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Politically Determined Entertainment Ratings and How to Avoid Them

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Executive Summary

When they select video games, comic books, movies, music, radio programs, and television shows for their children to experience, parents have a wealth of information available to them. Through government content codes, private ratings systems, and a variety of other measures, parents have a broad universe of choices between ratings systems. This paper explores the nature of ratings systems for movies, comic books, television, radio, and video games.

We find that, while no media ratings system can or will ever achieve perfection, the best rating systems have three attributes: They attempt to describe, rather than prescribe, what entertainment media should contain; they are particularly suited to their particular media forms; and they were created with little or no direct input from government. We also find that when ratings systems collapse, it simply results in the creation of better ratings systems.

The Entertainment Software Ratings Board system for evaluating computer games works better than most. It consists of five basic ratings ranging from Early Childhood—largely educational programs for kindergarteners—to Adults Only games with serious violent or sexual content. Descriptive, easy-to-understand phrases—from “comic mischief” to “strong sexual content”—accompany the ratings. Parents can tell, at a glance, exactly what they might find objectionable in a video game. Congress has held hearings on the video game industry and threatened to regulate content, but the system emerged almost entirely as a result of voluntary private action, and has worked well for parents, children, and software producers.

On the other hand, in the radio market, the Federal Communications Commission (FCC) imposes vague but sweeping content guidelines over almost all broadcasts. The threat of FCC-imposed fines has done nothing to give parents greater control over their children’s radio listening habits—they have virtually no way to protect their children from adult material like explicitly sexual “shock jocks” and violent hip-hop lyrics. Heavy regulation and the absence of a private ratings system have made radio worse for parenting.

Comic books publishers long subjected themselves to an industry “code” that specified exactly what they could and could not publish. While officially a voluntary industry standard, the Comics Code came into existence following a series of hearings that made it clear that Congress would impose a code if the industry did not write one. The resulting code became so incredibly specific that it once forbade comics from featuring werewolves, vampires, and zombies. The Comics Code collapsed during the 1990s as a relic of a more prudish era, but the two largest comics publishers, Marvel and D.C., adopted informative, multi-tiered ratings systems, on their own, thus providing parents more information about content than the Comics Code ever did.

Radio content regulation and the Comics Code fail because they provide very little information—none at all in the case of radio—and attempt to set particular limits over media that, by their very nature, *should* facilitate a wide range of different types of experiences for a wide range of different types of audiences. Neither takes the nature of the medium into account.

To work, however, industry ratings systems do not always need the complexity that characterizes the video game system. The music industry’s “Parental Advisory: Explicit Lyrics” sticker and similar “Explicit” warnings on Internet music downloads are good examples of a simple rating system that works well. Because songs tend to be short, and artists’ bodies of work are easy to investigate, parents can often simply listen to songs themselves if they have any concerns. While the system is simple, it works pretty well. And it originated largely as a result of voluntary industry action.

Ultimately, ratings systems cannot influence the content of what gets produced in the long run. Even the highly prescriptive Comics Code did nothing to stop the emergence of graphic novels with adult themes and situations. Those who want to “clean up” media without unconstitutional government censorship will likely do best to simply avoid buying cultural products they dislike.

Well thought-out ratings systems, particularly those shaped through market forces rather than government mandates, can prove a valuable tool for parents, but they are just that—tools. No ratings system can replace good parenting.

Introduction

The United States, alone among major industrial nations, relies almost entirely on the market for the distribution and rating of entertainment media.¹ Nonetheless, all widely popular forms of electronic entertainment media contain some sort of rating intended to advise parents about the possibility of objectionable content, from the detailed six-tier Electronic Software Rating Board (ESRB) video game rating to the simple “Parental Advisory: Explicit Lyrics” sticker found on many music recordings.

Ratings work when they provide parents the information they need to make informed entertainment decisions for their children. Any free society should have a place for cultural products of all types. Since most media consumers are adults, a free society will produce some materials most parents will not find suitable for their children. Yet no entertainment ratings system can or should substitute for parenting. Moreover, any efforts to change the nature of cultural production through political means constitute censorship. Although a broad social consensus exists favoring some very narrow forms of censorship—particularly of child pornography—there is little support for efforts to censor most types of entertainment.

This paper examines the ratings system for movies, television, music, video games, and comic books, describes how they have evolved, and assesses how they have functioned. Following a rather detailed examination of each rating system, it puts forward recommendations for creating ratings systems in general.

The market-based ratings system works. Even when particular ratings regimes have collapsed, the demand for ratings has simply created better ratings system to take the place of the collapsed one. Larger degrees of political interference and highly prescriptive standards would produce confusion and, in the long term, undermine efforts to give parents the information and tools they need to protect their children.

Movie Ratings

Films shown in theaters have the longest standing and most pervasive rating system. The history of this system takes place in three distinct phases: the laissez-faire era, the Hays Code, and the Motion Picture Association of America (MPAA) system that exists today.

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Twist, hit the screens, the Supreme Court ruled that the First Amendment did not apply to films.² This opened the door to almost unlimited political censorship. Some cities and states set up film censorship boards, but movie industry lobbying, attachment to those local film censorship boards, and a lack of political will prevented the emergence of a national film rating code.³

Films were never entirely “clean.” The things that concern parents—sex, violence, crime, bigotry, and offense to religion—appeared on screen from the earliest days of American cinema. Although the negatives of the actual film have been lost, the story of *Oliver Twist* involves plenty of explicit property crime and violent beatings. Sexually explicit entertainments quickly evolved, too.⁴ What was arguably the first American pornographic movie, *Traffic in Souls*, supposedly a docudrama about human trafficking, appeared only a year after *Oliver Twist*. Important silent-era directors, such as Cecil B. DeMille and D.W. Griffith, included explicit sexual materials. The film generally recognized as the first blockbuster, Griffith’s pro-Ku Klux Klan epic *Birth of a Nation* contains horrific bigotry, a rape scene, and several murders.

By the 1920s, local film censorship boards, many of which regulated according to idiosyncratic local standards, began crying out for a federal role. Under the leadership of former Postmaster General William H. Hays, the Motion Picture Producers and Distributors of America—hereafter referred to by its current name, the Motion Picture Association of America (MPAA)—created the first ratings system in 1927. While the system originally contained a list of “dos,” “don’ts” and “be carefuls,” it quickly evolved into a complex, highly prescriptive code to which studios agreed to adhere under threat of fines. Several religious groups, most prominently the Catholic Church-founded Legion of Decency, lobbied for a stricter code and threatened to agitate for national regulation. Facing such pressure, the studios agreed, and, in 1934, the full-fledged Hays Code came into existence with significant input from the Legion of Decency.⁵

A 10-page booklet when it first appeared, the Hays Code quickly grew to over 100 pages. It proved highly prescriptive; consider the following excerpts from the original 1930 code:

- “The sympathy of the audience should never be thrown to the side of crime, wrongdoing, evil or sin;
- “Illegal drug traffic must never be presented;

- “Seduction or Rape...should never be more than suggested, and only when essential for the plot, and even then never shown by explicit method.
- “White slavery [human trafficking] shall not be treated;
- “Miscegenation (sex relationships between the white and black races) is forbidden.
- “Sex hygiene and venereal diseases are not subjects for motion pictures.
- “Ministers of religion in their character as ministers of religion should not be used as comic characters or as villains.
- “The treatment of bedrooms must be governed by good taste and delicacy.” [This was typically interpreted to mean that even married couples were almost never explicitly shown sleeping in the same bed.]
- “Pointed profanity (this includes the words, God, Lord, Jesus, Christ—unless used reverently—Hell, S.O.B., damn, Gawd), or every other profane or vulgar expression however used, is forbidden.
- “Dances which emphasize indecent movements are to be regarded as obscene.”⁶

The Hays Code originally met with broad approval. From the standpoint of protecting children, it actually had a lot to recommend it. Adhered to specifically—the bigoted prohibition on interracial romance and the downright silly proscription on married couples sleeping in the same bed aside—most films produced under the code would be appropriate for all but the youngest children. However, the Hollywood studios explicitly said that the code applied to adults and was intended to protect *them* from harmful entertainment. The code’s preamble scolded:

“The MORAL IMPORTANCE [capitals in original] of entertainment is something which has been universally recognized. It enters intimately into the lives of men and women and affects them closely; it occupies their minds and affections during leisure hours; and ultimately touches the whole of their lives. A man may be judged by his standard of entertainment as easily as by the standard of his work.

“So correct entertainment raises the whole standard of a nation.

“Wrong entertainment lowers the whole living conditions and moral ideals of a race.”⁷

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Over time, furthermore, the Production Code Authority—the official name for what was colloquially called the Hays Code Office—became more and more proscriptive.⁸ Later regulations prohibited any bigoted content (even from obvious villains) (1951), dozens of words by name (1951), and, at least in theory, sexual innuendo (1962). Movie studios submitted nearly all scripts to the Hays office for pre-approval.

However, even as the code became stronger on its surface, its enforcement became much weaker: A Supreme Court decision, a breakdown of the studio system, and cultural changes conspired to make the code almost unenforceable.

First, the Supreme Court’s 1954 *Joseph Burstyn, Inc. v. Wilson* decision reversed its 1915 decision and applied the First Amendment to films.⁹ This made it nearly impossible for local censorship boards to function and thus made it possible for theaters to show non-Hays-Code-approved movies.

Second, some directors became powerful enough to attract funding on their own and produce major films on an independent basis. When Billy Wilder decided to distribute *Some Like it Hot* (1959) without Hays Office approval, nothing could stop him. Alfred Hitchcock did the same with *Psycho*. The Code Authority itself stopped enforcing the code as written: Under studio pressure, it approved the innuendo-filled James Bond thriller *Goldfinger* (1964) and, under pressure from new MPAA head Jack Valenti, the overtly sexual, profanity-laced *Who’s Afraid of Virginia Woolf?* The Legion of Decency—which would proclaim boycotts against any film it felt did not meet the Hays Code—saw its influence decline amidst the social turmoil of the 1960s. By the late 1960s, the Hays Code had collapsed completely.

The Hays Code, by prescribing content, proved inflexible. With good reason, producers complained that it was patronizing, unfair, and interfered with artistic creativity. Its own highly prescriptive nature made it difficult to respond to this criticism. Thus, the code quickly collapsed and, in the short term, parents were left with virtually no official industry guidance.

Enter CARA

The collapse of the Hays Code did not change things overnight. Increasing numbers of films with truly adult subject matter were produced before the code's collapse and such films continued to be produced in roughly the same numbers afterwards. There is little evidence that the collapse of the code did anything except continue trends. And, without any overt political interference, a new rating system arose anyway.

Many in the film industry, most prominently MPAA head Jack Valenti, felt that the collapse of the code could lead to outright censorship.¹⁰ Thus, they set out to create a new system. After some wrangling, the new system that emerged became known as the Classification and Ratings Administration (CARA). The system, still in existence today, rates movies on a scale from G to NC-17.

The current G (all audiences admitted) and R (18 or over unless accompanied by an adult) ratings have never changed. PG (parental guidance recommended) was renamed from M after some confusion and, in 1990, NC-17 replaced X as an adults-only designation. The system added PG-13 after Steven Spielberg's PG-rated 1984 film *Indiana Jones and the Temple of Doom* created an outcry after people denounced it as too violent for that rating, yet not strong enough for an R. Only the R and NC-17 ratings represent restrictions; the other three simply provide guidance to parents. Today, CARA says "the system is not designed to serve the function of 'critic.' The ratings do not determine or reflect whether a film is 'good' or 'bad.' The system is not intended to approve, disapprove or censor any film; it merely assigns a rating for guidance—leaving the decision-making responsibilities to the parents."¹¹ Any talk of moral guidance disappeared.

At first, however, things seemed to change little from the Hays system. CARA, which retained a lot of personnel from the Hays Office, reviewed scripts, and used the threat of an X rating to demand cuts in line with its staff's personal preferences.¹² An article by former CARA intern Stephen Farber exposed this practice and the system appeared headed towards collapse after two heads resigned in quick succession.¹³ In response, MPAA head Valenti recruited Rutgers University Professor Richard Heffner to head the Classification and Ratings Administration and offered him considerable autonomy.¹⁴ Heffner claimed that he sought to rate the films based on how they treated themes rather than those themes alone. His mother, he told an interviewer, had not raised him to "count

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nipples.”¹⁵ (However, Valenti and some studio heads often did lean on Heffner to convince him to change ratings.)¹⁶

At least in theory, the system relies on voluntary compliance from studios and theater chains. CARA only reviews about one-tenth of the movies distributed in the United States, although those 400 to 600 films it reviews each year comprise over 98 percent of the movies shown in multiplexes around the country.¹⁷ According to at least one study, however, theater chains tend not to strictly enforce the R rating.¹⁸

Although Heffner originally opposed doing so, some prescriptive rules eventually began to work themselves into the ratings, to the point that today’s rules have some strong similarities to the Hays Code that preceded them.¹⁹ Although originally couched in broad language, specific prescriptions have begun to creep in. For example, PG-rated movies cannot contain any drug use. One commonly understood curse word requires a PG-13 rating; while more than one requires an R rating.²⁰ Political influence has also begun to intrude on the system. Earlier this year, 32 state attorneys general called on CARA to include smoking as a factor in calculating film ratings; within a few weeks, CARA complied and announced that it would more strictly rate movies that depict smoking in any form.²¹

The system has attracted considerable criticism. Film critic Roger Ebert and a large group of movie directors and producers have long campaigned for changes to the rating system, claiming that *de facto* restrictions on distributing and making adults-only films tend to make the R rating include more adult-oriented films, while limiting artistic creativity.²² A 2006 documentary, *This Film is Not Yet Rated*, argues that the system is arbitrary, discriminates against African-Americans, and favors products from big studios.²³ The CARA system has also developed some idiosyncrasies. Films have received ratings based on “spiritual content” (2006’s *Facing the Giants*) and “severe weather” (1996’s *Twister*). This inconsistency may reduce the system’s usefulness for some parents.

Criticisms aside, annual polls sponsored by MPAA itself show that most parents find the system useful in selecting movies for their children.²⁴ For those unhappy with it, several other organizations, including the Legion of Decency’s successor, the Conference of Catholic Bishops’ Office for Film and Broadcasting, and the websites screenit.com and capalert.com provide their own film ratings.

Although it may be losing some of the flexibility that once characterized it, there is little doubt that the CARA ratings system does help at least some parents. Recent decisions to make it more prescriptive may limit its flexibility and thus send it the way of the Hays Code. If this happens, many alternatives exist to take its place.

Comic Book Ratings

The battle over comic book content began with Fredric Wertham's 1954 book *Seduction of the Innocent*.²⁵ Profusely illustrated with color panels from comic books, *Seduction of the Innocent* poses two interrelated theories, one largely non-controversial, the other much shakier. In a section that few found objectionable, Wertham explores the nature of comic book marketing: He points out that many are marketed towards children but contain advertisements for weapons, quasi-pornographic "health" information, and drug-related paraphernalia. In a section that aroused far more controversy, Wertham, a medical doctor, argues that youth are uniquely susceptible to comic book depictions of violence. Through a wealth of anecdotes, but no actual studies, Wertham tries to prove a link between exposure to violent comic books and violent acts.

Despite its weaknesses as an academic work, the book became a national bestseller and sparked a series of Senate hearings in 1955, chaired by Estes Kefauver (D-Tenn.), which were held in New York City to be near the comic book publishers.²⁶ The majority of witnesses called said that they did not believe a relationship existed between comic books and juvenile violence, but the hearings nonetheless proved a disaster for the comic book industry. One witness, E.C. Comics publisher William M. Gaines—who would later go on to found *Mad* magazine—received particularly harsh questioning. In his testimony he claimed that gory horror comic books—for which E.C. was famous—were harmless and likely did children "no harm and no good."²⁷

Had Kefauver pressed ahead, he likely could have convinced the House and Senate to pass comic book censorship legislation in short order. But the bigger comic book publishers, working with their distributors, quickly moved towards a system of self-regulation, resulting in the Comics Code, which was somewhat inspired by the Hays Code.²⁸

The Comics Code addressed two issues: advertising and content. The advertising restrictions aroused reasonably little controversy. The code limits advertisements for a variety of items that most people agree children

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should not have, including “sex instruction books,” “[I]iquor and tobacco advertising,” fireworks, knives, and “realistic gun facsimiles.” (The latter three restrictions were often ignored in practice.) The advertising restrictions were a good business move for the comic book industry: They made the books more acceptable to parents and largely removed one set of Wertham’s objections.

The Comics Code, however, went much further than that. It also implemented content restrictions that proved the most severe in any industry. Among others things, it specified that:

- “Policemen, judges, Government officials and respected institutions shall never be presented in such a way as to create disrespect for established authority.
- “No comic magazine shall use the word horror or terror in its title. [A provision specifically targeted at Gaines’s company.]
- “Scenes dealing with, or instruments associated with walking dead, torture, vampires and vampirism, ghouls, cannibalism, and werewolfism are prohibited.”

And, most famously:

- “In every instance good shall triumph over evil and the criminal be punished for his misdeeds.”²⁹

The content code proved devastating for the comic book industry: It destroyed its largest distributor, shut down several publishers, and forced the others into less desirable market positions.

Distribution proved a linchpin in the strategy’s short-term success. Since a single large distributor—American—controlled more than half of all comic book distribution to newsstands and collaborated in the Comics Code’s creation, enforcement proved very easy. Companies like E.C.—publisher of the notorious *Tales from the Crypt*—could not get distributed and exited the comic book realm entirely.³⁰ But American faced a federal antitrust case and experienced a loss in business due to its own mismanagement. It collapsed less than three years after the code’s imposition.

The comic book industry had already entered a period of decline, which the code accelerated. Several pioneering publishers went out of business and some that survived did so by targeting an audience of very young children with inoffensive titles like *Richie Rich*,³¹ which sold

reasonably well in the short term but were often purchased by parents for their children rather than by the children themselves. Fewer people spent their own money on comic books, and over time, comics began to vanish from grocery and drug stores racks. Within 10 years of the Comics Code's imposition, only five significant comic book companies remained, compared to 14 before the code.

For the remaining companies, the Comics Code remained a hindrance. It underwent a series of liberalizing revisions in 1971 and 1989. Vampires, werewolves, and anti-drug stories were allowed in 1971.³² The 1989 revision dropped the requirement that the good guys always win and removed most of the explicit proscriptive language in the previous versions. (It only banned things like “primary human sexual characteristics” and “particular methods of committing crimes.”)

Coincidentally, the industry's nature began to change. Other new forms of comics—including the more adult “graphic novel” beginning with *The Spectacular Spider-Man* in 1968—began to change the nature of the Comics Code. Another Spider-Man title, a series of stories attacking drug use, also received distribution without code approval in 1970.³³ Newer, more agile distribution systems, which treated comics like books rather than magazines, and an increase in the number of sales outlets created other channels for distribution without code approval. Independent publishers entirely outside of the existing industry associations also emerged and published titles that ignored the code altogether.

In 2001, Marvel, one of the two largest publishers, withdrew from the Comics Code altogether, substituting its own five-step ratings system, ranging from “All Ages” (for everyone) to “MAX” (for comics with mature themes). The following year, D.C., the comic book industry's other large player, followed suit, setting up its own ratings system. By 2004, only one publisher—children's oriented Archie Comics—regularly carried the Comics Code seal on its books.³⁴

The Comics Code, quite simply, failed. By seeking to make sure that comics were appropriate for everybody, it so limited the range of expression that it made the emergence of other comics almost inevitable. Individual publishers went out of business in the short term—largely because of the structure of distribution—but similar products emerged just a few years later.

Furthermore, since all comics were either “approved” or not, the Comics Code gave parents very little information on which to make

judgments about what they considered appropriate for their children: Absolutely innocent Archie comics got the same rating as violent, crime-themed Batman titles that played on dark, scary themes despite the happy endings.

The Comics Code's failure did not cause serious problems. It was replaced by options that are better for parents as well as publishers. Although they are slightly different from one another, the Marvel and D.C. ratings systems provide the level of information that parents need to make informed choices. (As of October 2007, the two companies accounted for 67 percent of industry sales by dollar volume and 76 percent by unit volume.³⁵) Since ratings stickers contain clear descriptions, the likelihood of confusion is not great. Likewise, Archie Comics's decision to continue abiding by the Comics Code means that its books are all utterly inoffensive.

The comics market has also changed. A lot of popular titles like *League of Extraordinary Gentlemen*, *Sandman*, and *300* were written with adults specifically in mind. Today, comic book stores and the increasing number of bookstores that carry comics restrict sales of adult comics titles to youngsters in much the same way as they do for other kinds of publications.

Music Ratings

Unlike other entertainment industries, the recording industry does not have a formal regulatory infrastructure. No committees, boards, or commissions review musical or lyrical content. Although Federal Communications Commission (FCC) restrictions can impact what gets broadcast, no meaningful restrictions—self-imposed or otherwise—exist on what gets produced.

Instead, music labels attach a simple “Parental Advisory: Explicit Content” sticker to anything they think someone, somewhere might find objectionable. The Recording Industry Association of America (RIAA) currently presents seven guidelines for the display of the sticker. The most significant include:

- “[C]ontemporary cultural morals and standards should be used in determining whether parents or guardians would find the sound recording suitable for children.

- “[L]yrics are often susceptible to varying interpretations, and that words can have different meanings and should not be viewed in isolation from the music that accompanies them.
- “A determination requires sensitivity and common sense, and that context, frequency, and emphasis are obviously important; isolated or unintelligible references to certain material might be insufficient to warrant labeling a particular sound recording as containing PAL [Parental Advisory: Lyrics] Content.”³⁶

The stickers first appeared on records under pressure from the Parents’ Music Resource Center, a group of politicians’ wives of whom Tipper Gore was the most prominent member.³⁷ Although the system has undergone some minor changes—such as a change in wording from “explicit lyrics” to “explicit content”—it has remained largely the same since 1985.

The advisory sticker seems to serve its purpose. It does not impede distribution, and, while RIAA members must pledge to follow it, independent record labels and Internet-only producers have no obligation to offer anything like it. A few music labels add descriptions, such as for sexually explicit lyrics, to particular titles. Two major retailers, Target and Wal-Mart (the single largest music retailer), will not carry material with the advisory sticker on it. On Internet music sites like iTunes, labels and artists sometimes make available “clean” versions of songs with the lyrics bleeped or faded out.

The advisory label works as a ratings system because of the nature of the medium it rates. While it is impossible for parents to watch every movie or play every video game that might interest a child, it is possible for parents to get a good idea of their children’s listening tastes. A parent wishing to check out his or her child’s music choices has to do little besides log on to a file sharing site and download the song in question. Most popular songs are two to three minutes long and almost none exceed 10 minutes.

Moreover, while the collaborative nature of television shows, movies, and video games makes it impossible to judge any product simply by looking at the people involved in its creation, most musicians—the occasional stylistic shift aside—return to the same themes and styles time

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and again. A parent only needs to listen to a few tracks to realize that Liz Phair and Eminem deal with heavily adult themes in almost everything they do while Hanson and Jars of Clay would probably not produce anything offensive. The PAL sticker advises parents and, for music, that is enough.

Television Ratings

Congress created the ratings system for television—which includes those familiar square black icons that appear in the corner of the screen at the beginning of each program—with the passage of the 1996 Telecommunications Act. Telecom law had long been in need of an overhaul; many of the laws on the books were part of the first Telecommunications Act of 1934. The 1934 Act, a whopping 335 pages³⁸ of rules and regulations governing the public broadcasting spectrum, forms the foundation of America’s telecommunications law and created the Federal Communications Commission. The 1996 Act featured many rollbacks, reforms, and updates to the 1934 Act, but many completely new regulations were introduced as smaller portions of this 164-page bill made its way through Congress.³⁹

Throughout the process of drafting the 1996 Act and creating the ratings system, some politicians and the television industry argued that this system was voluntary. Rep. Ed Markey (D-Mass.) maintained that, “All of the ratings will be done voluntarily by the broadcasters.” Similarly, Rep. Jim Moran (D-Va.) stated that, “What we do is ask the broadcast industry to rate their own programs.”⁴⁰

The ratings system required by the bill was voluntary only in that it did not mandate the television industry to follow it, but the law granted the FCC power to appoint an advisory committee and adopt its own recommended guidelines if it concluded that, after one year of the 1996 Act’s enactment, the television industry had not established acceptable guidelines. The Act notes that an “acceptable” ratings system is to consist of: “Voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children.”⁴¹ The 1996 Act essentially told the television industry: Volunteer to follow ratings or the FCC will impose ratings on you. The Act also mandated TV manufacturers to include the V-chip in nearly all future televisions.⁴²

The FCC selected the television industry's three largest trade associations—the National Association of Broadcasters, National Cable Television Association, and Motion Picture Association of America—to nominate members of the advisory board created by the 1996 Telecommunications Act. Less than a year after passage of the Act, the board developed the television ratings system, officially known as the TV Parental Guidelines, and submitted them to the FCC for approval.⁴³ The Guidelines comprised a series of six ratings tiers, which are still in use today: Y, Y7, G, PG, TV-14, and TV-MA.⁴⁴

In initial drafts, the TV Parental Guidelines borrowed heavily from the MPAA's CARA system, with many of its ratings using the same or very similar abbreviations. In fact, MPAA head Jack Valenti chaired the inter-industry committee that created the guidelines and served as the first chairman of the TV ratings system's Oversight Monitoring Board, which was established to ensure that the Guidelines are applied accurately and consistently.⁴⁵

Unlike the MPAA system, in which an independent panel realistically could review hundreds of movies a year, the scale and nature of the television industry made such a system impossible. By its nature, television is a very short turnaround business, with shows often broadcast live or taped shortly before airing, so the ratings system was left to be applied by the content producers. Congress acknowledged that the amount of programming made it impossible to have a central rating authority and the inter-industry panel, upon submitting the TV Parental Guidelines to the FCC for approval, noted that producer self-enforcement "was the process Congress contemplated in the Telecommunications Act, and it is the only feasible way in which the 2,000 hours of television programming distributed every day could be rated."⁴⁶ The FCC announced on March 12, 1998, that the TV Parental Guidelines were acceptable.⁴⁷

However, despite the television industry's best efforts in working with the FCC to devise the ratings system, fears of future regulation have recently been realized in the form of an April 2007 FCC report, *In the Matter of Violent Television Programming And Its Impact On Children*, in which the Commission makes two suggestions for mitigating what it views as the failure of its current mandates on the television industry: a return of "Family Viewing Hour" regulations and forcing cable TV providers to offer channels on an "a la carte" basis.⁴⁸ These recommendations clearly

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demonstrate the FCC’s continued desire to further regulate the television industry and steer the ratings systems away from one driven by market forces.

The current “voluntary” TV ratings system is anything but. The industry has been operating under the fear of future regulation, which has been nearly as effective in influencing industry behavior as actual regulation. In addition, the FCC’s obsession with the V-chip has steered public resources away from other innovations that might be used in conjunction with the TV Parental Guidelines or another such ratings system.

Despite this, the TV ratings system has not been a complete failure. It has been used by developers of other filtering technologies that have been developed in recent years despite the mandated ubiquity of the V-chip. “Fortunately, today’s parents have at their disposal more choices in parental controls and blocking technologies than ever before,” notes current FCC Commissioner Robert M. McDowell in the report cited above. “Never have parents been more empowered to choose what their children should and should not watch.”⁴⁹ He cites cable TV technologies that exceed the abilities of the V-Chip, such as Digital Video Recorder tools like TiVo’s KidsZone.

Former FCC chief economist Thomas Hazlett, a critic of the V-chip, quips that, “The idea that technology allows parents to shield their kids by setting the television on automatic pilot is a figment of Washington policymakers’ imaginations.”⁵⁰ Moreover, he points out:

“Parents commonly restrict viewing by OKing certain networks (Nickelodeon yes, MTV no) and by conducting spot checks of viewing fare. In some cases, such strategies probably work better than a V-chip might: Since the system does not rate news or live sports, the filter has loopholes large enough for Janet [Jackson]’s breast to slip through. On Super Bowl Sunday, even a television with its V-chip set to filter all but the most innocuous content would have let the halftime show air.”⁵¹

Rather than believe their imaginations, policy makers should rescind the V-chip mandate, which, although of little cost to manufacturers,⁵² is a distraction from the development of other more effective filtering technologies such as those Commissioner McDowell describes.

Continued regulation, restriction of choice, and curtailment of free speech will result not in a robust, informative ratings system; rather, we would be more likely to see a proscriptive code or an even more complex set of broadcasting rules and regulations. By allowing the industry to develop a truly independent ratings system, parents will be given the greatest amount of information to make choices about their children's viewing. The technologies to work in conjunction with this will continue to improve, not through mandate, but through competition.

The most important lesson from the V-chip and TV Parental Guidelines episode is that rating systems and blocking technologies are supposed to aid parents, not replace them. When we invite the federal government to parent our children, we invite trouble. The blunt instrument of government regulation will have a hard time of targeting only youngsters and will inevitably treat us all like children.

Radio

Radio has no ratings system as such, which makes it a unique medium in the United States. But this should be no surprise. From the beginnings of radio as a mass medium, federal regulatory authorities have had total control over who uses the airwaves and how. However, technological change may change that in the future.

The Federal Radio Commission (FRC) was created by the 1927 Radio Act, establishing federal control over the radio spectrum. The Act, originally conceived of as provisional, was renewed annually until 1934 when Congress passed the Telecommunications Act, creating the Federal Communications Commission, which replaced the FRC and continues to regulate broadcasting in the name of "the public interest, convenience, or necessity."⁵³ This mission, first stated in the 1934 Act, has been carried through in the 1996 Telecommunications Act.

The FCC's "public interest" mission rests on the notion that the electromagnetic spectrum is a public good and must therefore be offered to the public without means of excluding them from listening. Thus, terrestrial radio is considered a public space, much like a public park or a city sidewalk. This paper focuses on how content ratings can best empower parents to make the best decisions for their children, so how do they work in a public space? Quite simply, they don't.

Imagine if the activities that take place on pay cable TV shows like "The Sopranos" took place in a public park, an undeniably public space. A

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The greatest barrier to on-air free speech has long been the lack of property rights. By forcing radio station owners to broadcast free and open to the public, legislators and regulators made the airwaves a public space, unfit for a wide variety of controversial content.

performer could not declare a performance art piece to be rated NC-17 and then disrobe. Neither could someone simply wear a T-shirt denoting his behavior as rated R and get away with screaming profanities at passers by. In a public space, nudity and lewd or violent behavior would be considered indecent or a public nuisance under any circumstances.

The most notable case upholding the view of the airwaves as a public space is the landmark 1978 Supreme Court ruling *FCC v. Pacifica Foundation*. The ruling bolstered the FCC's ability to regulate profanity, thanks, oddly enough, to a comedy routine about speech regulation. A Pacifica-owned radio station broadcast comedian George Carlin's bit about "the words you couldn't say on the public, ah, airwaves, um, the ones you definitely wouldn't say, ever," as Justice John Paul Stevens quoted from Carlin in his opinion.⁵⁴

The case ruled out using ratings or warnings before a broadcast to insulate a radio station from FCC-imposed penalties. Though not a recognizable rating, the Carlin broadcast did contain a content warning that, as Justice Stevens noted, "advised [listeners] that it included sensitive language which might be regarded as offensive to some."⁵⁵ However, given the firmly established legal concept of public space, Justice Stevens joined the Court's majority to overturn the prior victory which the Pacifica Foundation had won on appeal.

As the *Pacifica* case makes clear, the greatest barrier to on-air free speech has long been the lack of property rights. By forcing radio station owners to broadcast free and open to the public, legislators and regulators made the airwaves a public space, unfit for a wide variety of controversial content.

By contrast, satellite radio provides a real-world counterexample to the forced public space status of terrestrial radio. Because the two current U.S. satellite radio providers, XM and Sirius, are subscription services, neither is considered part of a larger public space, despite their using the electromagnetic spectrum—though a very different part of it—like radio.

This excludability has enabled both companies to institute a two-tiered rating system, much like the music industry. Sirius's Stiletto 100 portable player allows users to lock out any channel they wish using a password.⁵⁶ XM rates several of its shows as XL, for explicit language, and allows users to block the channels that broadcast them.⁵⁷

Because terrestrial radio is forced into a public space, rating technologies such as those developed by XM and Sirius do not exist

outside satellite radio's niche market. This leaves terrestrial radio with nothing more than a kind of Hays Code developed and enforced by the FCC—a system of content regulation that relies on the threat of fines or license revocation to ensure that radio stations conform to FCC standards. Other mechanisms, including improvements to local zoning codes and mechanisms to let insurers verify participation in mitigation programs, could also help encourage mitigation. On their own, insurers could raise premiums and deductibles to levels that standard market regulators would consider “excessive” and then cut them in return for mitigation (though this cannot happen in the standard market).

Yet despite the steep fines, all sorts of undeniably adult content still finds its way onto the airwaves. In 2002, New York-based shock jocks Opie and Anthony broadcast a couple who claimed to be having sex inside New York's St. Patrick's Cathedral. And in 2004, a Jacksonville, Florida, station broadcast the show “Bubba the Love Sponge,” which described sexual acts between cartoon characters. These incidents resulted in steep fines, \$715,000 and \$357,000, respectively, *after* they were broadcast.⁵⁸

In short, the current system does nothing to either help parents or to keep adult content separated from family-friendly fare. By contrast, satellite radio allows parents to block out shock jocks like Howard Stern, who broadcasts on his own satellite channel.

Allowing for excludability in terrestrial radio, through technologies similar to those that prevent non-satellite radio subscribers from accessing satellite broadcasts, would create a private space on the airwaves—one that would be able to host, and rate, a wider variety of content.

Video Game Ratings

“Since the earliest days of pinball, someone somewhere has been determined to ban games,” writes Lauren Gonzalez of CNet's gamespot.com, in an essay on the history of video game controversies. She isn't exaggerating. Efforts to ban games long predate the formation of the Electronic Software Rating Board (ESRB) and the fallout from such infamous games as *Mortal Kombat* or *Grand Theft Auto*. In fact, Gonzalez observes, one of the earliest controversies and public outcries against games came in 1976 with the appearance of the arcade game *Death Race*, in which the goal was to “[e]arn points by running over as many ‘gremlins’ as possible within a given time frame.”⁵⁹

Mortal Kombat had been an arcade fixture for months, but parents did not seem to be following youngsters into those coin-hungry establishments. When kids brought the game home, however, it started a political frenzy.

The public outcry from *Death Race* even produced a piece on “60 Minutes”⁶⁰ on the game’s alleged psychological effects. The low-resolution graphics of *Death Race* would seem quite tame compared to today’s games, but such video game violence was unprecedented in 1976, so game maker Exidy pulled the game from sale.⁶¹

Other infamous titles followed. *Custer’s Revenge*, a 1983 release for the Atari game system, featured a nude General George Armstrong Custer dodging his way through a hail of arrows to, as G4TV’s Todd White puts it, “[r]each and molest a helpless Indian girl.”⁶² The game’s release party saw protests from feminist, anti-pornography, and Indian activist groups, and even descendants of General Custer.⁶³ Mystique, the game’s publisher, went out of business shortly thereafter.⁶⁴

Death Race and *Custer’s Revenge* were the earliest widely released commercial video games to feature violent and sexual content, so the tremendous public outcry and negative consequences for their respective publishers that accompanied their release seemed to quell any thoughts of long-term industry solutions for handling controversies in game content. A ratings system like the MPAA’s CARA would not have made much sense to deal with what was than a rare exception in a video game world populated by *Pac Man* and *Space Invaders*.

The years following *Death Race* and *Custer’s Revenge* saw a fair amount of controversial video games, but the offending titles caused little fallout in the press or in Washington. That changed when Sega released *Mortal Kombat* in September 1992. The game had been an arcade fixture for months prior, but parents did not seem to be following youngsters into those coin-hungry establishments. When kids brought the game home, however, it started a political frenzy.

Sega created *Mortal Kombat* as a response to Nintendo’s *Street Fighter*, a best-selling fighting game. To gain an edge over its rival, Sega upped the violence in *Mortal Kombat*, adding blood and, most famously, grisly fatality and dismemberment moves.

In December 1993, Sens. Joseph Lieberman (D-Conn.) and Herb Kohl (D-Wisc.) held hearings to investigate the growing “problem” of videogame violence. *Washington Post* reporter John Burgess, who covered the hearings, noted that Lieberman “at one point wielded a large plastic handgun that a player of *Lethal Enforcer* uses to shoot at enemies on the screen, sometimes hitting imaginary bystanders. He also aired *Mortal*

Kombat scenes in which a victorious street fighter controlled by the player plucks the heart from a victim or pulls off his head and spinal cord.”⁶⁵

After the Senate hearings spectacle—reminiscent of the Kefauver comic book hearings—Lieberman and Kohl pushed concurrent bills in the House⁶⁶ and Senate⁶⁷ to mandate the creation of a ratings system. The bills gave the gaming industry one year to develop a ratings system that would meet with the approval of an independent commission. If the commission found the ratings system proposed by the industry to be inadequate, the bill mandated the commission to create one of its own.

The bills never made it out of committee, because the industry took the wind out of Congress’s sails. After infighting about an industry-wide ratings system, the industry became galvanized to view a ratings system that involved compromise as significantly better than one in which they had no input in at all, and acted to create the Electronic Software Rating Board system before the Kohl-Lieberman proposal could progress.⁶⁸

Earlier ratings systems had been adopted by individual companies. In May 1993, Sega had begun rating its games internally and advertising games as either GA (general audiences), MA-13 (mature audiences 13 years old and over), and MA-17 (over 17).⁶⁹ Though Sega may have been considering this system for some time, it was likely a direct result of the *Mortal Kombat* controversy. Ultimately, however, Sega’s move proved ultimately insufficient to keep Congress away.

The ESRB system is by far the most descriptive and comprehensive ratings system for any medium today. Indeed, it is one of the few that contains all relevant information on the products themselves.

Even for those who have never purchased a video game in their lives—a situation common for many parents—the system is incredibly accurate and easy to understand. The system’s most basic component is the rating itself, which is explained on the box, and therefore does not rely on parents or other game buyers to be familiar with the system.

For example, *Company of Heroes*, a World War II-themed game that contains swearing soldiers, blood, gore, and the level of violence to be expected from a realistic representation of warfare, is rated M for Mature. The reverse side of the box shows that the M rating is due to “Blood and Gore,” “Intense Violence,” and “Strong Language—just a few of the 32 content descriptors that make up the ESRB system. In addition to violence, other descriptors warn purchasers of everything from alcohol references to

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The market has already created at least one alternate system for those unsatisfied with the industry-created ESRB. Best Buy, one of the nation's largest video game retailers, now adds game ratings, reviews, and comments from the family entertainment website Common Sense Media to its own website.

nudity. They also describe games containing “edutainment” or games that are particularly informative.⁷⁰

Yet the ESRB system still has its critics. One common complaint concerns its method of rating, which involves three or more trained game raters watching a DVD prepared by the game publisher which must contain “[a]ll pertinent content (as defined by ESRB), including the most extreme instances, across all relevant categories including but not limited to violence, language, sex, controlled substances and gambling.”⁷¹ Some have criticized this method for an alleged lack of thoroughness, which supposedly allows some content to slip past the raters. But to address this problem, the ESRB can impose strong penalties for any such deception. The ESRB notes on its website:

“In the event of incomplete disclosure...corrective actions may also be required of the publisher to ensure that all game packaging and advertising materials are accurately labeled. Examples of corrective actions include the re-labeling of product inventory and unsold product at retail or, potentially, a product recall. Where warranted in order to ensure compliance with its directives, ESRB can suspend rating services altogether.”⁷²

Given the potential for such costs, why would a game manufacturer submit to the ESRB rating process? Quite simply, for market access. Most retailers currently will not stock AO-rated (adults only) games, let alone unrated titles.⁷³ If the ESRB determines that a manufacturer is acting dishonestly, it can make a pariah out of the company and its games. So although the ESRB is being rather trusting in its DVD submission rating process, it knows that it has good reason to trust the accuracy of those submissions.⁷⁴

A federally mandated video game rating system would require committee hearings, committee mark-up sessions, and floor debate. At the end of this process a new federal regulatory agency would exist, or an existing agency’s powers would be expanded. Proposed changes in the system could require Congress to act, starting the legislative process anew. By contrast, the ESRB can respond swiftly to developments in the industry that require any adjustment in the ratings system.

One notorious such case involves *Grand Theft Auto*, a popular 2004 release by Rockstar Games. A player skilled in programming scoured the game’s original source code looking for hidden elements. What he

found wasn't just hidden, but sexually explicit material that had been completely edited out of the final game. This type of edited material is common, as programmers often leave unused code in the game to avoid the possibility that removing it might break the game. But in this case, a third party created a downloadable modification to the game that turned it from simply violent to both violent and pornographic.⁷⁵ The industry responded swiftly, changing its official policy within months of the hidden code being discovered and published online. As of July of 2005, content programmed to be inaccessible in the final version of the game must also be submitted to the ESRB.⁷⁶

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Hardware manufacturers are also providing alternatives. In November 2005 the Electronic Software Association announced that all new video game consoles are to include parental controls.⁷⁸ The newest generation of consoles, namely the Nintendo Wii, the Sony Playstation 3, and Microsoft's Xbox 360, all include parental controls based on the ESRB system.

On their own, video game manufacturers have adapted the parental controls of these new systems to work beyond the bounds of V-chip-like controls. Not only can parents set a maximum rating allowed to be played—like T for Teen—they can also limit access to a myriad other features.

Nintendo Wii, for example, allows parents to limit access to Internet browsing, news channels, instant messaging, and the Wii Shop Channel.⁷⁹ (Who would want their kids spending their Wii points?) Similarly, Xbox offers ratings control for games and DVDs, and allows for parents to turn off access to Xbox Live, Xbox 360's Internet feature.⁸⁰

As much as consoles have enjoyed an incredible growth in popularity and sales, personal computers remain the preferred gaming platform for many parents and kids alike. Microsoft has taken this into account. It has integrated parental controls based on the ESRB system into its latest operating system, Windows Vista, and has expanded those controls to online access, and even times of day when children can access a computer.⁸¹

The ESRB ratings system—the least government-influenced of the lot—does the best job of giving parents the information they need to make decisions for their children. At the other extreme, the radio regulatory system, which is almost entirely political, provides parents practically no useful information.

The Best Buy and manufacturer options do not necessarily illustrate a failing in the ESRB system, but rather the strength of the free market to provide alternatives when they are desired.

Conclusion: Principles for Rating Systems

When fully or partially mandated systems exist, alternative systems can only hope to provide additional information, not provide a real alternative to the existing system. This discourages the development of an alternative and makes content producers and distributors less willing to invest in a new system knowing that they will have to continue using the existing one.

Through our analysis of ratings systems, we have described how they have evolved, how some have worked—and how others have failed to work. In our judgment, the ESRB ratings system—the least government-influenced of the lot—does the best job of giving parents the information they need to make decisions for their children. At the other extreme, the radio regulatory system, which is almost entirely political, provides parents practically no useful information. Between the poles, we see a great diversity of opinion. We close, therefore, with four pieces of advice:

First, keep politics out of ratings systems. The best ratings systems have evolved in response to market forces. The First Amendment, correctly we believe, has long been interpreted to limit political control over entertainment media, anyway. Ratings systems that avoid government involvement will do a better job giving people the information they need.

Second, know the medium being rated. Video games are complex, nuanced and—in the case of massive multiplayer online games like *World of Warcraft*—can literally go on forever. This complexity requires a ratings system that provides lots of information. Songs, on the other hand, are almost always reasonably brief and rarely have lyrics of more than a few hundred words. An explicit lyrics stickers suffices for them, while video games require a more sophisticated ratings system.

Third, if a ratings system collapses, it is not a cause for concern.

Changing tastes or attitudes mean that all ratings systems will need to be updated. Sometimes, it becomes clear that cultural changes—the sexual revolution, the emergence of adult-oriented graphic novels—simply render a ratings systems obsolete. When this happens, the country is better

off letting the market develop new, better ratings systems for the new, emerging media.

Finally, ratings systems will never substitute for other social institutions.

Parents, houses of worship, schools, and communities need to take the lead in keeping obscene, dangerous, or offensive materials away from children. Ratings systems cannot be expected to do this. Properly constructed, they provide useful information to parents, nothing more and nothing less.

Notes

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- 29 Ibid.
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