



**TESTIMONY OF KYLE McSLARROW  
PRESIDENT AND CEO  
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**on**

**IMAGES CHILDREN SEE ON THE SCREEN**

**before the**

**SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET  
UNITED STATES HOUSE OF REPRESENTATIVES  
WASHINGTON, D.C.**

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## **I. INTRODUCTION**

Chairman Markey, Ranking Member Upton and Members of the Subcommittee, my name is Kyle McSlarrow and I am President and CEO of the National Cable & Telecommunications Association. NCTA is the principal trade association for the cable television industry in the United States, representing cable operators serving more than 90 percent of the nation's cable TV households and more than 200 cable program networks. The cable industry is also the nation's largest broadband provider of high speed Internet access after investing \$110 billion over ten years to build out a two-way interactive network with fiber optic technology. Cable companies also provide state-of-the-art digital telephone service to millions of American consumers. Thank you for inviting me to testify today about the images that children see on the screen.

The cable industry understands the concerns that have been expressed by Members of Congress, the FCC and other groups about the impact of television content on our children and families and takes seriously its role in addressing these concerns.

Cable television has greatly expanded not only the number but also the variety of viewing options available to America's television households. Before cable, most households spent the majority of their time watching three over-the-air broadcast networks, all of which sought to maximize advertising revenues by providing programming that would attract the greatest number of viewers. Cable fundamentally changed this business model by seeking to attract the greatest number of customers by providing the broadest range of programming options. Many cable program networks target audiences with particular interests and tastes, providing content that could never have been provided by broadcast networks seeking to appeal to everybody rather than the

unique interests of niche audiences. As a result, cable has transformed television into a medium that enables individuals to choose the entertainment, information and cultural offerings that suit their tastes, needs and interests.

Children and families, in particular, have benefited from this expanded breadth and diversity of programming, as cable challenged the three-network status quo and gave birth to programming services designed specifically for them. Program networks such as Nickelodeon, Discovery Kids, Disney Channel, PBS Kids Sprout and Toon Disney are 24-hour cable networks devoted solely to children. They provide hundreds of hours of high-quality, age-appropriate programming that educates, informs and entertains. In addition to these networks designed for children, cable provides an abundance of opportunities for the whole family to watch television together. ABC Family, National Geographic, and the Hallmark Channel are just a few of the dozens of examples of services that provide family-friendly programming and that make cable a great place for families to find appropriate fare any time of the day.

In short, the cable industry has done more to provide programming choices for families and children than any other industry. We're pleased to provide this kind of quality family programming, but we know that not all TV content is appropriate for all age groups. We take seriously our responsibility to ensure that parents have the tools they need to decide what is suitable for their families and to prevent their children from watching programming that they deem unsuitable. That's why the cable industry has developed and deployed technology to allow parents to manage TV content, and launched a number of initiatives designed to help families deal with our complex media environment. As cable technology has evolved, operators and programmers have

developed increasingly effective – and increasingly easy – ways for parents to take control of their children’s television viewing. Digital Video Recorders and Video on Demand are also tools that parents use to manage what their children watch on television. Continued technological improvements and the increasing pace of consumers’ shift to digital will ensure that all viewers have the ability to control the programming their families see.

## **II. THE CABLE INDUSTRY PROVIDES PARENTAL CONTROLS THAT ARE EASY TO USE**

The cable industry has ensured that technology is available to enable customers to block access to programming they believe is unsuitable for their children. The Cable Communications Policy Act of 1984 requires cable operators to make such technology available, “by sale or lease,” to subscribers upon request. And in 2004, leading cable companies, including the 10 largest cable operators serving more than 85% of the nation’s cable subscribers, went further by agreeing to provide such technology free of charge to subscribers who request it.

Customers who opt for digital cable service, and more than 50 percent of cable subscribers have made the switch to digital cable, are given even greater control over the programming their children see. Digital set top boxes are equipped with advanced parental controls that can block individual programs based on title, time and date, and TV or movie rating. Electronic program guides provide better information about specific programming, including its TV rating, and can be used in conjunction with parental control tools to block programming. In addition, virtually all television sets manufactured since 2000 are equipped with a “V-chip,” which empowers parents to block programming based on its TV rating.

However, for such blocking technology to be an effective tool, parents need to be able to identify in advance the programs that they want to block, the technology needs to be easy to use, and parents need to know how to use it. The cable industry has taken significant steps to meet each of these prerequisites. With ratings and program guides, program networks and operators make it easy to identify programming that may, in one respect or another, be deemed unsuitable for children. And when customers have identified channels or programs that they do not want their children to see, those channels can be easily blocked by the technology that cable operators make available. Indeed, such blocking typically requires only a few clicks of the customer's remote control.

The key to identifying potentially unsuitable content in advance is the ratings system developed by the cable, broadcast and motion picture industries in conjunction with the deployment of V-chips in television sets. Almost all cable programming (other than news, religious, and sports) is rated to identify the age-appropriateness of the programming and, where appropriate, specific types of material (*e.g.*, language, sexually-oriented material, depictions of violence) that is included in the programming. TV ratings are encrypted into the programming so that they can be identified by the V-chip. Once a parent enables the V-chip and decides what TV ratings they want to block, no programming with that rating will be viewable on that TV set. These settings can be changed at any time, or disarmed temporarily, to give adults in the house the ability to view their favorite programs.

In addition, TV ratings are visually displayed on the TV screen at the beginning of rated programs. They are also included in electronic program guide information so that cable customers can make viewing decisions for their family or use blocking

technology to ensure that unsuitable programming cannot be watched. In June 2005, as part of the cable industry's "Take Control. It's Easy." campaign (discussed further below), cable programmers made two major improvements to the TV ratings system to make the ratings more prominent and to help parents better understand whether the content of a specific program is appropriate for children. First, the size of the ratings icon that is displayed on the TV screen at the beginning of rated shows has been enlarged to make it more visible. Second, a ratings icon is being inserted on the screen after each commercial break to remind viewers of a program's rating throughout the duration of the program.

### **III. CABLE EFFORTS TO EDUCATE PARENTS ABOUT PARENTAL CONTROL TOOLS**

Making sure that consumers know how easy it is to use the readily available blocking technology is the final component that ensures that parents can limit what their children watch. Over the past decade, the cable industry has launched a number of initiatives to achieve this goal.

In 1994, NCTA and Cable in the Classroom, the cable industry's education foundation, formed a partnership with the National PTA to offer media literacy training across the country. This initiative provides resources to parents and teachers in order to help families critically examine media messages and make informed judgments and decisions about media use. Cable in the Classroom collaborates with the National PTA and other partners to produce and distribute media literacy materials that help parents learn how to get the most out of media while mitigating its potentially negative effects.

Since 1997, the cable industry has developed and distributed informational materials to increase public awareness of the TV ratings and V-chip. Often working in

conjunction with other television industry organizations and interested advocacy groups, the industry has created and aired public service announcements, established a website ([www.tvguidelines.org](http://www.tvguidelines.org)), created information for the FCC's Parent's Place ([www.fcc.gov/parents](http://www.fcc.gov/parents)) and distributed brochures aimed at helping parents understand and use the TV ratings system and the V-chip.

In March 2004, we launched the "Cable Puts You in Control" initiative, where leading cable operators pledged to provide free channel blocking technology to customers who don't have the means to block unwanted programming from being viewed in their home. This campaign also included a consumer outreach element designed to heighten awareness of the tools and resources cable provides to help families make educated decisions about television viewing. NCTA and Cable in the Classroom created a new website – [www.ControlYourTV.org](http://www.ControlYourTV.org) – to serve as a clearinghouse for information about the parental controls contained in cable set top boxes, the TV ratings and V-chip and media literacy. The site also includes a sample of cable programming from which families can choose and TV viewing tips for parents.

In April 2005, we announced a much broader set of initiatives to provide families with even more tools and resources to manage their home viewing environment and protect children from programming their parents may find inappropriate for them. Featuring the tag line "Take Control. It's Easy," the campaign emphasizes that parental control tools provided by cable operators are accessible and easy to use. Major elements of this campaign include:

- **\$250 million PSA campaign** – More than 100 program networks and thousands of local cable systems committed to air new Public Service Announcements (PSAs) in markets across the country, donating air time valued at \$250 million over 12 months. The PSAs are designed to inform consumers about cable's

parental controls, the TV ratings and V-chip, and direct consumers to the industry's website, [www.ControlYourTV.org](http://www.ControlYourTV.org), for more information. Since making this pledge in 2005, the value of the airtime contributed to PSAs by cable programming services and cable systems combined has exceeded \$300 million, with millions more dollars in commercial airtime being added to this total every month.

- **Enhanced TV Ratings** – As discussed above, cable programmers committed to increase the size of the TV ratings icon that is displayed on the TV screen at the beginning of rated shows, and to insert a TV ratings icon after each commercial break.
- **“Control Your TV” Events** – Local cable systems committed to host 100 local “Control Your TV” community events (which has been far surpassed) throughout the country to provide information about using cable’s parental control tools, and the TV ratings and V-chip. Many of these events were coordinated with, and attended by, Members of Congress.
- **Comprehensive Customer Outreach Efforts** – Cable operators committed to improve customer notification about the availability of parental control tools by providing materials and instructions to new and upgrade customers, notifying customers about parental controls through statements in cable invoices, and adding “one click” access to parental control information to the home page of company websites. Additionally, NCTA agreed to re-launch the ControlYourTV.org website with new materials providing instructions for using cable’s parental controls.
- **Free Blocking Technology** – Leading cable operators reaffirmed their commitment to provide free channel blocking technology to customers who currently don’t have equipment that allows them to control the flow of programming into their homes.
- **Retail Partnership** – Leading cable operators agreed to explore partnerships with Best Buy and Circuit City stores throughout the U.S. and to seek ways to add informational materials about cable’s parental controls to in-store displays.

And last year, the cable, broadcast, consumer electronics, motion picture, and satellite industries combined to launch a multi-million dollar campaign coordinated by the Ad Council to further increase awareness of the TV ratings system and the tools that are available to parents to help them control what their children watch on television.

Components of this large-scale effort include TV and radio public service

announcements, developed by the Ad Council, that explain parental control options. These PSAs are currently being run during advertising time donated by the media companies involved in the effort. The campaign also includes print ads and a comprehensive website, [www.TheTVBoss.org](http://www.TheTVBoss.org), where parents and other consumers can find useful information about managing media in their homes, including information on parental controls, television ratings, and the V-chip.

#### **IV. LEGISLATION TO BAR OR RESTRICT CERTAIN CONTENT WOULD NOT PASS CONSTITUTIONAL MUSTER**

Taken together, these commitments, along with the blocking technology available to cable customers at no charge, provide parents in cable households with the tools they need to prevent their children from viewing programming that is inappropriate for them. These blocking tools may not, of course, be wholly foolproof. There is always the possibility that a clever child may figure out how to unblock a program, or that parents may inadvertently fail or forget to block a program that they would not want their children to see. As the United States Supreme Court has itself noted with respect to cable's blocking technology, in *Denver Area Telecommunications Consortium, Inc. v. FCC*, 518 U.S. 727, 759 (1996), "No provision, we concede, short of an absolute ban, can offer certain protection against assault by a determined child."

But, according to the Court, "[w]e have not, however, generally allowed this fact alone to justify 'reduc[ing] the adult population . . . to . . . only what is fit for children.'" *Id.*, quoting *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115, 128 (1989), *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 73 (1983), and *Butler v. Michigan*, 352 U.S. 380, 383 (1957). As the Court subsequently made clear in *U.S. v. Playboy Entertainment Group, Inc.*, 529 U.S. 803 (2000), if blocking technology is an effective –

even if not foolproof – means of achieving the government’s legitimate interest in protecting children from the harmful effects of programming that their parents do not want them to see, the Court has held that more restrictive measures that bar or restrict the availability of such programming to households that may want to view it are prohibited by the First Amendment.

In that case, the Court set forth clear principles for determining the permissibility, under the First Amendment, of restrictions on cable programming that, while not “obscene,” may nevertheless be inappropriate for children:

- First, the Court made clear that restrictions that applied specifically and uniquely to programming on the basis of the programming *content* is subject to “strict scrutiny” – the least deferential and most rigorous standard of First Amendment review. It must be justified by a *compelling* government interest, must be “narrowly tailored” to promote that interest, and must be the *least restrictive* means of achieving that interest. Under this standard, as the Court acknowledged, “[i]t is rare that a regulation restricting speech because of its content will ever be permissible.” 529 U.S. at 818.
- Second, the Court noted that even if certain content is not completely barred but is restricted to certain hours, strict scrutiny still applies: “It is of no moment that the statute does not impose a complete prohibition. The distinction between laws burdening and laws banning speech is but a matter of degree. The Government’s content-based burdens must satisfy the same rigorous scrutiny as its content-based bans.” 529 U.S. at 813.
- Third, the Court found that even where the government has a compelling interest in protecting children from certain inappropriate programming such as indecency, the fact that “[c]able systems have the capacity to block unwanted channels on a household-by-household basis” is a “key difference between cable television and the broadcasting media.” 529 U.S. at 815. “Simply put, targeted blocking is less restrictive than banning, and the Government cannot ban speech if targeted blocking is a feasible and effective means of furthering its compelling interest.”

These standards make clear that, in light of blocking tools available to cable households and the steps taken by cable operators and program networks to ensure that

those tools are easily understood, usable and effective, legislation that bars the availability of indecent or violent programming to *all* adults *and* children would violate the First Amendment rights of cable operators and programmers. Let me be clear: the First Amendment does not prevent Congress from protecting children from indecent and inappropriate programming. But government must do so in a way that utilizes less speech-restrictive means when they are available, and that's the case here.

**V. THE FCC'S RECENT REPORT ON TV VIOLENCE CONTAINS NO LEGAL ANALYSIS OF THE CONSTITUTIONAL AUTHORITY TO REGULATE VIOLENT CONTENT ON SUBSCRIPTION-BASED CABLE AND SATELLITE TV SERVICES**

Numerous courts at all levels have rejected attempts to regulate portrayals of violence in literature, movies and video games. As one court observed, "every court that has considered the issue has invalidated attempts to regulate materials solely based on violent content, regardless of whether that material is called violence, excess violence, or included within the definition of obscenity." *Davis-Kidd Booksellers v. McWherter*, 866 S.W.2d 520, 531 (Tenn. 1993). In contrast, the FTC's recent report on marketing violent media to children contained a more detailed legal analysis and concluded that "[g]iven important First Amendment considerations, the Commission supports private sector initiatives by industry and individual companies." The FCC's recent violence report pays no attention to these considerations in its recommendations.

In particular, the FCC report fails to adequately recognize that the availability of sophisticated parental control technology offered by cable and DBS makes it highly unlikely that regulation of TV violence would sustain judicial scrutiny. The FCC claims that these user-controlled solutions are inadequate, and therefore Congress should pass a law. This unsupported conclusion ignores the relevant case law, from the U.S. Supreme

Court and others, which requires careful consideration of less restrictive alternatives. It also ignores the practical experience of parents in using controls to decide which content is appropriate for their households.

**VI. MANDATED A LA CARTE WOULD NOT BE AN EFFECTIVE TOOL FOR PARENTS IN MANAGING CONTENT, WOULD HARM CONSUMERS AND THREATEN PROGRAM DIVERSITY**

Government mandated a la carte is bad for cable consumers, who would wind up paying higher prices to receive fewer programming choices than they get today. Most studies conclude that a mandated a la carte regime would be more expensive for consumers and result in less diversity in programming.

Additionally, mandated a la carte would do little to help parents protect their children from programming they deem unsuitable. Many individual cable and broadcast networks offer a variety of programming choices, some of which might not always be appropriate for everyone in the family. In its 2004 report on a la carte, the FCC's Media Bureau found that a la carte was a "particularly blunt instrument" for blocking objectionable content. It concluded that regulatory and technology options already exist and are better suited for controlling content.

Ironically, mandating a la carte distribution of cable networks to allow only family-friendly networks will put at risk the very family-friendly programming available today on networks such as Disney Channel, Hallmark Channel and Discovery Channel, leaving families with fewer viewing options. That's because the number of homes that would buy these networks would immediately shrink, raising their individual cost – in a downward spiral leading to ever lower penetration and ever higher prices to account for decreased penetration. Even the FCC's Further Report on a la carte confirms that an a la

carte regime will likely diminish diversity and minority-interest programming. The report acknowledges that bundling gives cable operators incentives “to add niche programming that appeals to a small set of subscribers rather than add additional mainstream programming that provides greater total value to consumers” and that, in contrast, a la carte would be likely to provide more “mainstream” programming and less “niche” programming.

Lastly, in order to survive in an a la carte environment, networks would be forced to spend substantially more money to constantly market their channel and emphasize programming that attracts subscribers. This could result in an increase in edgier, sensational programming, which, ironically again, could lead to more sex and violence on TV.

Because it has all these adverse effects on the programming options available to consumers, *and* because there are equally effective – and less restrictive – tools available to enable parents to control the content available to their children, mandatory a la carte would not only be a particularly ill-suited but also an unconstitutional approach.

## **VII. CONCLUSION**

Mr. Chairman, in addition to offering the widest diversity of programming that viewers of all ages can enjoy, cable companies believe they have an important responsibility to provide customers with the necessary tools and resources to manage content that they deem offensive.

Since parents are best suited to make decisions about the appropriateness of TV programs for their household, the industry has dedicated itself to providing customers with easy-to-use tools that both inform parents about TV content and allow them to easily

block unwanted programs. The combination of technology built into set top boxes that the majority of cable customers already have, plus an enhanced TV ratings system, enable parents to take charge of their home viewing environment.

And cable companies remain committed to airing PSAs in markets across the country, donating valuable air time, as part of the industry's multifaceted effort designed to inform all customers about the tools they already have to make appropriate viewing decisions for their family.

Mr. Chairman, thank you again for inviting me to testify on this important matter. I would be happy to answer any questions you or the Members of the Subcommittee may have.