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GOVERNMENT CENSORSHIP IS NOT THE SOLUTION, EDUCATION IS

*Peggy Charren**

People generally think of me as a child advocate but, lately, I have spoken out more often as a staunch defender of free speech. This switch came about because children are being used as the excuse for censorship. Today, many child advocates, members of Congress and media regulators do not seem to understand that censorship is a slippery slide to disaster in a Constitutional democracy. For twenty-five years, I have been trying to get the Federal Communications Commission ("FCC") to fulfill its obligation to ensure that broadcast licensees obey the laws that govern broadcasting as applied to children.

The record shows that, in large part, commercial television has abdicated its educational role and concentrated on its ability to amuse. Unfortunately, it is often used to showcase violence, profane language, and sexual innuendo. Many adults, frustrated and angry with this type of television fare watched by children, want the government to ban G.I. Joe's guns and Ninja Turtles' weapons or to censor language and lyrics not suitable for young adults. During the 1970s and 1980s, the religious right and conservative Republicans tried to excise sex from the television screen. Today, Democratic members of Congress have introduced legislation designed to do away with violence on television.

But government censorship is not the way to protect children from inappropriate television. The right to express what some consider offensive speech is the price Americans pay for freedom of political speech and we cannot afford to risk losing that freedom. We have to teach our children that violence is not the solution to problems and we have to use the "off" button more often. Parents can turn off what is bad for children, but they cannot turn on what is missing from television's service to kids.

* Founder, Action for Children's Television. Editor's note: This article was originally presented at a live Symposium on Television and Violence at the Hofstra University School of Law in April 8, 1994.

Although the government has no place *limiting* television options, it does have a role to play in *increasing* diversity in programming. The FCC's *Children's Television Report and Policy Statement*,¹ published in 1974, emphasized that broadcasters have a special obligation to serve children and to develop and present programming which will serve the unique needs of the child audience. The FCC defined programs that could be considered educational or informative:

There are many imaginative and exciting ways in which the medium can be used to further a child's understanding of a wide range of areas: history, science, literature, the environment, drama, music, fine arts, human relations, other cultures and languages, and basic skills such as reading and mathematics which are crucial to a child's development.²

This is the statement that the FCC should be making again in 1994 and these are the ideas that broadcasters and their lawyers should keep in mind in interpreting the Children's Television Act of 1990.³

As licensed public trustees, broadcasters have historically been required to serve the public interest. The Children's Television Act breaks new ground by specifying that service to children is part of this obligation and that the child audience deserves special consideration.

Under the new law, stations must limit the amount of advertising on children's television (ten and one-half minutes per hour on weekends and twelve minutes per hour during the week, limits many people think should be significantly lower), and must broadcast programs that meet children's educational and informational needs. The law also establishes a process by which citizens can hold local stations accountable for meeting the mandate of this law.⁴

A 1992 report by the Center for Media Education on industry compliance with the 1990 law pointed out that stations claimed the *Jetsons*, *Super Mario Brothers*, *Leave It To Beaver*, *G.I. Joe* and many similar shows were specifically designed to educate children.⁵ When I commented that "if their lawyers weren't drunk, they must be

1. In the Matter of Action for Children's Television, 50 F.C.C.2d 1 (1974).

2. *Id.*

3. 47 U.S.C. § 303a (1990).

4. *Id.*

5. Joe Flint, *Study slams broadcasters' kid act compliance*, BROADCASTING, Oct. 5, 1992, at 40; *TV broadcasters hit on children's TV programming*, COMMUNICATIONS DAILY, Sept. 30, 1992, at 2.

sick," *Time Magazine* responded, "Not necessarily. Regulators in the Reagan administration once tried to cut funds for school lunch programs by classifying catsup as a vegetable."⁶

It does seem abundantly clear that almost everyone in the commercial television business is still trying to figure out how to benefit from children, instead of how to be beneficial to children. This approach is particularly offensive given the following facts: in the United States, one in four of television's youngest viewers is poor, one in five is at risk of becoming a teenage parent, and one in seven is likely to drop out of school.⁷ Fifty percent of the children born this year will live in a single-parent family before reaching the age of eighteen.⁸ And fifty percent of the women who work full time—20 million mothers—have children under six years old.⁹

Instead of focusing on ways to evade the public interest requirements, I believe communications lawyers should urge their clients to fulfill the spirit as well as the letter of the law. Everyone understands that along with its obligations, public trusteeship confers important advantages—advantages that have consistently prompted broadcasters to reject the spectrum usage fee and to come out on the side of the trusteeship model. The issue that vexes those of us concerned with television choices is that broadcasters are not behaving like trustees when it comes to kids. Adults get much better service than young audiences do.

During the 1960s and 1970s, the FCC played a significant role in getting broadcasters to provide choices for children. Through the decade of the 1980s, however, we had to listen to the drip, drip, drip of the Reagan/Bush trickle down theory of communications: What is good for the industry is good for children! That irresponsible doctrine helped to turn commercial television programming for young audiences into thirty minute commercials that make a mockery out of the legal obligation of stations to serve the public interest.

The response of CBS is typical of what happened to kids' shows across the country, and taught me one of the most important lessons in twenty five years of trying to bring more choices to children's television: When Washington talks, broadcasters listen. During the

6. *School of Hard Knocks; Some stations have pretty liberal definitions of educational television*, TIME, Oct. 12, 1992, at 29.

7. CHILDREN'S DEFENSE FUND, THE STATE OF AMERICA'S CHILDREN (1993).

8. *Id.*

9. *Id.*

1970s, CBS, in response to FCC concern, hired twenty people in its news department to produce informational programs for young audiences: *In the News*, *Thirty Minutes*, *What's an Election All About*, *What's Congress All About*, as well as other specials about government followed. This was in addition to the network's *Children's Film Festival* on Saturday mornings, an hour-long show featuring children's films from around the world, and *Captain Kangaroo* which aired Monday through Friday. As soon as deregulation became the order of the day, CBS got rid of the twenty news people and canceled all these quality educational programs. In comments to the now more broadcaster friendly FCC, CBS described one of its children's shows as a program which deals with recognizable young human beings in basic situations rather than the way out world of the traditional animated cartoon. What a strange way to describe one episode I saw that dealt with the capture of a frozen caveman who later chases the main character's friends, each trying to capture the other until the caveman falls into a giant clam and is discovered to be a professor intent on stealing another scientist's invention.

Television cannot solve all of the problems of growing up poor and unskilled in America. It can certainly do its part, however, to motivate kids to learn and it can teach them a great deal about how the world works and how to participate in a democratic society. Each year, public broadcasting puts a big chunk of its meager resources into this kind of service to children. And each year, especially since 1980, broadcasters resist every attempt to get them to do likewise.

I think there is a question here that transcends the legalistic game-playing that is the focus of discussions about television's role with respect to the effects of television violence on children. It goes beyond issues about the costs broadcasters would rather not incur for programs that may win awards but may not win advertisers. The question is: "Who really cares if a generation of kids is not adequately prepared to function as effective adults?" I will remind you who cares. For starters, the CEOs of every major industrial corporation, most of whom are panicked that they cannot find workers who can read manuals, compute basic mathematical calculations or assess electronic diagrams—and right behind them are all the other people who run the country. They care that the nation might be brought to a standstill by growing population of untrained job applicants who will never be able to earn a decent salary, uninformed voters who will not be able to make sensible political decisions, and uneducated parents who will not be able to do right by their children.

Even as I talk about the need for more terrific programming for kids, I see myself as an ally of broadcasters in fiercely protecting their right to freedom of editorial speech. Action for Children's Television was the lead plaintiff in the indecency case decided recently by the U.S. Court of Appeals.¹⁰ We were on the side of the dirty words! Not only am I against the idea that television should be cleansed of "bad" programs, I do not believe concerned parents must get rid of the television set. I like television! But I believe the television industry and families have to take more seriously the challenge of managing it properly.

The violence debates usually focus on making adult television suitable for children and ignore strategies to make children's television productive for children. The problem, as our country has painfully learned in the past, is that a little censorship goes a long way—toward imposing someone else's arbitrary standards on all of us, toward removing any controversial material from the public eye, and toward erasing precious First Amendment freedoms. What is a parent to do? Even parents who strongly support the *principle* of free speech may be hard-pressed to support its *practice* when it comes to shielding young people from violence and mayhem. But if censorship is not the answer, what is?

With television, as with most issues in our children's lives, perhaps our most important role is to guide youngsters to make thoughtful choices of their own. Just as we try to teach our children the merits of good nutrition versus a diet of junk food, we can try to help them choose a "nutritious" television diet, low on "junk" and high on food for thought. We can let them know how we view violence: when we think violence is justified, when another response is more appropriate. We can point out all the disparities between violence on the screen and violence in the real world, helping them to understand that violence hurts.

For parents who decide that reasoned guidance is not enough, especially for the youngest of television watchers, there are several devices on the market that give mothers and fathers the option of blocking out programming they deem unsuitable. These devices range from key-operated safety locks that keep the television set off entirely to programmable units that can be set to block selected channels. The next step is to ensure that these options are available to all who want

10. Action for Children's Television v. FCC, 11 F.3d 170 (D.C. Cir. 1993).

them, at a cost all can afford. The press has smirked that such parental control devices "take the fun out of being a kid." But television would be a lot less fun for children and adults alike if every show with a shred of controversy were forced off the air by those who want to "clean up" television.

To sum up, there are a number of ways to deal with the violence in our neighborhoods, with children killing children in kindergarten, without banning television speech.

1. Congress should pass a really strong gun-control bill. Use the national focus on violence to get guns off our streets and out of the hands of children and teenagers.

2. Congress should enact legislation to fully fund day care. Young children do not watch television violence during quality child care.

3. Congress should increase funding for Public Broadcasting System ("PBS") children's programming. Public broadcasting provides access to innovative, age-specific, cost-effective educational alternatives to television violence. With its willingness to tackle hard-to-handle topics and make them understandable to children, PBS has made television learning in school and at home a high adventure.

4. Parents should turn off what is terrible and turn on what is terrific. Although some adults may wish the government would get rid of shows deemed too violent for children to see, that would be unacceptable, unconstitutional censorship. Parents who help children make informed television choices should check out imaginative alternatives available in home video.

5. Educators should teach children how television works. Young viewers can learn to analyze story lines, listen for bias, create non-violent solutions to conflict situations, discover who controls decision-making and produce their own videos.

6. Communities should organize to improve television service to children in their area. Citizens should use the requirements of the children's television legislation to remind local stations that kids are entitled to the kind of choices available in a good children's library.

7. Commercial broadcasters and cablecasters should stop promoting violent programs and movies when children are likely to be watching. Keep violent promotions and advertising off of sports programs, children's shows and situation comedies that attract young children.

8. Congress should enforce the Children's Television Act. They should make sure the Federal Communication Commission specifies minimum station service of one hour per day of regularly scheduled

children's programming specifically designed to educate.

9. Commercial broadcasters should stop undermining the Children's Television Act. The new law states that each station must carry enough educational children's programming to justify its license.¹¹ Giving children something wonderful to turn on is the better alternative to just warning parents what to turn off.

If new rules and FCC guidelines are not enough to guarantee television industry compliance with the Congressional mandate to serve children, I propose an alternative solution: The FCC should initiate the necessary steps to relieve broadcasters of their public service obligation to children and instead charge the industry a small percentage of its revenues. That money should then be allocated to the Public Broadcasting System to add money used for programs specifically designed to educate children. Fortunately PBS knows precisely what that mandate means. I believe a reasonable amount would be one hundred million dollars annually, which is less than one percent of revenues of the television broadcast industry.

As former United States Supreme Court Chief Justice Warren Burger has written:

A broadcaster seeks and is granted the free and exclusive use of a limited and valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations. A newspaper can be operated at the whim or caprice of its owners; a broadcast station cannot.¹²

It is obvious that commercial station service to young audiences is still capricious at best. The good news is that the Clinton Administration has put the health and education at the center of its concerns. I believe that broadcasters will get the message they need to hear from this administration's FCC.

11. 47 U.S.C. § 303a (1990).

12. *Office of Communication of United Church of Christ v. FCC*, 359 F.2d 994, 1003 (1966) (Chief Justice Burger was then a Judge on the United States Court of Appeals for the D.C. Circuit).

