

THE EFFECTIVENESS OF MEDIA RATING SYSTEMS IN
PREVENTING CHILDREN'S EXPOSURE TO VIOLENT
AND SEXUALLY EXPLICIT MEDIA CONTENT:
AN EMPIRICAL STUDY

Patrick M. Garry^{*}
Candice J. Spurlin^{**}

I. INTRODUCTION

With the increasing reach and influence of the media, as well as the growing presence of harmful and offensive material carried by that media, significant portions of the public hold a suspicious, if not outright oppositional, stance towards modern media in America. Such oppositional public attitude has led to repeated attempts to control media content, most of which have been declared by the courts to violate the First Amendment. Nonetheless, to ward off further regulatory attempts, many of the various media industries have voluntarily adopted self-regulation schemes. These schemes promise to help parents prevent their children from being exposed to objectionable and unwanted material, such as violent and sexually explicit speech or video images.

According to media representatives, this self-regulation system achieves everything that the intrusive hand of governmental regulation might achieve. This claim was tested in a study conducted by researchers at the University of South Dakota School of Law. These researchers focused on the aspect of media self-regulation: the rating systems used by the motion pictures, music and video game industries. Through the survey of pre-teen and teenage children, the study found that

* J.D., Ph.D., University of Minnesota. Associate Professor, University of South Dakota School of Law.

** B.A., Augustana College; M.S. University of North Carolina at Chapel Hill. Senior Librarian, University of South Dakota School of Law.

in fact the rating system fails to prevent underage children from being exposed to material that is rated only for older children or adults.

II. THE LEGAL AND SOCIAL PROBLEMS ASSOCIATED WITH HARMFUL OR OFFENSIVE SPEECH

A. *The Prevalence of Unwanted Speech in a Media Society*

As the Supreme Court has recognized, broadcast and cable programming exert a “uniquely pervasive presence in the lives of all Americans.”¹ Through the media, every kind of speech is readily available, sometimes with no more effort than the push of a button. Consequently, receivers of such media are exploring ways to combat the constant surge of unwanted information and to help the receiver control what he or she receives. Indeed, with the explosive growth of the Internet, “it is clear that society is demanding some method for shielding itself, or at the very least for shielding children.”²

The Internet alone contains an almost unlimited supply of pornography, violence, vulgarity and hate speech. “[A]lmost 70 percent of the traffic on the Web is adult-oriented material,”³ and “approximately 200 new pornographic sites [are] created each day.”⁴ This is a particularly worrisome problem, since “[n]inety percent of children between the ages of five and seventeen . . . now use computers.”⁵ Moreover, online pornography cannot be neatly cordoned off from areas to which children can gain access.⁶ It is not like the adult bookstore, which has a windowless door through which children are not permitted to enter. Studies have shown that most adult-oriented commercial web sites do not use age verification measures and that about a quarter of them employ practices like mouse trapping, which keep users from

1. Denver Area Educ. Telecomm. Consortium, Inc. v. FCC, 518 U.S. 727, 744-45 (1996).

2. Thomas B. Nachbar, *Paradox and Structure: Relying on Government Regulation to Preserve the Internet's Unregulated Character*, 85 MINN. L. REV. 215, 218 (2000).

3. H.R. REP. NO. 105-775, at 10 (1998).

4. Elizabeth M. Shea, *The Children's Internet Protection Act of 1999: Is Internet Filtering Software the Answer?*, 24 SETON HALL LEGIS. J. 167, 174 (1999).

5. Mitchell P. Goldstein, *Congress and the Courts Battle Over the First Amendment: Can the Law Really Protect Children From Pornography on the Internet?* 21 J. MARSHALL J. COMPUTER & INFO. L. 141, 143 (2003).

6. *Id.* at 144.

exiting the site.⁷

But it is not just the Internet that is witnessing the explosion of sexually explicit speech available to children. In recent years, with sexually exploitive reality shows becoming ever more prominent on the television schedule, public complaints to the Federal Communication Commission (“FCC”) about indecent programming have soared.⁸ The FCC Consumer and Governmental Affairs Bureau reported a “huge increase” in such complaints in 2003,⁹ and the number of complaints to the FCC rose to more than 1.4 million in 2004.¹⁰ Indeed, empirical evidence has shown a significant rise in the sexual content of television programming.¹¹ Consequently, there has been a number of attempts over the years to regulate television programming.¹² Efforts have included extending the indecency and profanity rules to cable and satellite television,¹³ channeling the broadcast of certain adult-themed programming to times when children are less likely to be viewing,¹⁴ blocking indecent programming completely,¹⁵ and creating a “family hour” during which programming unsuitable for children is not shown.¹⁶

The majority of parents strongly support the “efforts of Congress to protect children from harmful” and offensive entertainment speech.¹⁷ According to congressional findings, the average child witnesses approximately 100,000 acts of violence on television by the time he completes elementary school.¹⁸ Many believe that a community should

7. *Id.* at 144-45.

8. See Associated Press, *FCC's Chief: TV Gets Too Racy*, THE CINCINNATI POST, Nov. 22, 2002, at A2.

9. Mark Wigfield, *FCC Reports Spike in Complaints About Broadcast Indecency*, DOW JONES NEWSWIRES, Nov. 21, 2003.

10. Stephen Labaton, *Knowing Indecency Wherever He Sees It*, N.Y. TIMES, Mar. 28, 2005, at C1.

11. Richard A. Brisbin, Jr., *Sex on the Tube: The Media Business and Sexual Portayals on American Television*, FOCUS ON L. STUD., Fall, 2004, at 1, 6 (providing empirical evidence showing a significant rise in the use of sexual content on television).

12. David L. Bazelon, *FCC Regulation of the Telecommunications Press*, 1975 DUKE L.J. 213, 215-16 (1975).

13. Labaton, *supra* note 10, at 1.

14. *FCC v. Pacifica Found.*, 438 U.S. 726, 729 (1978).

15. *Denver Area Educ. Telecomms. Consortium, Inc. v. FCC*, 518 U.S. 727 (1996).

16. *Writers Guild of Am., West, Inc. v. FCC*, 423 F. Supp. 1064, 1072 (C.D. Cal. 1976).

17. *Am. Civil Liberties Union v. Reno*, 31 F. Supp. 2d 473, 498 (E.D. Pa. 1999).

18. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 140.

have the authority to protect children from exposure to this kind of media output, and that “widespread availability of such material in the larger society makes it virtually impossible for parents to act effectively on their own.”¹⁹ Yet most attempts to do so have been foiled by the courts.

According to a 2003 study by the Kaiser Family Foundation and the Children’s Digital Media Centers, there has been “an explosion in electronic media marketed . . . at the very youngest children in our society.”²⁰ The Kaiser Foundation study confirmed that “[y]oung people have become viewing, listening and surfing addicts.”²¹ The report stated that eight to eighteen-year-olds “live media-saturated lives,” spending over forty-four hours per week with electronic entertainment.²² The six and a half hours a day devoted to electronic entertainment compares with one and a half hours spent on physical exercise and just fifty minutes on homework. The entertainment industry tells viewers that the solution to unwanted offensive speech is not to watch it, but instead “avert one’s eyes” from it. But this presumes that the public knows in advance when and where such speech will occur. As evidenced by the 2004 Super Bowl halftime show, such predictability is no longer possible. As *Time* magazine observes, from the “unwanted porn e-mail” to the “hamburger commercial with a woman lasciviously riding a mechanical bull,” people today “feel mugged by pop culture.”²³ “[C]able television, the pop music industry, the Internet and video games” are all “expanding the reach—and depths—of the media cesspool exponentially.”²⁴ As the executive secretary of the Iowa Freedom of Information Council notes, American children “are swimming around in this pop culture that is becoming a sort of sewer.”²⁵

19. Steven J. Heyman, *Ideological Conflict and the First Amendment*, 78 CHI.-KENT L. REV. 531, 608 (2003).

20. THE HENRY J. KAISER FAMILY FOUNDATION, ZERO TO SIX: ELECTRONIC MEDIA IN THE LIVES OF INFANTS, TODDLERS, AND PRESCHOOLERS 2 (2003).

21. Robert Dodge, *Study: Kids Addicted to Media*, ARGUS LEADER, Mar. 10, 2005, at 4A.

22. *Id.*

23. James Poniewozik, *The Decency Police*, TIME, Mar. 28, 2005, at 31.

24. Diana West, *All That Trash*, THE PUBLIC INTEREST, Summer 2004, at 131.

25. Poniewozik, *supra* note 23, at 30.

B. The Judicial Response to Media Content Regulation

In general, most efforts to regulate violent and indecent media programming are struck down by the courts as violating the First Amendment. With regard to such speech, however unwanted or offensive as it may be, the courts generally require viewers or listeners to take whatever steps necessary to avoid exposure to it.²⁶ But the growth of a media society, along with the corresponding explosion of media speech, have made the burdens of “averting one’s eyes” all the more onerous. Under current First Amendment doctrines, opt-out schemes have been favored over their opt-in counterparts. Unwilling listeners must opt-out of the unwanted speech environment. Moreover, courts have essentially assumed that the First Amendment requires opt-out.²⁷ But the ability to opt-out necessitates, for instance, an enforceable rating system.

The duty imposed on unwilling listeners or viewers to avoid exposure to unwanted media programming was highlighted in *Denver Area Educational Telecommunications Consortium, Inc. v. FCC*²⁸ and *United States v. Playboy Entertainment Group, Inc.*²⁹ At issue in *Denver Area* were regulations in the Cable Act of 1992. The Act required cable operators to place indecent programs on a separate, blocked channel, which would be unblocked only after a subscriber submitted a written request for access.³⁰ In holding these regulations unconstitutional, the Supreme Court voiced concern with inconveniences and burdens to potential viewers of indecent programming. This included, for instance, the viewer desiring a single show, as opposed to the entire channel, or the viewer wanting to choose a channel without any advance planning (the “surfer”), or the viewer worrying about the danger to his reputation

26. See *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 210-11 (1975) (striking down an ordinance prohibiting drive-in movie theaters from exhibiting nudity and holding that the burden falls upon the unwilling viewer to “avert [his] eyes”).

27. See *Lamont v. Postmaster General*, 381 U.S. 301, 305 (1965) (holding that the Post Office could not screen out communist mail from foreign sources and require potential recipients to request affirmatively its delivery (or opt-in)); see also *Boler v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 61 (1983) (holding that the federal government could not ban the unsolicited mailing of condom ads – a law which required opt-in).

28. *Denver Area Educ. Telecomm. Consortium, Inc. v. FCC*, 518 U.S. 727 (1996).

29. *United States v. Playboy Entm’t Group, Inc.*, 529 U.S. 803, 813 (2000) (citing *Cohen v. California*, 403 U.S. 15, 21 (1971)).

30. *Denver Area*, 518 U.S. at 735.

that might result if he made a written request to subscribe to the channel.³¹ However, none of these burdens represented insurmountable obstacles. Each one of these types of viewers could get access to the desired programming by simply following the established procedures.

In *Playboy Entertainment*, the Court held that audiences must assume the full burden of avoiding unwanted or offensive speech.³² The case involved a challenge to a provision in the Telecommunications Act of 1996, which required cable channels “primarily dedicated to sexually-oriented programming” either to “fully scramble or otherwise fully block” their channels or limit their transmission to the hours between 10:00 p.m. and 6:00 a.m., when children are unlikely to be among the viewing audience.³³ Even before the enactment of this provision, cable operators used signal scrambling to limit programming access to paying customers. However, since this scrambling was imprecise and often led to signal bleed, the time-channeling regulation was intended to shield children from hearing or seeing images resulting from such signal bleeding. Yet, even though the Court recognized the strong state interest in shielding young viewers from such programming, it still struck down the law, holding that it constituted too great a burden on adult viewers.³⁴

In reaching its decision, the *Playboy Entertainment* Court more or less assumed that a less restrictive alternative was available to parents who wished to keep their children from watching indecent programming.³⁵ This alternative required the objecting parent to request that her cable operator block any channel she did not “wish to receive.”³⁶ For this alternative to work, however, the cable operator would have to provide “adequate notice” to its subscribers that certain channels would broadcast sexually-oriented programming, that signal bleed may occur, that children might then see portions of the programming, and that parents should contact the cable operator to request a channel blocking device.³⁷ This notice, apparently, would be provided as an insert in the monthly cable bills.

31. *Id.* at 754.

32. *Playboy*, 529 U.S. at 813 (citing *Cohen*, 403 U.S. at 21).

33. *Id.* at 806-07.

34. *Id.*

35. *Id.* at 809.

36. *Id.* at 810.

37. *Id.*

In dissent, Justice Stephen Breyer, recognized that, because of signal bleed, approximately 29 million children were exposed each year to sexually explicit programming.³⁸ According to Justice Breyer, over 28 million children have no parents at home after school, and children may spend afternoons and evenings watching television outside of the home with friends, and therefore the time-channeling law offered “independent protection for a large number of families.”³⁹ Given the compelling interest of child protection at issue, Justice Breyer concluded that the majority’s proposed alternative was not at all an effective one.⁴⁰ In support of this conclusion, Justice Breyer cited evidence stating all of the problems people had experienced in trying to get their cable operator to block certain channels.⁴¹

The *Playboy Entertainment* decision reveals that the Court is hoping technology will solve the problem of intrusive, unwanted speech.⁴² According to the Court, the technological ability to block unwanted channels on a household-by-household basis “enables the Government to support parental authority without affecting the First Amendment interests of speakers and willing listeners.”⁴³ The V-chip is an example of a technology intended to effectuate a private right of censorship.⁴⁴ However, evidence has shown that various filtering technologies are far from perfect.⁴⁵ Moreover, many filtering technologies possess characteristics that inhibit their use. Lock boxes used to block out indecent cable programming, for example, require advance planning and thereby fail to protect those who scan from channel to channel and whose viewing of a given channel is unplanned and incomplete.

38. *Id.* at 839 (Breyer, J., dissenting).

39. *Id.* at 842.

40. *Id.* at 841.

41. *Id.* at 843-44.

42. Jennifer L. Polse, Note, *United States v. Playboy Entertainment Group, Inc.*, 16 BERKELEY TECH. L.J. 347, 348 (2001).

43. *Playboy*, 529 U.S. at 815.

44. J. M. Balkin, *Media Filters, the V-Chip, and the Foundations of Broadcast Regulation*, 45 DUKE L.J. 1131, 1143 (1996).

45. See generally Saul Hansell, *F.T.C. Rebuffs Plan to Create a No-Spam List*, N.Y. TIMES, June 16, 2004, at C1 (suggesting that a do-not-email registry would not be a cure-all).

C. The Reliance on Media Self-Regulation

For unwilling listeners or viewers to be able to avoid exposure to certain media programming, they must know in advance the content of that programming. This is where a rating system becomes relevant, that is, to give advance content notice to wary viewers. However, only if a rating system is effective may viewers fulfill their duty to avoid exposure to offensive media speech. Unfortunately, such effectiveness is becoming increasingly doubtful in rating systems.

In general, there has been a steady decline in the broadcast industry's efforts at self-regulation,⁴⁶ which include administration and enforcement of rating systems. After years of agreeing not to air liquor advertisements, for instance, broadcast television has not only begun airing them, but has laced those advertisements with raw sexual appeal, such as two women mud-wrestling in their underwear. Broadcasters are also showing no willingness to self-regulate the advertisement of sexual-aid products, such as impotency drugs. As a result, parents are forced to discuss topics with their children that they perhaps consider inappropriate.

Television's inability to regulate itself was particularly evident in the 2004 Monday Night Football ad controversy. The advertisement, placed during the Monday Night Football opening segment, showed an actress from the television series *Desperate Housewives* standing in a locker room, wearing only a towel and provocatively asking a football player to skip the game for her. After she dropped the towel, he agreed. She then jumped into his arms. Following a barrage of complaints from viewers, executives at ABC apologized, agreeing that the advertisement was "inappropriate."⁴⁷ But the fact that ABC was obviously unaware of the ad's "inappropriateness" prior to the public outrage is by itself reason enough to doubt ABC's judgment on matters of public decency or propriety. Or as one media critic reported, the reason ABC aired the ad was that any flak from the FCC was "chicken feed next to the priceless promotion and ratings bonanza" the network would receive from the

46. See Angela J. Campbell, *Self-Regulation and the Media*, 51 FED. COMM. L.J. 711, 717-19 (1999) (discussing criticism of media self-regulation).

47. Andrea Adelson, *ABC Apologizes for Steamy Intro Monday Night*, ARGUS LEADER, Nov. 17, 2004, at 1C.

controversy.⁴⁸

With respect to the V-chip, the television industry is proving to be anything but cooperative. Despite demands from parent groups, the industry has refused to adopt a rating system that would expressly identify the amount of sex, violence and vulgar language in each program. Children's advocacy groups oppose the current "age-appropriateness" rating system as ineffective, because it does not provide parents with enough content information, such as violence, sexual portrayals and sexually charged language.⁴⁹ Furthermore, a study by the Parents Television Council found that during the "sweeps" periods, more than half the network programs surveyed were missing the proper content warnings. Ninety-two percent of shows with sexual behavior carried no "S" rating, and 75 percent of shows with violence had no "V."⁵⁰

Television broadcasters also make no effort to advertise or promote use of the V-chip, nor do they encourage manufacturers to include V-chip directions in the operating manuals for televisions that contain the chip.⁵¹ A survey by the Kaiser Family Foundation found that almost 40 percent of all parents are unaware that television sets are equipped with a V-chip.⁵² Consequently, the V-chip is rarely used by parents.⁵³ Moreover, the Parents Television Council has concluded that the V-chip has led to an increase, rather than a decrease, in indecent content. The group claims that the V-chip has given "networks free reign to push the TV envelope as long as they put the right stamp on it."⁵⁴

The failure to self-regulate is not confined to television. Video game makers, likewise, have a self-imposed rating system, yet studies have shown that these manufacturers actively market ultra-violent games,

48. Jonathan Alter, *A Shabby Fiesta of Hypocrisy*, NEWSWEEK, Nov. 29, 2004, at 56.

49. Lawrie Mifflin, *TV Industry Leaders Unveil Technique of Rating Shows*, N.Y. TIMES, Dec. 20, 1996, at 18.

50. L. Brent Bozell, *The V-Chip is No Magic Pill*, THE WASHINGTON TIMES, Apr. 20, 2005.

51. Dan Hunter, *Philippic.com*, 90 CAL. L. REV. 611, 666 (2002).

52. Bozell, *supra* note 50 (explaining that only 15 percent of parents say they have used the V-chip).

53. Treasa Chidester, Comment, *What the #\$ is Happening on Television? Indecency in Broadcasting*, 13 COMMLAW CONCEPTUS 135, 160 (2004).

54. Lynn Elber, *TV Too Nasty for Kids, Study Says*, L.A. TIMES, Aug. 3, 2001, at R10.

rated for users seventeen years and older, to children.⁵⁵ With respect to the music industry, the Federal Trade Commission (“FTC”) has found that the industry’s rating system fails to provide enough information about the content of music lyrics for parents to make intelligible decisions pertaining to the music their children listen to.⁵⁶ Furthermore, in addition to the recording industry’s “basically useless” labeling system, there was found a complete absence of enforcement of these ratings at the retail level.⁵⁷

The movie industry has also had a history of indifference toward, or disregard of, ratings—using the rating system, according to critics, only as a means of warding off further government regulation. And even though the majority of moviegoers are children, the movie industry has turned out more than five times as many R-rated films as G, PG, or PG-13 films during the years 2000 to 2004. Whereas 2,146 films have received R ratings, only 137 films have been rated G and 252 rated PG.⁵⁸ Furthermore, the movie industry has been steadily growing more lenient in its ratings, allowing “increasingly more extreme content in any given age-based rating category over time.”⁵⁹ A study by the Harvard School of Public Health found that a decade of “ratings creep” has permitted more violent and sexually explicit content into films.⁶⁰ In addition, according to the study, “age-based ratings alone do not provide good information about the depiction of violence, sex, profanity and other content.”⁶¹ And if those increasingly lenient and ineffective ratings are not enough, theater chains have recently begun selling “R-cards,” which

55. Rupal Ruparel Dalal, *Congress Shall Make No Law Abridging Freedom of Speech – Even if it Causes Our Children to Kill?*, 25 SETON HALL LEGIS. J. 357, 367 (2001).

56. FED. TRADE COMM’N, *MARKETING VIOLENT ENTERTAINMENT TO CHILDREN: A REVIEW OF SELF-REGULATION AND INDUSTRY PRACTICES IN THE MOTION PICTURE, MUSIC RECORDING & ELECTRONIC GAME INDUSTRIES*, (2000) [hereinafter *FTC REPORT*], <http://www.ftc.gov/reports/violence/vioreport.pdf>.

57. *Marketing Violence to Children: Hearing on H.R. 1086 Before the S. Commerce, Science and Transportation Comm.*, 106th Cong. 3 (2000) (statement of Sen. John McCain).

58. Philip F. Anshutz, *Whatever Happened to the Family Film?* IMPRIMIS, June, 2004, at 1.

59. Sharon Waxman, *Study Finds Film Ratings Are Growing More Lenient*, N.Y. TIMES, July 14, 2004, at E1.

60. Julie Salamon, *The Rating Says PG, But Is That Guidance Enough?*, N.Y. TIMES, Jan. 7, 2005, at B1.

61. Waxman, *supra* note 59, at E1.

2007]

Media Rating Systems

225

allow teenagers to attend R-rated movies without being accompanied by a parent or guardian. Critics denounce these R-cards as yet another “maneuver around the movie rating system.”⁶²

III. THE EMPIRICAL STUDY

A. Introduction to the Study

The data in this section is drawn from one study that surveyed pre-teen and teenage students to determine whether the current media rating system is effective. The rating system was designed by the entertainment industry in an attempt to self-regulate and warn youth and parents about media products inappropriate for certain ages. Students were questioned using surveys asking about movies, music, and computer/video games that had been rated by the entertainment industry as inappropriate for their age. The surveys were designed to determine the extent of the student’s use of entertainment products and the lack of difficulty experienced in obtaining them.

Many of the results of this study were consistent with findings of other studies conducted on the regional and national level.⁶³ In a number of national studies young shoppers were “planted” to purchase products from stores. In our study, students were not asked to try to obtain the products as “plants”; rather, we questioned students of a particular age and locale about their normal use and purchasing practices of media products.

B. Overview of Methodology

The study was conducted through the use of surveys administered to students between the ages of nine and fifteen attending schools in two smaller mid-western cities.⁶⁴ Three surveys, labeled “Music CDs,”

62. Micheline Maynard, *Youth Who Like Films Rated R, But Not Chaperones, Get a Card*, N.Y. TIMES, June 26, 2004, at B7.

63. See FTC REPORT, *supra* note 56, at app. F.; see also David A. Walsh & Douglas A. Gentile, *A Validity Test of Movie, Television, and Video-Game Ratings*, 107 PEDIATRICS (6)1302 (2001).

64. The study was conducted by the University of South Dakota School of Law in the spring of 2006. The study is grateful for the cooperation of Rodney Lenz, principal of Sioux Falls Lutheran School in Sioux Falls, South Dakota and Dr. Phyllis Ellett of

“Movies,” and “Video and Computer Games,” asked students about that particular media category. The surveys were administered by classroom teachers, homeroom teachers, or principals. The participating schools were a public middle school in Rock Island, Illinois and a private parochial school in Sioux Falls, South Dakota. The study was conducted in the spring of 2006. A total of 440 students were surveyed; the nine and fifteen year olds were eventually cut from the survey since there were not enough samples in either category to draw any conclusions. Not every student answered every question; for this reason, the percentage of responses that are noted in the findings may be based on totals differing from the 440 surveyed. Totals that do vary are noted when used in a particular section.

The Rock Island, Illinois students, ranging in age from ten to fourteen, attended seventh and eighth grade in a public middle school. The same age group in Sioux Falls, South Dakota attended a private school with students from kindergarten through eighth grade. Seventy-four students were surveyed in the private school system, with 366 respondents in the public school system. There were 210 girls and 230 boys, so gender ratio was approximately equal.

The respondents were divided into four categories: public male, public female, private male, and private female. These four categories were sub-divided into age brackets from ten to fourteen years.

C. Background of Study Cities

A snapshot portrait of the two cities showed a similarity in their formative years. Both cities were chartered in the mid 1800s, and both grew and were shaped by the railroad and riverboat industry and traffic. At first glance, Sioux Falls, South Dakota, located on the banks of the Big Sioux River, appeared to have the larger population with 148,000 inhabitants.⁶⁵ However, Rock Island, Illinois, located on the Mississippi River with a population of 38,857 in 2003, is one of five cities that form the arguably misnomered “Quad Cities” on the Iowa and Illinois border with an overall population of 377,291.⁶⁶ In both Sioux Falls and Rock

Washington Junior High in Rock Island, Illinois who administered the student surveys.

65. Wikipedia.org, *Sioux Falls, South Dakota*, http://en.wikipedia.org/wiki/Sioux_Falls,_South_Dakota.

66. Wikipedia.org, *Quad Cities*, http://en.wikipedia.org/wiki/Quad_Cities.

Island, approximately 24 percent of the population was below the age of eighteen.

A closer examination of the demographics revealed differences between the two cities. Rock Island is an industrial, blue-collar city with a disproportionately low rate of college level degrees: 19 percent of its population had earned a bachelor's degree or higher, while 28 percent of Sioux Falls' population had earned a college degree. A comparison of residents with high school diplomas showed more similarity in the two cities: 88.5 percent of Sioux Falls residents had graduated with a high school diploma and 82.9 percent of Rock Islanders had earned high school diplomas.⁶⁷ The median income reflected a disparity in the number of professionals in the two cities: the 2000 census median income, in 1999 dollars, was \$34,729 in Rock Island, while Sioux Falls showed a median income of \$41,221.⁶⁸ The median value of a home in Rock Island was \$70,600 as opposed to \$101,700 in Sioux Falls.⁶⁹ Racial diversity figures indicated that Rock Island was the more culturally diverse city, even though its Caucasian population was still slightly over 77 percent. Sioux Falls residents were 92 percent Caucasian. Rock Island, a smaller, more industrial city, actually lost 2.1 percent of its population between 2000 and 2006, while Sioux Falls' population increased by 22.2 percent from 1990 to 2000.⁷⁰

D. Significant Findings of Student Surveys

Sioux Falls and Rock Island students were surveyed to determine their ease of access to music, video games, and movies that were rated by the entertainment industry as appropriate for more mature listeners or viewers. The results of our surveys showed that students in both cities were easily able to access media rated inappropriate for their age. Moreover, they were seldom asked their age when purchasing tickets for movies or buying such music CDs or video games.

67. U.S. Census Bureau, *State & County QuickFacts, Rock Island (city), Illinois*, available at <http://quickfacts.census.gov/qfd/states/17/1765078.html> (last visited Oct. 18, 2007); U.S. Census Bureau, *State & County QuickFacts, Sioux Falls (city), South Dakota*, <http://quickfacts.census.gov/qfd/states/46/4659020.html> (last visited Oct. 18, 2007).

68. *Id.*

69. *Id.*

70. *Id.*

The study consisted of three surveys pertaining to the mass media products of movies, video games and music. The results of each media survey indicated that the majority of students can and do access materials rated unsuitable for them. The responses indicated that 73 percent of all students had attended a PG-13⁷¹ or R-rated⁷² movie without a parent present. The responses also showed that 72 percent listened to music CDs with Parental Advisory Explicit Content⁷³ warnings affixed to the wrapper. Moreover, 58 percent of the students responded that they played video games rated as M⁷⁴ or AO.⁷⁵ The overall percentage of computer/video game players was smaller than the other two media products. This appears to be due to the fact that girls did not play video games in great numbers;⁷⁶ however, 81 percent of all males surveyed in the public school said they played games rated inappropriate for their age group.

The survey also revealed that in all three categories students were not asked their age when purchasing the media products. Moviegoers were more likely to be asked their age than those buying video games or music

71. FTC REPORT, *supra* note 56, at 6 (stating that “PG-13 [means] Parents Strongly Cautioned. Some material may be inappropriate for children under 13. [This] [s]ignifies that the film rated may be inappropriate for pre-teens. Parents should be especially careful about letting their younger children attend. Rough or persistent violence is absent; sexually-oriented nudity is generally absent; some scenes of drug use may be seen; some use of the harsher sexually derived words may be heard.”).

72. *Id.* at 6-7 (stating that R means “Restricted-Under 17 requires accompanying parent or adult guardian (age varies on some locations). [This] [s]ignifies that the rating board has concluded that the film rated contains some adult material. Parents are urged to learn more about the film before taking their children to see it. An R may be assigned due to, among other things, a film’s use of language, theme, violence, sex, or its portrayal of drug use.”).

73. Recording Industry Association of America, Parental Advisory Label (“PAL”) Program, <http://www.riaa.com/issues/parents/advisory.asp>. “The Parental Advisory is a notice to consumers that recordings identified by this logo may contain strong language or depictions of violence, sex or substance abuse. Parental discretion is advised.” *Id.*

74. Entertainment Software Rating Board, Games Rating and Descriptor Guide http://www.esrb.org/ratings/ratings_guide.jsp. (stating that “[t]itles rated M (Mature) have content that may be suitable for persons age 17 and older. Titles in this category may contain intense violence, blood and gore, sexual content and/or strong language.”).

75. *Id.* (stating that “[t]itles rated AO (Adults Only) have content that should only be played by persons 18 years and older. Titles in this category may include prolonged scenes of intense violence and/or graphic sexual content and nudity.”).

76. Only 19 percent of the females surveyed indicated that they played an M or AO rated video game for more than a few minutes in a week, and 42 percent said they played no video games with mature ratings.

2007]

Media Rating Systems

229

CDs. Ninety percent of the students stated that they had not been asked their age when purchasing a video game or music, while only 75 percent of moviegoers were not questioned about their age.

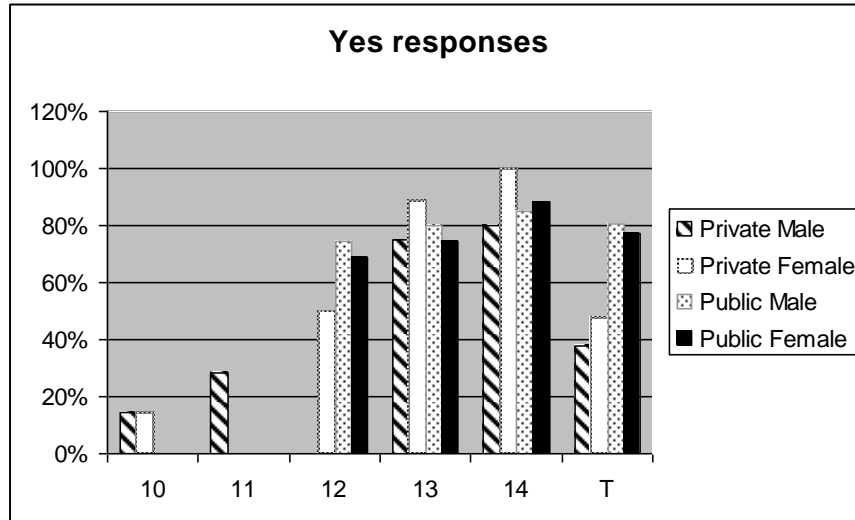
When private and public student responses were compared, noticeable differences emerged. For example, when students were asked how many hours they played M or AO-rated video games in a week, only two of fifty-seven private school students (less than 2 percent) said they played the games for five or more hours in a week. Public students, on the other hand, indicated that of the 284 students playing, 77 percent were playing five or more hours in a week. This disparity between private and public school student responses remained throughout the questions in the media surveys. However, variables, which include educational background, economic differences, and cultural composition, were not studied. Therefore, no conclusions could be drawn from this study. The difference in the media usage between public and private school students indicates this may be an area for future study.

E. Individual Survey Findings

1. Movie Survey Analysis

Responses from teen and pre-teen moviegoers indicated that 73 percent of the students surveyed had attended movies, unaccompanied by a parent, which had been rated by the Film Rating Board of the Classification and Rating Administration as appropriate for a more mature audience. The percentage of students below the age of thirteen who attended PG-13 or R movies was 29 percent of all private school students and 71 percent of all public school students. The total column in Chart A-1 shows that public middle school students of all ages (ten to fourteen) were almost twice as likely to have attended a movie with a PG-13 or R rating without a parent as their private school counterparts.

Chart A-1 *Have you attended a movie rated PG-13 or R without a parent?*



Students were also asked whether they had been asked their age when purchasing a ticket for a movie. Seventy-five percent of all students said they had not been asked. Males were asked their age more frequently than females. The age group most frequently responding that they were asked their age was the eleven year group, but still only 32 percent were asked, and only 26 percent of twelve year olds were asked. A 2000 FTC study entitled “Marketing Violent Entertainment to Children” noted similar results: “[T]he youngest shoppers (13-year-olds) were successful in purchasing the ticket or product at 29 % of [the] movie theaters. . . .”⁷⁷

Students were also asked if they had ever purchased a ticket for a PG or G-rated movie and, instead, attended a PG-13 or R-rated movie. Nineteen percent of all students said that they had (24 percent of fourteen year olds, and 18 percent of twelve and thirteen year olds). Students were asked if they thought that it was a common practice among their peers to attend a PG-13 or R-rated movie when they had purchased a PG or G ticket. The perception of 78 percent of the respondents was that

77. FTC REPORT, *supra* note 56, at 4.

2007]

Media Rating Systems

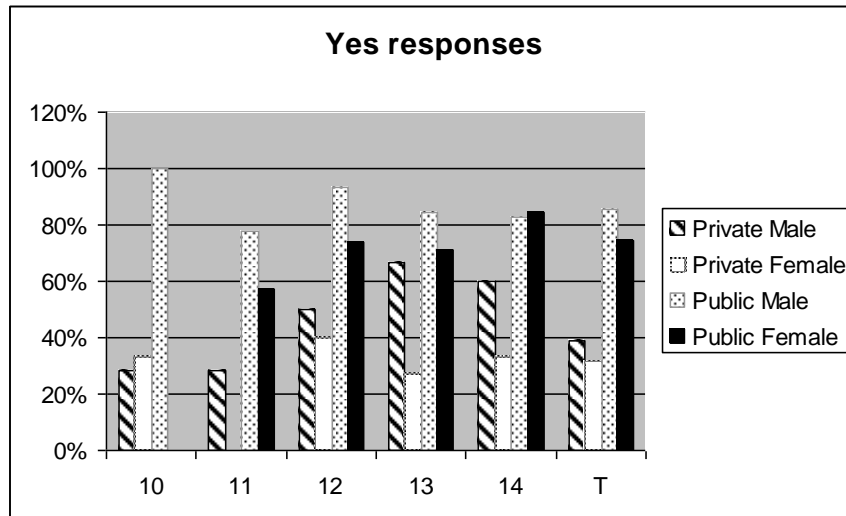
231

students below the age of thirteen commonly engaged in this practice.

2. Music Survey Analysis

Similar to the movie responses, 72 percent of students said they had listened to CDs with the Parental Advisory Explicit Content warnings on them. The public school students said yes on 80 percent of the questionnaires and private school students on 35 percent of the questionnaires. Chart B-1 displays the number of students by age who said yes. Eighty percent of the fourteen year olds said that they listened to CDs displaying warnings. They were followed closely by 76 percent of the twelve year olds and 74 percent of the thirteen year olds.

Chart B-1 *Have you listened to CDs that have the Parental Advisory Explicit Content Warnings on them?**



** When the result for a particular age group was zero, no bar appears on the chart for that group. For example, there is no bar for eleven year old private school females on this chart.

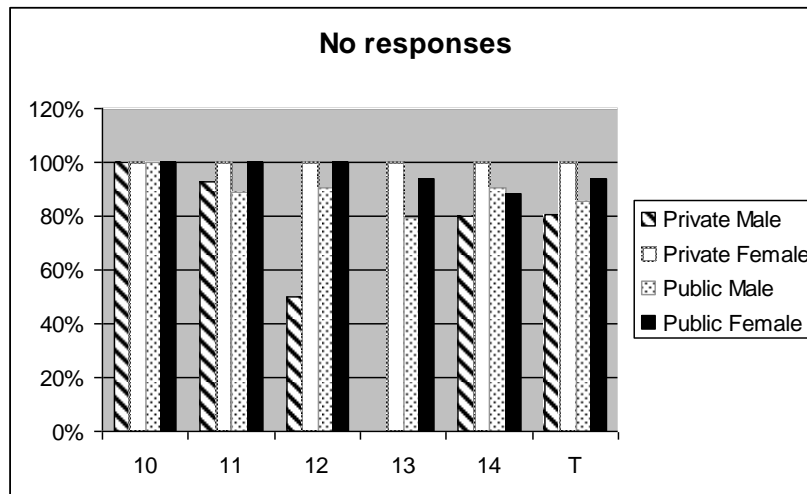
When asked if they commonly listened to CDs with warnings on them, the group least likely to listen to such music was private school males. Only 10 percent said yes. The group most likely to listen to such music was the public school males, of whom 65 percent said yes. Fifty-two percent of all students said that they commonly listened to music

containing warnings while 58 percent of public school students answered yes.

When students were asked whether they had purchased CDs with warnings on them, 44 percent said they had. Again, public school males were the most likely to have purchased them, 56 percent claimed they had done so.

In addition, the students were asked if anyone had asked about their age when buying the CD. Researchers found that 90 percent of all the students said they had not been asked: 95 percent of all eleven year olds and 94 percent of twelve year olds had not been asked. Chart B-2 displays the percentage of each age group who were not asked their age by the person selling the CDs.

Chart B-2 *Have you ever been asked your age when buying a CD?****



***When the result for a particular age group was zero, no bar appears on the chart for that group.

Again, this study followed the FTC's 2000 study, which found that 70 percent of the music stores sold CDs to their youngest shoppers (thirteen year olds) without checking their age.⁷⁸ The same study found that larger music retailers were significantly more likely to sell to young

78. *Id.*

2007]

*Media Rating Systems***233**

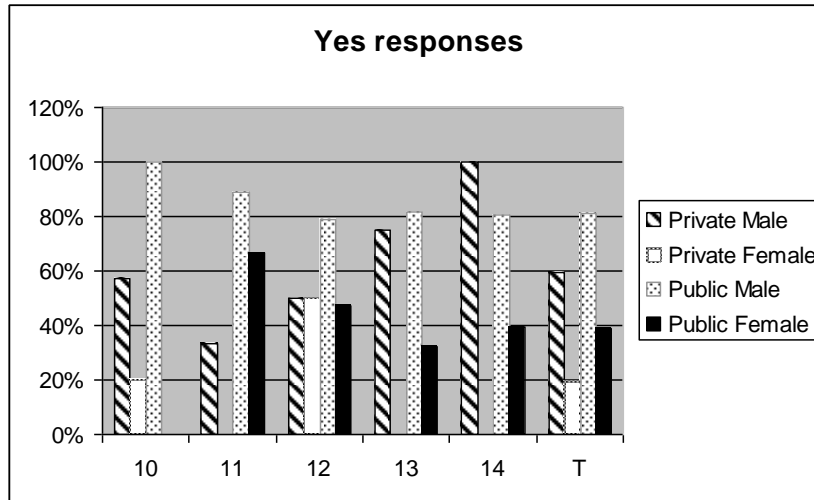
shoppers without checking their age than smaller music retailers.⁷⁹

While it appears that students have no problem buying CDs themselves, we also asked students if they had adults or older teens buy CDs for them; 27 percent indicated they had. This finding indicates that adults seem to ignore the ratings restrictions when buying music for younger children.

3. Video and Computer Game Survey Analysis

The percentage of students who played M or AO-rated video games was not as high as the other two media products surveyed. Fifty-eight percent of all students said that they played the games. The discrepancy between private and public school students was again noted, as was the significant difference between males and females. This product has a greater allure for males than females among both private and public school students. Eighty-one percent of public school male students said they played violent games and 59 percent of private school males replied yes to the question. By contrast, females generally played violent games less often. Only 39 percent of the public school females and 19 percent of the private school females played.

79. *Id.* at 5.

Chart C-1 Do you play M or AO-rated video/computer games?***

*** When the result for a particular age group was zero, no bar appears on the chart for that group.

The students were also questioned about the amount of time they played the M or AO-rated games. When asked if they played games more than two hours a day, 21 percent of all students said yes. Eighteen percent of the eleven and twelve year olds, and of the male public school students 35 percent said they played more than two hours a day. Forty-one percent of the 278 students who played M or AO-rated games played more than three hours weekly, and 29 percent said they played five or more hours weekly.

In the 2000 study, the FTC found that the Entertainment Software Ratings Board, a self-regulatory body that assigns and enforces advertising ratings, assigned an M rating to only 7 percent of all video games and less than 1 percent were given an AO rating.⁸⁰ Despite the small percentage of games with the M and AO ratings, 47 percent of the students in our study said they owned an M or AO-rated video or computer game and 67 percent of male public school students owned

80. *Id.* at 38 (stating that the ESRB reported that only 7 percent of videos were given a rating of M and only 1 percent rated AO). The FTC found that the video game industry was the only industry that had a rule against pitching a game to those under the age of the rating but despite the rule 70 percent of M rated games were targeted to children under the age of seventeen. *Id.* at ii and iv.

2007]

Media Rating Systems

235

one. Thirty-seven percent of the students said they had someone else purchase the game for them and 20 percent said they purchased the games themselves. Of the students who purchased their own games, 90 percent were not asked their age when making the purchase.

Despite claims by the entertainment rating industry that it is keeping a close watch on the products put into the hands of children, our study showed that children have no problem obtaining products that the industry labels as inappropriate for their age. There appears to be little effort by retailers to enforce any of the ratings by the industry.

The results showed a difference in the media habits of children in private schools versus public schools. However, there were too many variables to draw conclusions. The cities where students attended school had a different makeup and no data on home life was available. The fact that the differences were notable indicates that a more in-depth study would be beneficial to draw more definite conclusions.

IV. CONCLUSION

Most forms of electronic media entertainment now carry some sort of voluntary rating system. Television, motion pictures, musical recordings, and video games are all subject to a self-imposed industry rating system. These rating systems recognize that there is much media entertainment programming that is unsuitable for children. But the imposition of these systems also serves a self-interest of the various media industries. By adopting some type of regulatory system, self-imposed though it may be, the media industry hopes to avoid or forestall more stringent or demanding governmental regulations. Moreover, when the government does attempt to regulate certain harmful or offensive media programming, the subject industries can argue that the problem is already being addressed by a less-intrusive and voluntarily adopted rating system.

The study described in this article, although narrowly focused, suggests that the voluntary measures undertaken by the media are not nearly as successful in achieving their stated goals as might otherwise be claimed. The results of this empirical study indicate that children are indeed being exposed to various media products that, according to the rating system, are inappropriate for those children. Despite the media's continual promotion of its various rating systems, the present study

suggests those systems may be ineffective at best. Moreover, the rating systems could actually cause harm in that parents rely on them to prevent their children's exposure to unwanted media programming.