health of children and adolescents. America's young people are being exposed to ever-increasing levels of media violence, and such violence has become increasingly graphic.

Violence in all forms has become a major medical and public health epidemic in this country. The AMA strongly abhors, and has actively condemned and worked to reduce, violence in our society, including violence portrayed in entertainment media. The AMA has long been concerned about the prevalent depiction of violent behavior on television and in movies, especially in terms of its "role-modeling" capacity to potentially promote "real-world" violence. We have actively investigated and analyzed the negative effects that the portrayal of such violence has on children, and for almost 30 years, have issued strong policy statements against such depictions of violence.

Over the past three decades, a growing body of scientific research has documented the relationship between the mass media and violent behavior. Over 1000 studies, including reports from the Office of the Surgeon General, the National Institute of Mental Health, as well as research conducted by leading figures in medical and public health organizations, point overwhelmingly to a causal relationship between media violence and aggressive behavior in some children. The research overwhelmingly concludes that viewing "entertainment" violence can lead to increases in ag-

gressive attitudes, values and behavior, particularly in children. Moreover, exposure to violent programming is associated with lower levels of pro-social behavior.

The effect of "entertainment" violence on children is complex and variable, and some children will be affected more than others. But while duration, intensity and extent of the impact may vary, there are several measurable negative effects of children's exposure to such violence:

- Children who see a lot of violence are more likely to view violence as an effective way of settling conflicts and assume that acts of violence are acceptable behavior.
- Viewing violence can lead to emotional desensitization towards violence in real life. It can decrease the likelihood that one will take action on behalf of a victim when violence occurs.
- "Entertainment" violence feeds a perception that the world is a violent and mean place. Viewing violence increases fear of becoming a victim of violence, with a resultant increase in self-protective behaviors and a mistrust of others.
- Viewing violence may lead to real life violence. Children exposed to violent programming at a young age have a higher tendency for violent and aggressive behavior later in life than children who are not so exposed.

In July 2000, at a Congressional Public Health Summit, the AMA joined the American Academy of Pediatrics, the American Academy of Child and Adolescent Psychiatry, the American Academy of Family Physicians, the American Psychiatric Association and the American Psychological Association in issuing a "Joint Statement on the Impact of Entertainment Violence on Children." The Joint Statement acknowledges that television, movies, music and interactive games are powerful learning tools and that these media can, and often are, used to instruct, encourage and even inspire. The Joint Statement, however, also points out that when these entertainment media showcase violence, particularly in a context which glamorizes or trivializes it, the lessons learned can be destructive.

While "entertainment" violence is certainly not the sole factor contributing to youth aggression, anti-social attitudes and violence, the entertainment industry must assume its share of responsibility for contributing to the epidemic of violence in our society. The AMA believes that because violence is a public health threat, careful consideration must be given to the content of entertainment media. As part of its strategy to reduce violence, the AMA supported past efforts by network broadcasters in adopting advance parental advisories prior to airing programs that are unfit for children, strong and effective television and movie ratings systems, and "V" Chips that can screen out violent programming.

In a free society, there must be a balance between individual rights of expression and societal responsibility. We believe that balance can only be achieved if Americans are provided with the tools they need to identify and distinguish those forms of entertainment that might be suitable for themselves and those that might be suitable for their families. We are not advocating restrictions on creative activity. We do believe, however, that parents need and deserve help in supervising their children's viewing behavior and guiding them in the right direction.

DVD-filtering devices can empower parents with the means to make decisions about what entertainment media they want their children to view. It is our understanding that the DVD-filtering technology allows consumers to automatically delete profanity, nudity and graphic scenes from DVD movies, but does not permanently alter the content of the DVDs. Movies shown on television or airplanes already are edited to remove some violence, sexually explicit scenes and profanity. DVD-filtering technology would seem to be a logical extension of these efforts to enable parents to exercise their appropriate role and responsibility in determining the types of entertainment media to which their children will be exposed.

The AMA appreciates the opportunity to share its views on a matter of such high importance to the health of Americans.

[The prepared statement of Mr. Bray follows:]

Written Testimony
Provided By
Rick Bray
CEO, Principle Solutions, Inc. & TVG Vision, LLC

To The
US House of Representatives
Subcommittee on Courts, The Internet and Intellectual Property

Submitted
May 17, 2004

Subject: Subcommittee Hearing, May 20, 2004 regarding the pending lawsuit between the Directors Guild of America (DGA) and ClearPlay et al providing technology to skip and mute foul language, excessive violence, and scenes of a sexual nature in DVD movies.

In behalf of Principle Solutions, Inc. and TVG Vision, LLC I am pleased to submit this written testimony to the House of Representatives Subcommittee on the Courts, the Internet, and Intellectual Property. The said committee to hold a hearing on the above issue – May 20, 2004.

A number of years ago, as a concerned parent I found few, if any, options available to me to reduce or eliminate the increasing amount of foul language, extreme violence, and scenes of an explicit sexual nature that were included in what was otherwise perfectly good movies and TV programs. My interest was in providing my family, within the confines of my home, more family-friendly versions of TV programs and DVD versions of major movies. I am aware that such versions of movies are provided by the industry for Airline and Television use.

As a result I invented TVGuardian – the Foul Language Filter, which is now found in more than five million homes throughout the United States. This technology mutes offensive language in television programs, videos, and DVD movies and is available in DVD players, VCR's, Combination Players, and in TVGuardian's set-top box sold in major retail outlets. Principle Solutions, Inc./TVG Vision, LLC is now the industry leader in advanced parental control technology.

TVG Vision, LLC, acquired the Movie Mask technology formally owned by Trilogy Studios and named in the current DGA lawsuit. With contractual agreements in hand with Sanyo, Apex, Mintek Digital, Memorex, Initial and several others, TVG Vision will capture 30-50% of the DVD player market and will be the leading player in this technology niche.

TVG Vision technology provides consumers, within the privacy of their home, the ability to skip and mute in real time and in a frame accurate way, foul language, extreme violence, and scenes of a sexual nature found in DVD movies, without altering the original DVD movie in any way.

It is our contention that similar to the manner in which consumers read books after their purchase, or listen to music CD's, they have the right to choose how they view copyrighted works that they have rented or purchased. The Copyright Act was not written to address such private viewings. Rather, it was written to control the (1) creation of copies and/or derivative works; and (2) publication of the same. By using TVG Vision technology, no creation of any permanent derivative work is occurring, and no publication of any such work is taking place. We feel that the studios position is, at best, a strained interpretation of the Copyright Act.

This technology merely provides a solution for families to make today's DVD movies more suitable for the entire family to view. There are many misconceptions about this software's capability and it is important to understand that it is nothing more than a program allowing consumers, in the privacy of their own homes, the ability to pre-program their DVD players to skip and mute offensive portions of films.

As indicated in recent studies, consumers want cleaner films. Although 66% of all movies are rated "R", only one "R" rated movie made it in the top 30 Box Office sellers of all time. 62% of parents believe that the entertainment industry has problems providing quality entertainment for the whole family. New studies also show a link between teen violence and the level of violence teens observe while playing video games and watching TV and movies. 87% of parents want more control over TV and movie viewing for their children, citing objectionable content as the major motive for this need. 82% of Americans feel there is too much profanity, violence, and nudity in movies. As you can see from this data, this type of technology is both wanted and needed.

We believe the law is clear and the courts will make the right decision and rule in favor of the defendants. We do not feel that new legislation is required to resolve this matter. TVG Vision technology has the potential to expand the market for the studios by selling additional DVD's and will only strengthen their financial position.

I appreciate this opportunity to submit this written testimony to the subcommittee and hope you will give it every consideration.

J. Richard Bray

Rick Bray
Chairman and CEO
Principle Solutions, Inc.
TVG Vision, LLC

Mr. SMITH. Let me say that I do hope that the issues can be negotiated and resolved over the next, say, couple of weeks and that it won't be necessary to introduce legislation, but that, of course, is an option that the Chairman of the full Committee and I intend to exercise if the resolutions are not forthcoming as I hope that they will be.

This has been very informative and an unusual hearing, I think, for us, to be talking about parental rights as well as technology at the same time and I thank you all for your contributions.

We stand adjourned.

[Whereupon, at 11:58 a.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE HOWARD L. BERMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND RANKING MEMBER, SUBCOMMITTEE ON COURTS, THE INTERNET, AND INTELLECTUAL PROPERTY

Mr. Chairman,

This hearing certainly delves into a number of interesting issues about artistic freedom, the definition of copyright-infringing derivative works, and the extent to which the unfair competition provisions of the Lanham Act protect the moral rights of creators.

However, I'm not sure any of these issues are ripe for a congressional hearing. The movie studios, directors, and ClearPlay are actively engaged in licensing negotiations to resolve their dispute. As I understand it, those negotiations had been close to a mutually acceptable conclusion. The public posturing and adversarial nature inherent in congressional hearings is bound to set back these negotiations, and thus thwart the stated purpose of this hearing.

Furthermore, the problem on which this hearing focuses is hypothetical at best. A District Court case addressing these very issues has not yet proceeded past the most preliminary stages. It seems a waste of time to discuss statutory amendments before any court has interpreted the law in an allegedly undesirable way.

But despite my misgivings, we are here. So, I might as well use my time to clearly state my opposition to the hypothetical legislation that may be forthcoming to address the hypothetical problem before us. I do not believe Congress should give companies the right to alter, distort, and mutilate creative works, or to sell otherwise-infringing products that do functionally the same thing. I believe such legislation would be an affront to the artistic freedom of creators. It would violate fundamental principles of copyright and trademark law. And if drafted to avoid violating the First Amendment, it would almost surely defeat the apparent purposes of its drafters.

Such legislation presents an almost endless variety of complications and conundrums.

Would legislation attempt to define the types of "offensive" content that could be altered or deleted? If such definitions include violence, sexual material, and profanity, the legislation will almost certainly violate the First Amendment. And First Amendment concerns aside, attempts to define offensive content will backfire. Legislation that allows deletion of violent scenes from The Last Samurai would also allow The Passion of The Christ to be stripped of its graphic violence. Do those who find the violence in The Passion so integral to the story think a sanitized version would do the story justice?

Of course, First Amendment concerns could be skirted by granting a content-neutral right to edit content, but that will just create further problems. For every case in which ClearPlay sanitizes the kitty litter humor in "The Cat in the Hat," another company will strip The Passion of offensive depictions of Jews. Personally, I might not mind the outcome. Someone else might prefer it if scenes depicting interracial physical contact were cut from Look Who's Coming to Dinner or Jungle Fever. But I don't think this is what America is about. Innovation, growth, and progress occur through exposure to an unbridled marketplace of ideas, not by ensuring that everything you see, read, and experience fits within your pre-conceived world views.

Would legislation distinguish between fictional and non-fictional works? I don't see how. For instance, is The Passion of The Christ fictional or historical? What about "The Reagans" mini-series? And who would be the arbiter? The Anti-Defamation League in the case of The Passion? The Reagan family in the case of The Reagans? But if the legislation does not make a fiction/non-fiction distinction, it is an invitation to rewrite history. For instance, World War II documentaries could be

stripped of concentration camp footage. Fahrenheit 911 could be stripped of scenes linking the Houses of Bush and Fahd.

And on what principled basis would such legislation apply only to motion pictures? If it is really meant to empower consumers to customize their lawfully purchased copyrighted works, then it would apply to all copyrighted works. It would legalize the unauthorized software plug-ins that enable you to play the Tomb Raider computer game with a topless Lara Croft, and to put the faces of teachers and classmates on the heads of target monsters in certain "shooter" computer games. Would the legislation make it legal for someone with digital editing software to doctor a 30-year-old photograph of a Vietnam War rally so that it appears that John Kerry is standing next to Jane Fonda?

Would the legislation only apply to digital works? If so, what nonsense. It means that someone could sell an e-book reader that prevents reading the murder scene in an ebook version of Dostoevsky's Crime and Punishment, but can't sell the hardcopy book with the offending pages ripped out. Why would legislation protect technology that skips the violent scenes in a DVD version of Platoon, but not protect a service that cuts the same scenes from the VHS version? If both activities are copyright infringement today, why would legislation only immunize the digital infringement?

As a parent, I am concerned about what my children see and hear in our cacophonous media society. But I believe parenting is the parents' job, not the government's. I wonder why vocal proponents of personal responsibility and limited government readily abandon those principles when presented with the opportunity to place the government in loco parentis. If the government should stay out of our gun closets, shouldn't it stay out of our bedrooms and living rooms? If the government should let the marketplace develop solutions to environmental pollution, shouldn't it also let the marketplace develop solutions to so-called cultural pollution?

I yield back the balance of my time.

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, AND RANKING MEMBER, COMMITTEE ON THE JUDICIARY

Make no mistake about it, today's hearing is an abuse of process and is about nothing less than censoring the movie industry.

At the outset, I am embarrassed we are having this hearing. The Republicans know full well that the directors and ClearPlay are engaged in settlement negotiations to resolve a lawsuit over copyrights; they are using this hearing to pressure the directors and help the other side. In my tenure in Congress, this is the first time I can remember having a one-sided hearing involving on-going settlement talks. Our hearings should be reserved for public policy debates, not for strong-arming private litigants.

It is more troubling considering that we are here to continue the Republican assault on the First Amendment and media content. In the past few months, we've seen Republican overreaction to a televised Superbowl stunt and to radio broadcasts. Now the self-proclaimed moral majority is turning to movies.

Censoring filmmakers would diminish the nature of this medium. Let us not forget that *Schindler's List* was on broadcast television completely uncut. The movie studio and the broadcasters knew the film could not convey its feeling and authenticity if it was edited. Despite this, the movie has been edited by censors to make the Nazis appear merely mischievous. *Traffic,* an acclaimed anti-drug movie, has been edited in a way that makes drug use appear glamorous.

This is not to say that movie fans should be forced to watch the latest Quentin Tarantino movie. People looking for family-friendly fare have countless choices. Parents are inundated with commercials for the latest children's movies; over the past several years, Hollywood has increased its output of G- and PG-rated films. Newspaper reviewers make specific mention of family-friendly films. Finally, organizations like Focus on the Family provide information on movies for parents who seek it. In short, there are options.

There is a simple solution to this problem. It is a market-based solution that conservatives should like. If a family finds a particular DVD offensive, it should not buy it.

I hope this is not the type of democracy, one of strong-arm government and censorship, that our Republican colleagues want to take to Iraq.

RESPONSE TO QUESTION SUBMITTED BY REPRESENTATIVE HOWARD L. BERMAN TO MARJORIE HEINS

June 7, 2004

Reply to Post-Hearing Question from
Rep. Howard Berman, House of Representatives, Committee on the Judiciary, Subcommittee on the Courts, the Internet, and Intellectual Property, Hearing on Derivative Rights, Moral Rights, and Movie Filtering Technology

By Marjorie Heins, Brennan Center for Justice, Free Expression Policy Project

The Question (received via e-mail on June 2, 2004) reads:

> Ms. Heins, as a First Amendment expert, help me understand the implications of legislating in this area. Under the First Amendment, as I understand it we have to be "content neutral." In other words, if we tried to legislatively allow third parties to edit movies, we probably could not allow editing only for certain purposes like "cleaning up" movies and not others like emphasizing the salacious parts, is that right?
>
> So, would we run the risk of allowing some editors to turn up or emphasize the sex or violence at the same time as allowing others to turn it down?
>
> Would we potentially be allowing other parties to edit movies in other ways, such as adding offensive material to otherwise family friendly entertainment?
>
> Could any third party with any bias of any kind edit movies in any way they saw fit under the kind of "content-neutral" legislation we would have to adopt to so as not to run afoul of the First Amendment?
>
> Would such legislation potentially backfire by depriving content owners of the ability to stop those who might edit movies to make them more salacious or to display other negative biases?

Reply

The question recognizes that legislation affecting expression is most suspect under the First Amendment when it makes distinctions based on content, rather than being "content-neutral." Let me address the "content- neutral" and "content- based" alternatives in turn.

The "Content-Neutral" Approach. If Congress were to pass legislation immunizing from copyright liability the manufacture, distribution, and sale of filters that blur, mute, or otherwise censor parts of a copyrighted work, this would probably be considered a "content-neutral" law.[1] This does not mean that the law would be exempt from First Amendment scrutiny – simply that the scrutiny would be less exacting than for a law that explicitly discriminates against disfavored content such as nudity, "violence," or coarse language.

Although the Supreme Court has generally taken a deferential approach to Congress's judgments in the area of copyright and has not subjected them to exacting First Amendment scrutiny, it has also noted that where Congress "alter[s] the traditional contours of copyright

[1] If it became clear from the legislative history that Congress's purpose in passing the law was to discriminate against disfavored content, then courts might consider the law content-based even though the language on the face of the law was content-neutral.

protection," a heightened level of First Amendment scrutiny may be necessary. *Eldred v. Ashcroft*, 537 U.S. 186, 221 (2002). A law that creates an exception to the usual copyright owner control over derivative works (17 U.S.C. §106) could well qualify for this heightened scrutiny because it indeed alters "the traditional contours of copyright protection." That is, the exception would not be designed to advance any purpose of the copyright system ("to promote the progress of science and useful arts"), but instead would be designed to encourage the distortion and mutilation of creative works in the purported interest of potential viewers who are offended by controversial content.

At the very least, it is highly unusual for Congress to alter copyright law in order to pursue an objective so unrelated to the usual purposes of copyright as enabling individuals to watch movies in censored form. A court might well conclude that such an unusual law infringes the First Amendment rights of film directors, producers, and scriptwriters, by purposefully aiding and abetting the mutilation of creative works by private companies for financial gain.

In addition, as your question suggests, such a content-neutral amendment to the copyright law would have far-reaching, unintended consequences. It would invite the manufacture and sale of filters that delete substantial portions of cinematic works, leaving only salacious scenes, non-stop violence, or other distortions of the story line and message. A filter could, for example, turn an anti-racist movie upside down by leaving in the comments and actions of the racist characters but deleting dialogue that explains why the racists are misguided or scenes that show the error of their ways. Thus, the contemplated legislation would be counterproductive, in that it would encourage and enable the mutilation of movies to promote violence, racism, sexual promiscuity, or other messages.

The Content-Based Approach: Targeting Disapproved Content. If Congress were to narrow the legislation to allow only filtering of nudity, crude language, or other disapproved content, the law would face serious constitutional challenge on the ground that it is content-based – targeted at controversial expression. As I pointed out in my testimony, "singling out constitutionally protected expression for adverse treatment under the law – in this instance, scenes and dialogue from films that a private company has decided contain unacceptable levels of sex or violence – is precisely what the First Amendment condemns."

Another constitutional problem is that the contemplated legislation would essentially endorse subjective censorship decisions made by private companies based on unspecified standards or no standards at all. In a series of cases in the 1970s, federal courts ruled that government cannot simply adopt private industry ratings and give them the force of law. *E.g., Engdahl v. City of Kenosha*, 317 F. Supp. 1133 (E.D. Wis. 1970); *Motion Picture Association of America v. Specter*, 315 F. Supp. 824 (E.D. Pennsylvania 1970). Although these cases involved direct governmental restraints on expression rather than the indirect restraints achieved through the approval of private filtering technology, the point remains that constitutional problems of vagueness and undue discretion to censor do arise when the government incorporates private industry ratings or standards as official policy.

I hope that this reply is useful to the Subcommittee as it continues its deliberations. Please don't hesitate to contact me with further questions.

BOOK REVIEW BY JOANNE CANTOR

Published in *Journalism and Mass Communication Quarterly, 2003, 80,* p. 468.

Media Violence and Its Effect on Aggression: Assessing the Scientific Evidence, by Jonathan L. Freedman. Toronto: University of Toronto Press, 2002, xiii, 227 pages; $50 hbk., $24.95 pbk.

"In 1999 I was approached by the Motion Picture Association of America [MPAA] and asked whether I would consider conducting a comprehensive review of all the research on media violence," says Jonathan L. Freedman in the Preface to *Media Violence and Its Effect on Aggression* (p. x). The media's cultivation of academics who disparage research showing that their products are harmful is not new: It goes back at least as far as Will Hays' lavish support of Mortimer Adler in the 1930's (Adler 1977, 193–194; Vaughn, 2003). Freedman, a psychology professor at the University of Toronto who has never conducted his own research on media violence, claims that the financial support has not affected his objectivity, although he doesn't hesitate to see ulterior motives in the scientists and professionals who disagree with his conclusions.

Freedman expresses outrage at social scientists and public health organizations for wrongly (in his view) concluding that media violence promotes aggressive behavior. His criticism essentially boils down to two arguments. The first is that the professional organizations have exaggerated the number of scientific studies that have been conducted on the topic. The second is that a study-by-study analysis reveals that there is no consensus in the findings.

Freedman is correct that the number of studies has sometimes been overstated. Although some organizations have cited a number as high as 3,500, recent meta-analyses have placed the number between 200 and 300. Freedman explains that the inflated number originally referred to all types of articles about media effects, not just *scientific* studies of media *violence*. Somehow this number was picked up by others and misapplied. Freedman considers this "the worst kind of irresponsible behavior," and finds the use of this figure to be as "sloppy" as an economist saying that his research was based on data from "over 150 American states" (p. 9)!

Freedman never says how many more studies he would consider necessary. If we look at research findings in other areas, however, 200 would seem quite sufficient. For example, the finding that calcium intake increases bone mass is based on 33 studies (Welten, Kemper, Post, and van Staveren 1995); the conclusion that exposure to lead results in low I.Q. scores is based on 24 studies (Needleman and Gatsonis 1990).

The bulk of the book includes a tedious, close analysis of every published scientific study of the effects of media violence on aggression or desensitization that Freedman could find. (See the Reference List for some he missed and more recent compelling evidence). Not surprisingly, Freedman considers many studies unconvincing. Although some of his criticisms of individual studies are justified, he seems strongly motivated to find flaws. Moreover, after giving an exhaustive explanation of research methods, he forgets one basic principle—that the lack of a statistically significant difference is not the same as a finding of no effect. In addition, he disputes the fact that meta-analysis, which statistically combines all the findings in an area and eliminates the subjective interpretation of individual studies (Mann 1994), is an appropriate way to discover a research consensus. Freedman discusses two meta-analyses (Paik and Comstock 1994; Wood, Wong, and Chachere 1991) that report a clear conclusion that media violence promotes aggression, but dismisses them. Two recent meta-analyses (Anderson and Bushman 2001; Bushman and Anderson 2001) are not included. Freedman also chooses not to cover research on media violence's effect on fear, simply claiming that "the research has not provided much support for it" (p. 11).

Why does Freedman think there so much bias in the interpretation of media violence research? In his view, the health professionals are trying to please the politicians, and the academics are trying to promote their careers. Although Freedman claims that he himself is not biased, he seems more concerned with damage to the media industries than with harm to children. For example, he decries the fact that reliance on what he considers flawed research has "force[d] television companies to rate every single program for violence" (p. 4), and he feels sorry for parents, who are getting unnecessary advice based on "pop psychology" (p. 12).

At the end of the book, Freedman makes a strange and ludicrous argument to explain why media violence does not have negative effects. He says that advertisements have effects because they have a "clear, unmistakable message. . . . The people who see an ad know its purpose; if they do not, . . . [it] will probably have no

effect." In contrast, "Films and television programs that contain violence . . . are just entertainment. . . . So it should not be surprising that they have no effect on people's aggressive behavior" (p. 204). This reasoning flies in the face of decades of research on persuasion, imitation, and child development.

Freedman says the book would not have been possible without the MPAA's support. However, between the tedium of the criticism of each research design and the polemical nature of his arguments, I don't foresee it having much of an impact.

Joanne Cantor
University of Wisconsin-Madison

Reference List

Adler, Mortimer J. 1977. *Philosopher at large: An Intellectual biography.* New York: MacMillan.

Anderson, Craig A. and Brad J. Bushman. 2001. "Effects of violent video games on aggressive behavior, aggressive cognition, aggressive affect, physiological arousal, and prosocial behavior: A meta-analytic review of the scientific literature." *Psychological Science 12:* 353–359.

Bushman, Brad J., and Craig A. Anderson. 2001. "Media violence and the American public: Scientific facts versus media misinformation." *American Psychologist 56:* 477–489.

Cantor, Joanne. 1998. *"Mommy, I'm scared:" How TV and movies frighten children and what we can do to protect them.* San Diego: Harcourt.

Huesmann, L. Rowell, Jessica Moise-Titus, Cheryl-Lynn Podolski, and Leonard D. Eron. 2003. "Longitudinal relations between children's exposure to TV violence and their aggressive and violent behavior in young adulthood: 1977–1992." *Developmental Psychology 39:* 201–221.

Johnson, Jeffrey G., Patricia Cohen, Elizabeth M. Smailes, Stephanie Kasen, and Judith S. Brook. 2002. "Television viewing and aggressive behavior during adolescence and adulthood." *Science 295:* 2468–2471.

Lemish, Dafna. 1997. "The school as a wrestling arena: The modeling of a television series." *Communication 22:* 395–418.

Mann, Charles C. 1994. "Can meta-analysis make policy?" *Science 266* (5197): 960–962.

Needleman, Herbert L., and Constantine A. Gatsonis. 1990. "Low level lead exposure and the IQ of children." *Journal of the American Medical Association 263:* 673–678.

Paik, H., and George Comstock. 1994. "The effects of television violence on antisocial behavior: A meta-analysis." *Communication Research, 21:* 516–546.

Vaughn, Stephen L. 2003. *Freedom and entertainment: Cinema, censorship and technology in the 20th Century.* Unpublished manuscript, submitted for publication.

Welten, Desiree C., Han C. G. Kemper, G. Bertheke Post and Wija A. van Staveren. 1995. "A meta-analysis of the effect of calcium intake on bone mass in young and middle aged females and males." *Journal of Nutrition 125:* 2802–2813.

Wood, Wendy, Frank F. Wong, and Gregory J. Chachere. 1991. "Effects of media violence on viewers' aggression in unconstrained social interaction." *Psychological Bulletin 109:* 371–383.

Remarks Delivered by Joanne Cantor at the Madison Civics Club Whose Freedom of Speech Is It Anyway? [1]

I've been asked to comment on Freedom of Speech issues that are confronting us in the U.S. today. Many people have noted that corporate interests control what gets discussed in the media, and one place where this is obvious is the controversy over the media's effects on children. Research shows that violent television, movies, videogames, and even commercials can produce serious harmful effects on children, such as promoting violent behaviors and inducing intense anxieties. Parents need this information so they can make informed choices about their children's viewing, but the media use their corporate power to censor information that might damage their profits. At the same time, these corporations raise First Amendment concerns when solutions that might help parents are proposed. Here are a few recent examples of what I'm talking about:

ONE. In 1997, I participated in a taping of *The Leeza Show.* On that show, parents were highly critical of the TV industry's new age-based rating system that was

[1] A shortened version of these remarks appeared in the *Wisconsin State Journal,* October 17, 2002.

supposed to help them block harmful content using a device called the V-chip. NBC, which opposed making changes in the rating system, refused to let that program air. And five years later, they still have not gone along with the compromise that the other stations adopted.

TWO. After the National Institute on Media and the Family released a list of the 10 most violent video games, they were sued by the manufacturer of one of the games on the list. Although the lawsuit was eventually dropped, the costly process caused the organization's liability insurance to double, and they were subsequently lucky to get any insurance at all.

THREE. The Center for Successful Parenting produced a documentary on the effects of media violence for Court TV, a cable channel that is owned by Time-Warner. Before the program could air, the producers were told to remove the mention of Time-Warner's products. They were also required to include remarks by lobbyist Jack Valenti, who claimed that the research showing harmful effects was inconclusive.

These are just a few of many examples of corporate interests using their muscle to restrict the free flow of information to parents. They say that it's up to parents, not the media, to raise their children. But they make harmful products, which come into our homes automatically through television, they market them to children too young to use them safely, and they try to keep parents in the dark about their effects.

A sensible solution is to require media producers to accurately label their programming. The media interests say that this is the start down a slippery slope toward censorship. But we require food labels so people don't have to eat something to find out they're allergic to it. We even require clothing manufacturers to label their products so our colors won't run and our garments won't shrink.

Because the media are so pervasive and parents can't be constantly present in their children's lives, parents need tools to help them enact their decisions about what's healthy or unhealthy for their children. The V-chip is one possible solution, but it won't work without accurate, informative ratings, and it can't be used by the majority of parents, who have yet to hear about it because it gets so little publicity. Did *you* know that since January 2000, all new TV's except very small ones are required by law to have the V-chip?

Newer tools that might help parents are being fought by the industry. A video recorder called Replay TV allows parents to skip commercials—which are becoming more violent and edgier all the time. The entertainment industries have sued Replay TV for encouraging what they call copyright infringement. Other new products involve software that can create "tamer" versions of movies according to parents' preferences. Recent news reports suggest that legal action against these products is also forthcoming.

Other attempts at parental empowerment are also being fought. The city of Indianapolis, recognizing that many young people go shopping without their parents, enacted a videogame ordinance. It required the owners of videogame arcades to label games featuring graphic violence or strong sexual content and to prohibit children under 18 from playing them without parental consent. The videogame industry sued, and the Court declared the law an unconstitutional infringement of freedom of speech. Similar ordinances in other communities are also facing challenge.

Censorship is not the answer. But the pattern here is that the First Amendment is aggressively used to protect commercial interests at the same time that the free speech rights of child advocates are stifled. We are fortunate in Madison to be the home of the National Telemedia Council, the nation's oldest media literacy organization, and I'm optimistic that through parent education and media literacy, we can help our children lead healthier lives. However, to do this, we all need equal access to freedom of speech.

See also:

Cantor, J. (1998). *Mommy, I'm Scared: How TV and Movies Frighten Children and What We Can Do to Protect Them.* San Diego, CA: Harcourt.

Cantor, J. (forthcoming). *Teddy's TV Troubles.* (A children's book about coping with frightening media, illustrated by Tom Lowes.) Madison, WI: Goblin Fern Press. *www.goblinfernpress.com.*

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