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CONGRESSIONAL INTEREST IN THE PROBLEM OF TELEVISION AND VIOLENCE

*John Windhausen**

I would like to take this opportunity to talk about what Congress is doing about the problem of television and violence and specifically, about the Hollings legislation.¹

* Senior Counsel, Communications Subcommittee, Senate Committee on Commerce, Science and Transportation. Editor's note: This article was originally presented at a live Symposium on Television and Violence held at Hofstra University School of Law on April 8, 1994.

1. S. 1383, 103d Cong., 1st Sess. (1993). The text of the Hollings Bill is as follows:

SECTION 1 SHORT TITLE

This act may be cited as the "Children's Protection from Violent Programming Act of 1993."

SECTION 2 FINDINGS

The Congress Makes the following findings:

(1) Television influences children's perception of the values and behavior that are common and acceptable in society.

(2) Television station operators, cable television system operators, and video programmers should follow practices in connection with video programming that take into consideration that television broadcast and cable programming—

(A) has established a uniquely pervasive presence in the lives of all Americans; and

(B) is readily accessible to children.

(3) Violent video programming influences children, as does indecent programming.

(4) There is empirical evidence that children exposed to violent video programming at a young age have a higher tendency for violent and aggressive behavior later in life than those children not so exposed. Children exposed to violent video programming are prone to assume that acts of violence are acceptable behavior and therefore to imitate such behavior.

(5) There is a compelling governmental interest in limiting the negative influences of violent video programming on children.

(6) There is a compelling governmental interest in channeling programming with violent content to periods of the day when children are not likely to comprise a substantial portion of the television audience.

(7) Restricting the hours when violent video programming is shown is the least restrictive and most narrowly tailored means to achieve that compelling governmental interest.

(8) Warning labels about the violent content of video programming will not in themselves prevent children from watching violent video programming.

SECTION 3 UNLAWFUL DISTRIBUTION OF VIOLENT PROGRAMMING

Title VII of the Communications Act of 1934 (47 U.S.C. § 601 et seq.) is

I thought I would begin my comments with a statement taken from a congressional hearing. In March, the Surgeon General's Committee unanimously concluded that the causal relationship between televised violence and anti-social behavior warrants appropriate and immediate remedial action.² It is, said the Surgeon General, an acquiescence in the continuation of the present level of televised violence entering American homes for no action to take place. There comes a time, he added, when the data is sufficient to justify action. That time

amended by adding at the end the following new section:

SEC. 714 UNLAWFUL DISTRIBUTION OF VIOLENT PROGRAMMING

(a) UNLAWFUL DISTRIBUTION—It shall be unlawful for any person to—

(1) distribute to the public any violent video programming during hours when children are reasonably likely to comprise a substantial portion of the audience; or

(2) knowingly produce or provide material for such distribution.

(b) RULEMAKING PROCEEDING—The Commission shall conduct a rulemaking proceeding to implement the provisions of this section and shall promulgate final regulations pursuant to that proceeding not later than nine months after the date of enactment of this section. As part of that proceeding, the Commission—

(1) may exempt from the prohibition under subsection (a) programming (including news programs, documentaries, educational programs, and sporting events) whose distribution does not conflict with objective of protecting children from the negative influences of violent video programming, as that objective is reflected in section 2 of the Children's Protection from Violent Programming Act of 1993;

(2) shall define the term "hours when children are reasonably likely to comprise a substantial portion of the audience" and the term "violent video programming."

(c) REPEAT VIOLATIONS—If a person repeatedly violates this section or any regulation promulgated under this section, the Commission shall, after notice and opportunity for hearing, immediately repeal any license issued to that person under this Act.

(d) CONSIDERATION OF VIOLATIONS IN LICENSE RENEWALS—The Commission shall consider, among the elements in its review of an application for renewal of a license under this Act, whether the licensee has complied with this section and the regulations promulgated under this section.

(e) DEFINITION—As used in this section, the term "distribute" means to send, transmit, retransmit, telecast, broadcast or cablecast, including by wire, microwave or satellite.

SECTION 4 EFFECTIVE DATE

The prohibition contained in § 714 of the Communications Act of 1934 (as added by section 3 of this Act) and the regulations promulgated thereunder shall be effective on the date that is one year after the date of enactment of this Act.

Id.

2. See 139 CONG. REC. S15230-01 (1993); 132 CONG. REC. S12203-01 (1986).

has come. This language is taken from a congressional hearing on April 3rd, 1974.³ At that time, Congress had already been looking at the issue of television and its relationship to violence for twenty years. Congress began holding hearings on this issue in 1952 and again in 1954.⁴ Senator Estes Kefauver, as Chairman of the Senate Committee on Juvenile Justice and Delinquency, began hearings on the implications of television violence and violent behavior in society.⁵ We have seen a constant concern and continual amounts of evidence brought forward to justify action, and yet no action has taken place. The question I want to begin and probably finish with is, how much longer are we going to let this go on without taking any appropriate and necessary action?

I would like to summarize the congressional interest on this issue and review briefly some of the evidence that has prompted Senator Hollings and the other Senators and Congressmen to examine this issue. I would then like to walk through the bill that Senator Hollings has drafted in order to justify the need for this legislation against constitutional arguments.

As I mentioned, Congress began looking at this topic in the 1950s. After a period of hearings and testimony, the Federal Communications Commission ("FCC") said that it was going to take care of this problem.⁶ Concern rose again after the urban riots of the 1960s. Senator John Pastore at that time wrote to the Surgeon General asking him to prepare a report on the influence and effects of television and violence.⁷ The statements I referenced earlier came from the Surgeon General's report drafted in response to Senator Pastore's request.⁸

Throughout the 1970s, there were fifteen days of hearings in the

3. See Timothy B. Dyk & Barbara McDowell, *The Congressional Assault on Television Violence*, COMM. LAW., Fall 1993, at 3.

4. *Juvenile Delinquency (Television Programs): Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. of the Judiciary*, 83d Cong., 2d Sess. (1954); *Juvenile Delinquency (Television Programs): Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. of the Judiciary*, 84th Cong., 1st Sess. (1955); see also 132 CONG. REC. S12203-01 (1986).

5. See *Report on the Broadcast of Violent, Indecent & Obscene Material*, 51 F.C.C.2d 418 (1975); see also Julia W. Schlegel, Note, *The Television Violence Act of 1990: A New Program for Government Censorship?*, 46 FED. COMM. L.J. 187 (1993).

6. See Dyk & McDowell, *supra* note 3, at 3 (stating that starting in 1974 Congress began placing "increasing pressure on the Federal Communication Commission to take action against violence" and that shortly thereafter the FCC did so).

7. *Id.*

8. See *id.*

Senate alone on the conclusions of that report, finding as I mentioned that there was a causal connection between television violence and violent behavior. No action was taken in Congress, however, in large part because of the actions and decisions made by the FCC.

Richard Wiley, Chairman of the FCC, negotiated an agreement with the broadcast industry in 1975 which he claimed was going to solve the problem. The broadcast industry agreed to limit the number of programs that contained violent behavior. The television industry also agreed to restrict its programming during the primetime family hour of eight to nine p.m., and also for an additional non-primetime hour from seven to eight p.m. Everyone agreed that those hours should be suitable for family viewing with no violent televised activity.⁹

From the late 1970s through the 1980s, not much action occurred probably because Reagan administration officials were at the FCC during that period and Republicans controlled the Senate from 1981 until 1987.

Beginning in 1988 and 1989 the level of the congressional activity again increased. The Children's Television Act,¹⁰ passed in 1990, reaffirmed the need for broadcasters to fulfill their responsibilities in programming geared toward children. Children spend more time watching television than they spend in school. The hearing records supported the claim that television is an enormous influence on the activities and the impressions that children form as they grow older.¹¹

In 1990, Senator Paul Simon proposed the Television Violence Act which gave the broadcast industry and the cable industry a three-year exemption from the antitrust laws.¹² The purpose of the Act

9. *Id.* at 4.

In early 1975, the networks and the National Association of Broadcasters (NAB) established the so-called "family viewing policy" which required that "entertainment programming inappropriate for viewing by a general family audience" not be presented during the first hour of prime time or the immediately preceding hour. The policy was to be enforced by the NAB under its Television Code authority.

Id.

10. 47 U.S.C. § 303a (1990).

11. "[F]or some children, television acts as the electronic baby-sitter and as a surrogate parent. With a T.V. in 96% of all American households, T.V. obviously has major effects on the attitudes, education and behavior of our children." *Television Violence Act of 1988: Hearings on H.R. 3848 Before the Subcommittee on Monopoly and Commercial Law of the House Committee on the Judiciary*, 100th Cong., 2d Sess. 9 (1988) (statement of Arnold Fege, National PTA Director of Governmental Relations).

12. 15 U.S.C. §§ 1-7 (1988).

was to allow the networks and the cable industry to voluntarily cooperate in establishing standards to limit the showing of television violence. His approach attempted to force industry to address the problem uniformly and voluntarily. What did they come up with? Not much. It took them two years and eleven months to even meet to form some voluntary standards. They finally agreed to provide warnings on their television shows that were regarded as violent.¹³

In sum, we have been waiting a long time for the industry to take care of this problem and to deliver solutions so that we would not have to legislate. During that time period, we have seen both an increase in the amount of violent activity and violent programming on television and also an increase in the amount of violent behavior in society.

Congress has waited a long time for the industry to regulate itself and it appears from the extensive time and opportunities the industries have had, that they are not taking advantage of these opportunities. The evidence to support some form of action is quite widespread. I would like to bring to your attention a statement made in the early 1950s which sets forth very clearly the incentives for the television industry with regard to violent programming. Instructions given by the networks or by one particular network to the producers of programming stated that it has been found that audience interest was best retained when the story concerns murder. Therefore, although other crimes may be introduced, somebody must be murdered and hopefully it happens early with the threat of more violence to come.

You would not find a memo like that written today. No one would be so careless as to put that in writing, but I think it demonstrates that the industry itself has certain incentives to broadcast what they may refer to as action programming simply because they have found that it attracts the most viewers. I think as legislators and as public policy makers, we have to ask if these marketplace incentives are in the public interest. Should Congress allow these incentives to dictate what people, particularly children, see on television? Does

13. See Schlegel, *supra* note 5, at 194.

The television industry . . . did not meet until December, 1992, when under pressure from Senator Simon, ABC, CBS, and NBC finally came together to establish some guidelines to reduce violent television. In a joint statement, the networks said that their standards are intended to "prohibit depicting violence as glamorous or using it to shock or stimulate the audience."

Id.

violence on television lead to violent behavior? Again, we will hear more evidence about that later today. I will just mention a couple of anecdotal references I have come across in my research. *The Untouchables* was a very popular television show in the late 1950s and early 1960s. There was at least one example of teenage gang members who, upon their arrest after looting and rampaging through the streets, claimed in their defense that they were untouchable. After the movie *The Deer Hunter* was aired on network television, twenty-six children and adults self-inflicted gunshot wounds to their heads after watching that film. A twelve-year old boy was found hanging from a noose in his home with the set tuned to NBC. He was found the morning after Johnny Carson had been engaged in a stunt on his show in which he placed a noose around his neck, fell through a trap door and returned to the stage unharmed. The little boy was not so fortunate.

Most recently, there have been examples of violence copied from the television show *Beavis and Butthead* on MTV in which the television characters played with fire and joked about how cool fire was. The day after that episode aired, a young boy set fire to his trailer home which resulted in the death of his two-year old sister.

We see the evidence all around us. It is important to do the documentaries and to do the studies and the research, but I think we also have to use our common sense.

What should be done? We have relied upon the industry to come up with its own standards of self-regulation. That has not worked. The question is therefore what kind of government action should be undertaken? There are currently two kinds of proposals in Congress.

Two resolutions and nine bills, a total of eleven pieces of legislation, are now pending in Congress.¹⁴ These pieces of legislation propose giving the consumer more information about the kinds of programs that are being broadcast. This quantity of legislation gives you an idea of the extent of congressional interest and involvement with this issue. North Dakota Senator Byron Dorgan's Bill¹⁵ would authorize the FCC to prepare report cards on television programs

14. S. 1556, 103d Cong., 1st Sess. (1993); S. 1383, 103d Cong., 1st Sess. (1993); S. 973, 103d Cong., 1st Sess. (1993); S. 943, 103d Cong., 1st Sess. (1993); H.R. 2888, 103d Cong., 1st Sess. (1993); H.R. 2837, 103d Cong., 1st Sess. (1993); H.R. 2756, 103d Cong., 1st Sess. (1993); H.R. 2609, 103d Cong., 1st Sess. (1993); H.R. 2159, 103d Cong., 1st Sess. (1993); S. Res. 122, 103d Cong., 1st Sess. (1993); H. Res. 202, 103d Cong., 1st Sess. (1993).

15. S. 973, 103d Cong., 1st Sess. (1993); H.R. 2159, 103d Cong., 1st Sess. (1993).

which have been monitored four times a year and a public notice of the most violent shows would then be issued. This legislation reflects the notion that if consumers are provided with this information, they will be able to monitor the shows their children watch.

Congressman Edward J. Markey has introduced a proposal called the "V Chip" proposal.¹⁶ His idea is to require that television sets, rather than the programmers, have a programmable chip included in the television which would allow parents to screen out any violent programs. This again relies upon the industry and programmers to include a message in the program as it is broadcast which would communicate with the programmable chip. The idea here is a worthy one; give viewing control to the parents as the best way of attempting to solve the problem.

The problem I think with both of these proposed solutions is that they rely upon the parents. As much as we would like to think that parents will be the solution, society is increasingly finding that they are not. We have heard testimony in our committee that sixty or seventy percent of the children in inner city are without parental supervision.

I recently read in a South Carolina newspaper that court and juvenile justice officials have found South Carolina to be among the top three states in the nation for violent crimes committed by children.¹⁷ There is also an interesting statement by the police officers in the town where this newspaper is published.¹⁸ Only eleven percent of juveniles incarcerated from 1991 to 1992 were living with both natural parents. Fifty-three percent were in single parent households and thirteen percent were living with other relatives. If you do not have parents at home to monitor what the children are watching and to screen out the programs, the information made available to parents is irrelevant and will not work. Even Senators on the Committee who are parents and who have very strong desires to control and monitor what their children see on television admit that kids go next door. Children will see programs at their friends' houses; they will see programs whenever they are out of the house. It is impossible for parents to sit there with the children every minute of the day to see

16. H.R. 2888, 103d Cong., 1st Sess. (1993).

17. *Youths, Crime Focus of Hearings: Law Makers Meet This Week to Mull Escalating Problem, Possible Solutions*, CHARLOTTE OBSERVER, Oct. 18, 1993, at 1C.

18. See Nina Brook, *Frightening Trend: Youth in Trouble Sumter Worried About Escalation in Crime Among Juveniles*, THE STATE, Feb. 18, 1992, at 1B; *Restoring Peace in the Neighborhood*, THE STATE, Sept. 19, 1993, at 3D.

what it is that they are watching.

If we rely upon the parents, as worthy a goal as that might be, the danger is that we will not be successful. That is why Senator Hollings' bill adopted the approach that violent programming needs to be controlled by preventing it from being distributed on television during hours when children are likely to be in the audience.¹⁹

His approach is very similar to the approach that the FCC currently takes with regard to indecent programs. The FCC has established certain hours of the day when indecency cannot be shown on television.²⁰

I am sure that we will hear from the other panelists about the problems that indecency provisions have had in the courts in the past. I want to be sure and get a chance to respond to some of those, but I want to keep one thing in your mind. The court has never disputed that protecting the rights of children is a compelling state interest.²¹ Congress and legislators have a greater responsibility to protect the interest and the well-being of children than they do for adults. This is the foundation of our concern about the effect of violent programming on children.

The bill would delegate a lot of responsibility to the FCC. The FCC would set the hours of the day when children are most likely to be in the audience. It also gives the FCC the role of defining what is violent.

How do you define it? It is a large, difficult issue, and I think we feel more comfortable with the FCC developing a definition based on its analysis of the record. We think that it is unfortunate that we have had to come to this point. Senator Hollings in the past has said that he would prefer not to have to legislate, but if we continue to see things happen as they have been, he feels that we really have no choice at this point other than to pursue some legislation.²² The

19. See S. 1383, 103d Cong., 1st Sess. (1993).

20. 47 C.F.R. § 73.3999 (1993); see also 18 U.S.C. § 1464 (1988).

21. See *Osbourne v. Ohio*, 495 U.S. 103, 109 (1990) (stating that "[i]t is evident beyond the need for elaboration that a state's interest in 'safeguarding the physical and psychological well-being of a minor' is 'compelling'").

22. See 139 CONG. REC. S10566-01, S10581 (1993).

MR. HOLLINGS. . . . The concern over this issue is not new. The Commerce Committee held hearings on television violence almost twenty years ago. Since then, countless studies have been done, numerous solutions have been offered, and yet the rise of violent programming only continues. Television violence is not to blame

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trends are certainly very alarming and disturbing.

for all of our societal ills, but there is little doubt in my mind that it is a significant negative influence on children. So, the time for more studies and panel discussion is over. It is time to solve the problem.

Id.

