

# Children's Media Policy

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## Summary

Amy Jordan addresses the need to balance the media industry's potentially important contributions to the healthy development of America's children against the consequences of excessive and age-inappropriate media exposure.

Much of the philosophical tension regarding how much say the government should have about media content and delivery stems from the U.S. Constitution's First Amendment protection against government interference in free speech, including commercial speech. Courts, Jordan says, have repeatedly had to weigh the rights of commercial entities to say what they please against the need to protect vulnerable citizens such as children. This balancing act is complicated even further, she says, because many government regulations apply only to broadcast television and not to non-broadcast media such as the Internet or cable television, though Congress has addressed the need to protect children's privacy online.

The need to protect both free speech and children has given rise to a fluid media policy mix of federal mandates and industry self-regulation. Jordan describes the role of the three branches of the federal government in formulating and implementing media policy. She also notes the jockeying for influence in policymaking by industry lobbies, child advocacy groups, and academic researchers. The media industry itself, says Jordan, is spurred to self-regulation when public disapproval grows severe enough to raise the possibility of new government action.

Jordan surveys a range of government and industry actions, from legislatively required parental monitoring tools, such as the V-Chip blocking device on television sets, to the voluntary industry ratings systems governing television, movies, and video games, to voluntary social website disclosures to outright government bans, such as indecency and child privacy information collection. She considers the success of these efforts in limiting children's exposure to damaging content and in improving parents' ability to supervise their children's media use.

Jordan concludes by considering the relevance and efficacy of today's media policy given the increasingly rapid pace of technological change. The need for research in informing and evaluating media policy, she says, has never been greater.

[www.futureofchildren.org](http://www.futureofchildren.org)

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In American society, freedom of speech sometimes comes into conflict with the need to protect children. On the one hand, Americans highly value the First Amendment, which guarantees media makers' right to free speech. On the other hand, Americans recognize that exposure to much of this protected speech—for example, graphic sex or gratuitous violence—can be detrimental to children's psychological, social, and physical well-being. In this article, I consider the national effort to balance media rights and responsibilities to protect the healthy development of children. I lay out the impetus for and philosophical underpinning of government media policies and industry self-regulation and consider the success of these efforts both in limiting children's exposure to harmful content and in improving parents' ability to supervise children's experience with media. I conclude by showing how the rapid evolution of media technology may affect media policymaking and by highlighting the important role of research in designing, implementing, and evaluating media policy for children.

## Government Action

Government media policymakers are in the unenviable position of walking the fine (and often moving) line between the best interests of a capitalist, speech-protected society and the best interests of the vulnerable, developing child. Unlike many other public policy debates, issues related to children and media do not typically have clear partisan boundaries. A liberal Democrat is as likely as a conservative Republican to participate in public discourse about the problems and potential of media. For example, Senators Hillary Clinton (D-N.Y.), Joseph Lieberman (Ind.-Conn.), and Samuel Brownback (R-Kan.) recently cosponsored the Children and Media Research Advancement Act (CAMRA)

to authorize new funding to build a comprehensive, long-term research program to study the effects of media on children, and their bill received unanimous Senate approval.<sup>1</sup>

Public action regarding media policy has several triggers. One is an upwelling of serious public concern about the media that comes to the attention of lawmakers—as, for example, when a national poll reveals that parents are worried about too much violence on television.<sup>2</sup> Another is the discovery of new scientific evidence suggesting a direct causal connection between the media and a negative outcome—as, for example, when a long-term study finds that heavy television viewing in the preschool years leads to greater aggression in the teenage years.<sup>3</sup> Yet another is a focusing event that creates a greater sense of urgency for change—as, for example, the massacre at Columbine High School that some commentators believed was linked to obsessive video game playing.<sup>4</sup>

## Who Shapes Government Policy?

Once a problem gains lawmakers' full attention, it tends to generate study groups, congressional hearings, and new legislation for regulation or research funding. All these steps involve a community of key stakeholders—academic researchers, child advocates, and industry lobbyists, among others—who work with or against policymakers as they hammer out the fine points of the legislative agenda.

The pluralist tradition of policymaking is marked by sharp competition for influence by interest groups (including industry and advocacy groups as well as governing philosophies).<sup>5</sup> As the scope, reach, and impact of the media have grown over recent decades, so too has the number of media-related pressure groups in society. Action for

Children's Television, a grassroots advocacy group headed by a Boston mother, exerted influence on Congress and the Federal Communications Commission (FCC) for several decades before it disbanded with its "mission accomplished" in the late 1990s.<sup>6</sup> More recently, the conservative Parents Television Council has been a key influence on legislation to increase fines for broadcast indecency through its regular reports of sex, violence, and profanity in television and its frequent complaints filed with the FCC.<sup>7</sup> Industry lobbying groups, including the National Association of Broadcasters, provide a countervailing force against advocacy groups, touting the sufficiency of their own efforts at self-regulation and advocating for their First Amendment right not to have the government interfere with their speech—a constitutional guarantee that increasingly protects not only political or religious speech, but also speech delivered by commercial entities.<sup>8</sup> In the midst of this give and take, policy is made.

Within the U.S. government itself, all three branches of government shape media policy. Presidential administrations can and do take up children's media issues by appointing like-minded executive agency heads or by using the bully pulpit to express their expectations or concerns. President Ronald Reagan, for example, appointed FCC Chair Mark Fowler, who, reflecting the Reagan doctrine of a *laissez-faire* government, shifted its regulatory philosophy and dropped proposals that had been in the works for years that would have required broadcasters to provide more educational programming for children.<sup>9</sup> A decade later, President Bill Clinton hosted a White House Summit on Children and Media, and his FCC chair, Reed Hundt, became a critical force in defining the broadcasters' public interest obligations under the

Children's Television Act of 1990, in part by reinstating the policies eliminated under President Reagan.<sup>10</sup>

The judicial branch shapes media policy by determining the constitutionality of media law. Most challenges come on the grounds that the regulation violates the First Amendment rights of media makers. In the United States, the First Amendment prohibits the federal legislature from making laws that infringe on freedom of speech or freedom of the press. In 1978, for example, the U.S. Supreme Court affirmed the FCC's authority to restrict the public broadcast of indecent language. In this case, the FCC had fined Pacifica Foundation for the radio broadcast of George Carlin's "Seven Dirty Words" routine, which contained sexual and excretory words that the FCC considered "patently offensive."<sup>11</sup> Today's courts have also been asked to weigh in on FCC fine policies. In 2007, for example, the Court of Appeals for the Second Circuit in New York determined that FCC fines for "fleeting expletives" levied against FOX television were "arbitrary and capricious" and sent the case back to the commission saying that the indecency test is undefined and constitutionally vague.<sup>12</sup> Thus, interpretations and reinterpretations of the constitutionality of media policy—in particular, whether federal policy infringes upon free speech—occur with regularity in a society that grapples with how best to navigate the best interests of its citizens.

The work of legislating media policy cuts across numerous congressional committees, including the Senate Subcommittee on Science, Technology, and Innovation; the Senate Transportation Committee; and the House Subcommittee on Telecommunications and the Internet. Often, too, appropriations committees, which allocate funds to support

**Table 1. Federal Children’s Media Policies**

Policy title	Source	Action
Children’s Television Act of 1990	Passed by Congress Implemented by the FCC	Mandates educational television for children on commercial broadcast stations.  Reestablishes commercial time restrictions.  Bans host selling.
Three-Hour Rule (1997)	FCC processing guideline MM Docket No. 93-48	Expects three hours a week of educational programming to qualify for expedited license renewal.  Provides guidelines for allowable air times, length, on-air identification. Also clarifies the definition of educational children’s programming.
Telecommunications Act of 1996	Passed by Congress	Requires television sets to include a “V-Chip” to block programs with content parents find objectionable.  Requires industry to design a ratings system to work in conjunction with the device.
Broadcast Decency Enforcement Act (2006)	Passed by Congress Implemented by the FCC	Stations may be penalized \$325,000 for airing “patently offensive” content (sexual or excretory words) between 6 a.m. and 10 p.m.
Communications Decency Act (1996)	Passed by Congress Implemented by the FCC	Though much of the act has been overturned, current law imposes criminal sanctions on those who knowingly transmit obscene materials to children under eighteen; Section 230 protects websites from defamation and violation of privacy lawsuits when the material is created by others.
Children’s Online Privacy Protection Act (1998)	Implemented by the FTC	Requires operators of websites and online services directed to children or heavily used by children under age thirteen to obtain verifiable parental consent and keep confidential information disclosed from parents.

authorized programs, reflect the federal government’s implicit role in shaping media culture—for example, by subsidizing the Corporation for Public Broadcasting, which provides funding to Public Broadcasting Service (PBS) and National Public Radio (NPR) stations, or by providing new grants for studying the effect of media on children, such as the Children and Media Research Advancement Act.

Table 1 outlines current federal media policies, including both congressionally enacted laws and federal agency processing guidelines related to children and media. The policies in place today reflect a legislative philosophy in which rulemaking focuses primarily on the medium (for example, television or the Internet) as a means of regulating content (for example, profanity or explicit sex). The

Telecommunications Act of 1996, the massive overhaul of the 1934 Communications Act, structures policy on a medium-by-medium basis in much the same way as the original law.<sup>13</sup> For example, broadcast media (stations such as ABC and CBS, which air their programs over the nation’s free public airwaves) do not enjoy the same First Amendment protections as the Internet or even cable television. The reason: the limited broadcast spectrum historically meant that the federal government provides licenses for stations to use a particular part of the spectrum to avoid signal confusion and disruption.<sup>14</sup> Until recently, the only way for a television or radio signal to reach household receivers was through what is known as the analogue spectrum—a limited resource that federal policy determined could not be “owned” but instead “leased” from the government. As

a result, broadcasters apply for and receive licenses on the basis that they will “serve the public interest, convenience, and necessity” and be subject to governmental oversight.

### Who Implements Media Policy?

Once laws are passed by Congress, the responsibility for implementing and enforcing them is given to independent federal oversight agencies. The two key regulatory bodies for media policy are the Federal Communications Commission (FCC) and the Federal Trade Commission (FTC). Both agencies are made of up five commissioners nominated by the president and confirmed by the Senate. Only three commissioners may be members of the same political party (usually that of the president who nominates them), and one commissioner serves as chairperson. The FCC has jurisdiction over policies related to the media industry, including restrictions on content and the structure of ownership. The FTC is charged with consumer protection, for example, ensuring that advertising and marketing practices are not harmful or misleading.

### Federal Communications Commission

As of this writing, the Federal Communications Commission is charged with implementing several key federal media policies related to children—most notably, the regulations involving children’s television and broadcast indecency.

After a decade when the landscape of children’s television became increasingly bleak and commercialized, Congress unanimously passed the Children’s Television Act (CTA) of 1990.<sup>15</sup> The CTA reestablished the commercial time limits applicable to children’s programming that had been eliminated during the Reagan administration. Stations are fined by the FCC if their advertising during children’s television programming exceeds

10.5 minutes an hour on weekends and 12 minutes an hour on weekdays. The CTA also required broadcast stations, including ABC, CBS, and NBC, to increase significantly their educational offerings for children. In the years following implementation of the CTA, most stations did report airing educational programming for children. But an analysis by Dale Kunkel and Julie Canepa published in 1994 revealed that broadcasters were making dubious claims about the educational value of their programs, saying, for example, that the cartoon show *The Jetsons* was educational because it taught children about the future.<sup>16</sup> In addition, an examination of the 1995–96 broadcast season by the Annenberg Public Policy Center showed that few of the truly educational programs (such as *Bill Nye, the Science Guy*) were being aired at times when children were likely to be awake and in the audience (they were being shown, for example, at 5 a.m. on a Saturday).<sup>17</sup>

By 1996, the political climate was ripe for reform. In their bid for reelection, Bill Clinton and Al Gore made children’s media policy an agenda item. Simultaneously, the television industry was undergoing significant economic restructuring, and government agencies were carefully watching to see if media companies would continue to willingly “serve the public interest” while morphing into multimedia, mega-conglomerates. Though negotiations between policymakers, advocates, academics, and the industry were tense, all parties ultimately agreed to a “clarification” of the CTA of 1990, which set three hours as the minimum amount of educational programming to be aired by commercial broadcasters each week.<sup>18</sup> The industry, wanting to remain in the good graces of the FCC, promised not to challenge on First Amendment grounds the constitutionality of the so-called Three-Hour Rule.

Strictly speaking, the Three-Hour Rule is not a rule but a processing guideline that the FCC can use in determining whether a station's license should be renewed.<sup>19</sup> Airing three hours a week of educational programs guarantees stations an expedited review of their license renewal application. Because children's educational programming is essentially the only public interest obligation checked by the FCC, adhering to the mandate virtually guarantees the rubber stamping of the application for license renewal. Thus, the federal policy provides strong economic incentives to adhere to FCC guidelines while maintaining the literal boundaries of the First Amendment by not intervening directly in content matters.

The FCC also has the legal jurisdiction to enforce restrictions on indecent material on network broadcasting, including radio and television. Obscene material is not allowed at all on broadcast stations, and profanity and indecency are restricted to the hours of 10 p.m. until 6 a.m., when children are less likely to be in the audience.<sup>20</sup> Currently, the FCC can penalize a broadcast station a maximum of \$325,000 per incident for airing "patently offensive" content (articulated as "sexual" or "excretory" content). The penalties can be applied to multiple instances of indecency in a single show, potentially pushing the fines into the millions of dollars.<sup>21</sup>

The current indecency regulations, however, do not apply to non-broadcast media such as the Internet or cable television because they are not part of the limited spectrum owned and regulated by the U.S. government.<sup>22</sup> (That is, they do not reach audiences through the nation's free airwaves.) Though the Communications Decency Act (CDA), passed by Congress in 1996, imposes criminal sanctions on anyone who transmits *obscene* materials

to people known to be under age eighteen, provisions in the law regulating *indecent* content were invalidated almost immediately by the Supreme Court.<sup>23</sup> (Recent congressional attempts to protect children from Internet pornography, such as the Children's Online Protection Act of 1998, have similarly been struck down.<sup>24</sup>) A key provision of the CDA has remained in place, however. Section 230 of the CDA protects websites from defamation and violation of privacy lawsuits when the material is created by others, a protection that non-Internet publishers do not enjoy.<sup>25</sup> From these rulings, it would appear that the courts view the Internet more as a "common carrier" (like FedEx or the phone company) and less as a medium (like newspapers or television).<sup>26</sup>

### The Federal Trade Commission

The primary responsibility of the Federal Trade Commission is consumer protection. The FTC has often acted to protect the interests of the child consumer, primarily by regulating (or threatening to regulate) advertising content. Advertising is protected as free speech, however, and the FTC must restrict its regulatory activities to ad content that is clearly harmful to the developing child or that exploits the vulnerabilities of a less-sophisticated audience.<sup>27</sup> The FTC's efforts to broaden its oversight have not been regarded favorably by Congress. In the 1970s, the FTC undertook a multi-year deliberation to consider the possible need for government intervention to regulate advertising directed at children. At the time, scientists were increasingly concerned about sugar consumption and dental caries, and television was the primary medium through which children learned about sugary foods and beverages. These health concerns, combined with the social concern that young children could not tell the difference between advertising and program

content, led the FTC to propose a rulemaking process that would either restrict or ban advertising to children. The proposal raised the hackles of many lawmakers, even leading some to suggest disbanding the agency. As reported by an Institute of Medicine study, "Congress subsequently objected to intrusions on private-sector advertising and pressured the FTC to withdraw its proposed rule and to conclude that evidence of adverse effects of advertising on children was inconclusive."<sup>25</sup> Today, the FTC hosts seminars and writes fact-finding reports, but broad regulatory debates take place in other arenas.

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The 1998 Children's Online Privacy Protection Act (COPPA) was the result of the efforts of advocacy groups, including the Center for Media Education, that were alarmed by the extent to which websites had been collecting information about their child users.<sup>29</sup> The law, which addressed privacy and security risks created when children under thirteen years of age are online, is enforced by the FTC. As noted in table 1, COPPA imposes requirements on operators of websites and online services directed to children, as well as other operators who knowingly collect personal information from children. Websites that do not comply with COPPA are fined by the FTC.<sup>30</sup>

## Industry Self-Regulation

Signs of renewed governmental regulatory activity often stir the industry to preemptive self-censorship. Media companies are loathe to risk FTC or FCC action and certainly do not want to jeopardize their broadcast licenses. Yet they also do not want the government to become involved in censoring their content. As a result, they tend to be on the alert for signs of public disapproval and potential new federal actions. If they see new policymaking on the horizon, they will propose new self-regulatory measures. Some scholars call this dynamic "regulation by raised eyebrow."<sup>31</sup>

## Ratings

Nowhere is self-regulation more evident than in the voluntary ratings that media makers provide for their products. Movies, television, video and computer games, and music each provide the public with an indication of the content or age appropriateness, or both, of its titles for children. Industry rating efforts have virtually always followed episodes of heightened public concern, with government threatening to take action if the industry does not. Each medium has handled the application of ratings differently, however, with television and music producers determining ratings and film and video and computer game titles submitting to an independent but industry-funded board. Their codes and symbols differ too, leading one scholar to describe the result as "alphabet soup"<sup>32</sup> and many advocates to call for a uniform ratings system.<sup>33</sup>

Movie ratings came first, in 1968, after dramatic social upheavals, including the sexual revolution, Vietnam War protests, and assassinations of U.S. public figures, led policymakers and the larger public to scrutinize the contribution of media to the problems of the culture.<sup>34</sup> The structure of

**Table 2. Ratings for Motion Pictures and Television**

Motion pictures	Television
G: general audience	G: general audience
PG: parental guidance suggested	TV-Y: all children
PG-13: parents strongly cautioned	TV-Y7: directed to older children
R: restricted, under seventeen requires accompanying parent or adult guardian	TV-14: parental guidance suggested
NC-17: no one seventeen and under admitted	TV-MA: mature audience only

Sources: [www.mpa.org](http://www.mpa.org) and [www.tvguidelines.org](http://www.tvguidelines.org).

the Motion Picture Association of America’s (MPAA) age-based ratings has been modified over the years, with greater distinctions made and ratings justifications provided. During the 1980s and 1990s, the ratings PG-13 and NC-17 were added to refine the four basic age recommendations of G (for a general audience), PG (for parental guidance suggested), R (for restricted), and X (for no one under seventeen admitted), eliminating the need for the X rating.

More recently, ratings have appeared on television shows other than news and sports. With the passage of the Telecommunications Act of 1996, the government required the industry to devise a ratings system or let the government provide one for it. One justification for the ratings was that parents needed a classification system to program the V-Chip blocking device on television sets mandated by the 1996 act.<sup>35</sup> Table 2 provides an overview of the age-based ratings for film and television.

Pressure from advocacy groups has led most television stations to add content descriptors to the age-ratings. These content ratings include markers for fantasy violence on children’s programs (FV), sexual content (S), violent content (V), harsh language (L), and sexual dialogue (D). The film industry also provides content descriptors. Examples include “crude and sexual humor,” “drug

references,” and “comic violence.” The 2005 Warner Bros. Pictures’ movie *Harry Potter and the Goblet of Fire*, for example, was rated PG-13 “for sequences of fantasy violence and frightening images.”<sup>36</sup>

Video and computer games also are packaged to show their ratings. Similar to the film industry ratings board, the gaming industry examines titles that are voluntarily submitted and rates them for both age and content (see table 3).

**Table 3. Computer and Video Game Ratings**

**EC (Early Childhood):** contains content that may be suitable for ages three and older. Contains no material that parents would find inappropriate.

**E (Everyone):** contains content that may be suitable for ages six and older. Titles in this category may contain minimal cartoon, fantasy, or mild violence or infrequent use of mild language, or both.

**E10+ (Everyone 10 and Older):** contains content that may be suitable for ages ten and older. Titles in this category may contain more cartoon, fantasy, or mild violence; mild language; and minimal suggestive themes.

**T (Teen):** contains content that may be suitable for ages thirteen and older. Titles in this category may contain violence, suggestive themes, crude humor, minimal blood, simulated gambling, or infrequent use of strong language.

**M (Mature):** contains content that may be suitable for persons ages seventeen and older. Titles in this category may contain intense violence, blood and gore, sexual content, or strong language.

**AO (Adults Only):** contains content that should only be played by persons ages eighteen and older. Titles in this category may include prolonged scenes of intense violence, graphic sexual content, and nudity.

Source: [www.esrb.org](http://www.esrb.org).

During the late 1990s, the Parents' Music Resource Center admonished the music industry for its increasingly violent, sexual, and misogynistic lyrics. The group, made up primarily of wives of prominent Washington lawmakers led by Tipper Gore, argued that such lyrics had negative effects on the psychological well-being of listeners.<sup>37</sup> After a series of Senate hearings and an extensive public debate, which weighed the well-being of children against the free-speech rights of musicians, the Recording Industry Association of America agreed to ask its members to participate voluntarily in a system of labeling their recordings and offering less explicit versions of lyrics alongside the original versions (see [www.riaa.org](http://www.riaa.org)). Today, the Parental Advisory Label system alerts parents with a warning label, voluntarily placed on recordings by producers and distributors.

## Advertising Self-Regulation

Over the years, the federal government has considered and reconsidered the notion of regulating advertising directed at children

(see table 1). Today just two clear advertising laws pertaining specifically to children are in place for broadcast and cable television: commercial time limits during children's television shows and a ban on "host selling," which prohibits characters from a television show from appearing in commercials that air adjacent to or during that show.<sup>38</sup> Though the Federal Trade Commission examines complaints of deceptive or harmful advertising, most restraints on advertising to children come from within the industry, through an association funded by commercial companies. The Children's Advertising Review Unit (CARU) of the Council of Better Business Bureaus provides guidelines and evaluates consumer complaints.<sup>39</sup> For example, CARU guidelines say, "Advertisements should not convey to children that possession of a product will result in greater acceptance by peers or that lack of a product will result in less acceptance by peers." Advertisers are also admonished not to advertise products "that pose safety risks to them, i.e., drugs and dietary supplements, alcohol, products

**Table 4. Food Company Pledges for Self-Regulation, Summer 2007**

Company	Pledge highlights
Cadbury Adams, USA, LLC	Cease advertising and product placement of Bubblicious brand of gum to children under twelve
Campbell's Soup	Advertise only products that are "sound" food choices, including lower-sodium soups and portion-controlled packages of crackers
Coca-Cola North America	No advertising to children under twelve; limit beverages in schools to water, 100 percent juice, and milk for elementary and middle school students
General Mills	Advertise only Health Dietary Choices (12 grams or less of sugar per serving) to children under twelve; license Nickelodeon characters (SpongeBob SquarePants, Dora the Explorer) to frozen and canned vegetables
Hershey Company	No in-school advertising or brand licensing for use on educational materials; no television advertising aimed at children under twelve
McDonald's USA, LLC	Advertising directed at children under twelve will be limited only to meals with less than 600 calories (for example, the four-piece chicken nugget meal)
Unilever	No advertising to children under age six; advertising to children aged six to twelve will meet criteria for "Eat Smart-Drink Smart" logo
Kraft Foods	No advertising to children under six, advertising of "Sensible Solution" products to children aged six to eleven

Source: Children's Advertising Review Unit, Council of Better Business Bureaus.

labeled, “Keep out of the reach of children.”

Mass media marketing to children of “junk food” (foods high in calories and low in nutrition) has come under increasing scrutiny by lawmakers and advocates in light of the sharp uptick in childhood obesity rates in America. Several academic studies have linked exposure to unhealthful food advertising with childhood overweight.<sup>40</sup> And content analyses reveal the ubiquity of junk food advertising on the programs watched by and the websites frequented by children.<sup>41</sup> In 2007, Congress and the FCC formed a joint task force on marketing and childhood obesity. With new regulatory action looming, more than a dozen of the nation’s largest food manufacturers pledged to limit junk food marketing and promote healthy lifestyles (see table 4).

Similarly, in 2007, the Motion Picture Association of America announced that it would consider smoking when it rates movies. “Depictions that glamorize smoking or movies that feature pervasive smoking outside of an historic or other mitigating context” may lead to a higher rating by the industry panel that decides whether a film deserves a G, a PG, a PG-13, or an R.<sup>42</sup> Smoking joined violence, sex, profanity, and drug use as a red flag used by raters to judge the age-appropriateness of films. Why smoking? Why now? The historic “Master Settlement” of 1998 required the big tobacco companies such as R. J. Reynolds and Phillip Morris to pay hundreds of billions of dollars to states to spend on prevention programs. It also prohibited tobacco companies from targeting youth with ads, promotions, and marketing, such as paid-for product placements on TV and in movies. But researchers tracking the prevalence of smoking in film since 1998 found that tobacco use went up

after the settlement by 50 percent and began pressuring Congress to act.<sup>43</sup> Rather than have to respond to government inquiry and sanction, the MPAA decided to take preemptive action.

### **Protecting Children from Online Predators**

Though no one knows for certain the extent to which children are sexually harassed or exposed to sexual predators online, the increasing popularity of social networking sites such as MySpace and Facebook has raised public and lawmaker concerns about children’s Internet-related vulnerabilities. In 2007, Senators John McCain (R-Ariz.) and Charles Schumer (D-N.Y.) introduced the Keeping the Internet Devoid of Sexual Predators Act of 2007, known as the KIDS Act, which would require convicted sex offenders to submit e-mail addresses, instant message addresses, or other identifying Internet information to law enforcement to be placed on the National Sex Offender Registry.<sup>44</sup> Within months of the bill’s announcement, MySpace agreed to turn over to state attorneys general the names of convicted sex offenders who had been using the site.<sup>45</sup>

### **Successes and Failures of Media Policy for Children**

Judgments about the success or failure of media policy to empower parents to more effectively direct children’s media use or limit exposure to potentially harmful content depend, in large part, on where one stands. Evaluations of the implementation of federal mandates suggest that the media industry will follow the letter of the law. In the case of television, for example, television manufacturers began including the computer V-Chip device in television sets sold after January 2000 to comply with the Telecommunications Act of 1996. Programmers provided ratings information for television shows to comply

with the V-Chip mandate. Broadcast networks listed the minimum three hours a week of educational programming for children in their FCC filings under the Three-Hour Rule. But did children's exposure to the "bad" of television decrease, and did their viewing of the "good" of television increase? Research says "not really."

Some observers argue that media companies live up to the letter but not the spirit of the law.<sup>46</sup> As a result, the usefulness of federal regulations has been widely viewed as limited in the current media environment. A study conducted by the Annenberg Public Policy Center in the year following implementation of the V-Chip mandate found that less than 10 percent of parents consistently used the device, even when they were shown how to use it.<sup>47</sup> Why? Post-experiment interviews with mothers revealed that many found the device difficult to locate (it was buried five menus into the RCA model provided) and confusing to program. Research at the Kaiser Family Foundation also suggests that the ratings are too complex to be effective for parents. A full decade after the V-Chip ratings were introduced, only 11 percent of parents know that "FV" is an indicator of violent content in children's programming.<sup>48</sup>

The Three-Hour Rule has also had limited success in changing parents' practices regarding the television set. A study by the Annenberg Public Policy Center conducted two years after the mandate went into effect found that few parents knew that broadcasters were airing educational and informational programming for children.<sup>49</sup> Two critical obstacles appeared to block parental awareness. First, the programs considered educational by the broadcasters (for example, *Saved by the Bell*, a comedy about high school teens) were not considered educational by parents, who held a

more traditional conception of "educational." Second, parents did not recognize or understand the on-air symbol "E/I" used by broadcasters to denote educational programming.

Several years of content analyses of the commercial broadcasters' educational offerings reveal that broadcasters continue to make dubious claims about the educational value of their programs. The Annenberg Public Policy Center has consistently found that roughly one in five of the commercial broadcasters' "FCC-friendly" programs contains no discernable educational lesson. In addition, the majority of the network-provided programs are "pro-social"—they teach children lessons such as loyalty, honesty, and cooperation rather than teaching curriculum-based lessons such as science, math, or reading.<sup>50</sup>

Though the Federal Communications Commission does not routinely screen programs to make judgments about whether a program is educational, it does act on complaints it receives. In 2005, the United Church of Christ raised concerns about commercial broadcast network Univision's educational programming lineup. After reviewing the complaint, the FCC fined Univision affiliates \$24 million for listing rebroadcasts of steamy and violent *telenovelas* (such as *Complices al Rescate*) as educational programming for children.<sup>51</sup>

Broadcast networks have also been fined for violating federal policy related to indecency. The infamous case of Janet Jackson's "wardrobe malfunction" raised the concern of lawmakers and catalyzed Congress to pass the Broadcast Decency Enforcement Act of 2005, which raised fines tenfold from \$32,500 to \$325,000 for violations. In its aftermath, FOX stations were heavily fined when Nicole Richie used profanity during the live broadcast of the Billboard Music Awards. A federal

appeals court, however, found the rule “arbitrary and capricious” and ordered the FCC to reconsider its policy on “fleeting expletives.”<sup>52</sup> Indecency definitions, often vague, have frustrated broadcasters and social observers. George Carlin’s famous “Seven Dirty Words” monologue highlights the challenges in legislating language, as does the inherent contradiction of punishing stations for profanity, which virtually no studies have shown to be harmful to children, but not for gratuitous violence, which dozens, possibly hundreds, of studies have shown to be problematic.<sup>53</sup> (Lawmakers and the Federal Communications Commission have recently argued that indecency definitions should include graphic violence, particularly in the wake of the blood, gore, and torture in popular programs such as FOX’s *24*.<sup>54</sup>)

The Federal Trade Commission, the agency charged with enforcing the Children’s Online Privacy Protection Act, has also found itself in the position of fining flagrant violators of the congressional mandate. In 2006, the FTC fined the website Xanga \$1 million, alleging that the site collected personal information from children whom it knew to be under thirteen years of age without having first obtained the requisite verifiable parental consent.<sup>55</sup> According to the FTC, the website stated that children under thirteen were not allowed to join. But despite this disclaimer, Xanga allowed 1.7 million visitors who submitted information indicating that they were younger than thirteen to create accounts on the website. The FTC further alleged that Xanga had not provided sufficient notice on the website of how information regarding children would be used, had failed to provide direct notice to parents about the information it was collecting and how the information would be used, and had failed to allow parents access to and control over their children’s information.

Violations of the industry’s self-regulatory practices are less widely known, primarily because investigations are not widely publicized by the industry-funded groups that track them. Some academic research has been conducted on the voluntary ratings systems, however. In one study, researchers recruited parents to rate the content of computer and video games, movies, and television programs.<sup>56</sup> Raters felt that industry labels were “too lenient” when compared with what parent coders would find suitable for children. Nor are ratings well understood. Perhaps because of ratings’ inconsistencies, or perhaps because parents are not fully aware of the information offered by media, many parents do not consistently use the ratings to guide their children. Though 78 percent of parents say they have used movie ratings to direct children’s movie viewing, only about half say they use music advisories, video game ratings, and television program ratings (54 percent, 52 percent, and 50 percent, respectively).<sup>57</sup> Even among parents who report using industry-provided ratings and advisories, most do not find them to be “very useful,” according to a Kaiser Family Foundation survey.<sup>58</sup>

Advocacy groups such as Children Now, the Center for Science in the Public Interest, and the National Center for Missing and Exploited Children keep a watchful eye. The Campaign for a Commercial-Free Childhood, for example, sent a letter to the Federal Trade Commission decrying the heavy marketing of the PG-13-rated movie *Transformers* to young children through toy and food promotions. Citing CARU’s lack of disciplinary action, it asked the FTC to intervene. And unlike industry self-regulatory units, advocacy groups have, as part of their mission, the goal of informing the public about industry misdeeds.<sup>59</sup>

## New Media Forms and the Policy Challenges They Present

A multitude of forces shape the contours of children's media policy in U.S. society. Regulatory efforts reflect societal beliefs about the need to protect children from the harmful effects of media and society's strong interest in respecting the First Amendment rights of media makers. These tensions have tended to result in a combination of laws and voluntary self-regulation, which have the simultaneous goals of encouraging the offerings of "good" content, such as educational programming and age-appropriate choices, and limiting exposure to "bad" content, such as profanity and online predators.

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*Of all the many challenges facing policymakers who use regulation to empower parents and protect children, perhaps the greatest is the rapid evolution of media technology.*

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Congressional mandates and self-regulation must be implemented in good faith by the industry and used effectively by the public to have a serious impact on the media landscape. But, as noted, the system has kinks. Research conducted by the Annenberg Public Policy Center, the Kaiser Family Foundation, advocacy groups, and even federal agencies suggests that policies and guidelines often do not produce dramatic changes in what is available, in what children see, hear, or play, or in how parents supervise. Some observers might argue that simply holding the line on content and access—keeping violence on

television from escalating, for example, or keeping junk food ads from increasing—is a sign of policy success. Others might argue that technological solutions such as the V-Chip were never intended to be used by all homes but rather by a minority of mothers and fathers who want to be able to monitor carefully their children's media exposure.

Of all the many challenges facing policymakers who use regulation to empower parents and protect children, perhaps the greatest is the rapid evolution of media technology. Congressional leaders do not interact with new media technologies in ways that provide great insight into their capacity for good and harm. In 2006, for example, Senator Ted Stevens (R-Alaska), then chairman of the Senate Committee on Commerce, Science, and Transportation, was ridiculed on *The Daily Show with Jon Stewart* and in other public forums for trying to describe the Internet as a "series of tubes" and comparing the Web to a "dump truck." The tubes and truck metaphors seemed to highlight the policymaker's weak grasp of the technology he was charged with overseeing.<sup>60</sup>

Though the Stevens gaffe may exaggerate the disconnect between the "real world" and the "Washington world," it does highlight the need to form clearer links between the policymakers and the communities they are meant to serve. It also suggests that parents, too, have difficulty understanding the media their children use. In a world where parents ask their children to fix a misbehaving computer, program the television remote control, or set up their cell phone ring tones, it is understandable that parents would see blocking filters like the V-Chip as a low hurdle for children to clear and an ineffective tool for managing media. It is not yet clear whether today's youthful media users will carry their

technological savvy into their adult years, when they can be more effective mediators than their parents. In all likelihood, the media will continue to evolve rapidly, and their children will become the new “early adopters,” leaving the generation gap as wide as ever.

Evolving media technologies also present a new set of challenges for regulators who have, historically, made policy on the basis of the vehicle of delivery (for example, broadcast television, movie, and newspaper). In the new media environment, vehicles or “platforms” have converged, so that one can watch episodes of *Desperate Housewives* on the computer through the network’s website or on an iPod through an iTunes download. Cell phones, which are carried by most children over the age of ten,<sup>61</sup> allow Web access and can receive spammed text messages, which can be quite salacious or pornographic. The distinctions that regulators make between these platforms, particularly between television channels, are not necessarily made by the viewing public. Do parents understand why the FOX broadcast channel content is held to a different (higher) set of standards than its sister network FX on cable? Do they care? Such questions may be overshadowed by the larger First Amendment concerns that might arise if policymakers begin to regulate content instead of platforms, however.

It is likely that in the decade to come, regulators will need to rethink the original premise of much of what has driven media policy. Some observers have argued that channel and outlet proliferation means that it is no longer valid to justify government regulation of broadcast media on the basis that it is a “scarce resource.”<sup>62</sup> Yet rulings suggest that the public interest obligation to children remains in place and, indeed, will be extended. In a 2004 FCC ruling, known as

the FCC 2004, the commission increased the core programming benchmark (three hours a week) for digital broadcasters “in a manner roughly proportional to the increase in free video programming offered by the broadcaster on multicast channels.”<sup>63</sup>

A final challenge facing media policymakers lies in the increasing personalization and portability of technologies. In a society where children have ownership over media devices and determine the content that appears on their screens, the “protecting the children” argument for restricting mass media content may be difficult to achieve from afar. Youth today idiosyncratically select, edit, and create their own media content to consume and share, and they make few distinctions between what is their media and what is adult media. Indeed, there may one day be few objects of regulation, as production becomes decentralized and producers become increasingly anonymous. Wikipedia ([www.wikipedia.org](http://www.wikipedia.org)) is a salient example of user-generated content carried over the Internet and widely used by the public with very light administrative oversight. Efforts to hold Internet service providers (ISP) responsible for problematic content are currently unenforceable under section 230 of the Communications Decency Act.

Though the future of media policy in a changing media environment is not yet clear, the importance of unbiased and systemic research has never been more so. Politicians often rely on surveys of public opinion to justify taking action in a particular arena, in part because the general public rarely weighs in on media policy matters.<sup>64</sup> Careful, objective research into parents’ views of media, media policy, and media practices is essential both to inform policy debates and to aid in shaping media policies that are useful to parents. This

means pilot testing potential legislation with a representative sample of families to ensure the understandability and usability of the information and tools.

Once in place, media policies must be routinely and objectively evaluated for efficacy. Federal regulatory agencies are neither mandated nor funded to routinely assess how their policies are followed. In 2004 FCC chair Michael Powell wrote in a *New York Times* op-ed, "We are not the federal Bureau of Indecency. We do not watch or listen to programs hoping to catch

purveyors of dirty broadcasts. Instead, we rely on public complaints to point out potentially indecent shows."<sup>65</sup> Academic researchers have a unique opportunity to inform policymakers about the efficacy of public policy. Ultimately, societal awareness and use of media-related information and technology and the effect of the policy on media use by children and families are distinct avenues of inquiry that promise to contribute much to the discussion of whether and how media policy can contribute to the positive role of media in the developing child's life.

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