

PRIVATE INTERESTS IN “PUBLIC INTEREST” PROGRAMMING: AN ECONOMIC ASSESSMENT OF BROADCASTER INCENTIVES

JAMES T. HAMILTON[†]

INTRODUCTION

Throughout the 1980s the metaphor of the market guided the decisions of the Federal Communications Commission. Then-Chairman Mark Fowler declared that television was simply a “toaster with pictures” and adopted the position that the same market mechanisms which work in the market for private goods (such as toasters) would also work in the broader information marketplace of television broadcasting.¹ To those who bemoaned the lack of public affairs or educational programming, he pointed out that viewer preferences determined programming outcomes and that any lack of programming stemmed from a lack of demand. As he put it: “The public’s interest, then, defines the public interest.”²

The current FCC Chairman, Reed Hundt, now proposes a clear departure from the regulatory bargain of the 1980s. Chairman Hundt’s article outlines a much different vision of the television marketplace and consequently a different definition of broadcasters’ property rights.³ Chairman Hundt suggests that the broadcast license should be an explicit contract between the government and a broadcast television station incorporating clearly enunciated standards with which the FCC will determine license renewal.⁴ Accordingly, stations will not be able to satisfy the terms of their licenses simply by responding to market forces. Fur-

[†] Director, Duke Program on Violence and the Media, and Assistant Professor of Public Policy, Economics, and Political Science, Sanford Institute of Public Policy, Duke University.

1. Bernard D. Nossiter, *The FCC’s Big Giveaway Show*, THE NATION, Oct. 26, 1985, at 402.

2. Mark S. Fowler & Daniel L. Brenner, *A Marketplace Approach to Broadcast Regulation*, 60 TEX. L. REV. 207, 210 (1982).

3. Reed E. Hundt, *The Public’s Airwaves: What Does the Public Interest Require of Television Broadcasters?*, 45 DUKE L.J. 1089 (1996).

4. *Id.* at 1096.

thermore, the Chairman urges, if broadcasters do not voluntarily label violent programming, Congress should pass legislation that channels such violent programming to safe harbor hours when children are less likely to be in the viewing audience.⁵ Broadcasters would have the option of showing violent programs in times outside the safe harbor only if they rate these programs so that they can be blocked by a television component capable of screening rated programs.

The reversal of the FCC's laissez-faire approach to broadcasters could be caricatured as a resurgence of progressive paternalism, in which government regulators attempt to influence people to watch more programs approved by the FCC. The notion of an active FCC specifying additional limits on programming may also suggest a return to command and control regulation, at a time when Congress is deregulating many other communications channels. This Comment argues, however, that attempts to influence the amount of educational programming for children, public affairs coverage, and indecent or violent programming are all aimed at remedying, rather than creating, market failures. Part I demonstrates how, in each of these areas, the pursuit by individuals of their private interests leads to outcomes less than optimal to the interests of society as a whole (as defined by the economist's standard of efficiency). Part II asserts that social science theory and evidence in each of these areas indicate the direction for improvement but cannot quantify the exact magnitude of the harm, thereby affording no guarantee that all government actions aimed at correcting these market failures will actually improve outcomes. However, Part III proposes that using the provision of information as a regulatory tool in this area holds out the prospect of better programming outcomes with fewer dangers of overregulation. The Comment concludes by arguing that theory and evidence indicate the potential for one particular mechanism for the provision of information, the V-chip, to alleviate some of the problems inherent in the current definition of property rights in broadcasting.

5. *Id.* at 1120. On Feb. 29, 1996, broadcasters and cable networks did announce a plan to rate their programs voluntarily. See Alison Mitchell, *TV Executives Promise Clinton a Violence Ratings System by '97*, N.Y. TIMES, Mar. 1, 1996, at A1.

I. A PROBLEM OF MASS APPEAL OR MARKET FAILURE?

Broadcast television stations, by the terms of their licenses, are supposed to broadcast in the "public interest, convenience, and necessity."⁶ Chairman Hundt notes that Congress has specifically taken action in four areas to provide guidance on how this broad requirement should be interpreted: educational programming for children; public affairs programming (specifically political campaign ads); indecent programming; and violent programming.⁷ There are, however, those who object to the imposition on broadcasters of strict regulations even in these areas. In the case of children's programming or public affairs coverage, a standard reply to complaints about an insufficient quantity of such programming is that these topics lack mass appeal. In the case of indecent or violent programming, on the other hand, the argument is made that these remain popular programs because they do have mass appeal. Complaints about the quality or quantity of shows in these fields are often criticized as arguments with the tastes of the viewing public.

Debates over program content should start with an analysis of the economics of the television market. Each of these programming areas is characterized by a particular type of market failure involving the presence of externalities, which are costs or benefits to society that may not be reflected in the decisions of individuals.⁸ Economists formally define externalities as existing when two conditions are met:

Condition 1: An externality is present whenever some individual's (say A's) *utility* or *production* relationships include real (that is, nonmonetary) variables, whose values are chosen by others (persons, corporations, governments) without particular attention to the effects on A's welfare. . . .

6. 47 U.S.C. § 309(a) (1988).

7. See Hundt, *supra* note 3, at 1089-90.

8. Bruce Owen and Steven Wildman detail many of the problems (from a social welfare perspective) associated with television markets, although they do not focus on the externality arguments advanced here. See BRUCE M. OWEN & STEVEN S. WILDMAN, VIDEO ECONOMICS (1992). Summarizing the results of models of broadcast and cable competition, they conclude that "[r]elative to the viewer benefits provided, both advertiser-supported television and pay television have three biases: against programs that cater to minority-interest tastes, against expensive programs, and in favor of programs that produce large audiences." *Id.* at 148.

Condition 2: The decisionmaker, whose activity affects others' utility levels or enters their production functions, does not receive (pay) in compensation for this activity an amount equal in value to the resulting benefits (or costs) to others.⁹

Educational programming for children and public affairs coverage provide positive externalities, which generally means that such programming will be underprovided in comparison to a marketplace where their full benefits were reflected in the decisions of private actors. Indecent and violent shows generate negative externalities, which means they will generally be overprovided in comparison to a property rights regime under which the social costs of these shows were incorporated in programming and viewing decisions.¹⁰ Consider the logic behind the viewing and broadcasting decisions in each of these areas.

A. *Educational Programming For Children*

Parents concerned about the educational development of their children may seek out educational shows for their children to watch. These parents trade off the costs of guiding children to educational programs (which include the time involved in learning which shows are educational) with the private benefits their children may gain from lessons learned by viewing. An additional set of benefits from a child's education, such as the increased probability that the child will become a productive citizen, accrue to society at large. However, parents do not fully internalize these benefits to society in their decisionmaking about how much to invest in guiding their children to educational programming. Thus, there will be fewer children in the audience for these shows than if all the benefits of these programs were reflected in parental

9. WILLIAM J. BAUMOL & WALLACE E. OATES, *THE THEORY OF ENVIRONMENTAL POLICY* 17-18 (1988).

10. Print coverage also generates positive and negative externalities, which raises the question of why broadcasters' externalities may be viewed differently from those of print media. Indecent and violent programming may be more accessible to young children than similar print material, thus drawing more attention to the issue of shielding children from such broadcast programming. Discussion of the positive externalities generated by educational children's programming or broadcast coverage of public affairs often occurs in debates over the "price" broadcasters should pay for their use of the spectrum. See, e.g., Edmund L. Andrews, *Digital TV, Dollars and Dissent: The Political Battle Grows Over the Use of New Broadcast Technology*, N.Y. TIMES, Mar. 18, 1996, at D1. If the spectrum were auctioned, broadcasters would likely face lower (or no) expectations in terms of public interest programming.

decisionmaking. Fewer children means less interest on the part of advertisers or cable operators, resulting in reduced incentives for broadcasters or cable operators to offer educational programs relative to incentives to offer entertainment programming for children. This does not mean that broadcasters or cable operators will fail to offer any educational programming for children. It simply means that the incentives they face in the marketplace will lead them to offer, from society's point of view, a less-than-optimal amount of educational programming.

B. *Public Affairs Coverage*

In the context of public affairs, Anthony Downs' theory of "rational ignorance" helps to explain the less-than-optimal levels of demand for and provision of informational programming. Downs developed the concept of rational ignorance to describe the levels of information most citizens have about the details of most policy issues.¹¹ According to the theory, the same logic of free riding which discourages voter turnout operates in the market for public affairs coverage. Downs emphasized that the markets for business, consumer, and entertainment information work relatively well because individuals cannot enjoy the benefits of these types of information without consuming the information themselves.¹² Yet when it comes to the market for information that allows people to function as citizens, the small likelihood that an individual's political action will have any significant impact leads to individual incentives that discourage people from expressing a strong demand for information that might aid their voting decisions.¹³

Downs demonstrated that a voter, when deciding how much information about the details of policy he will demand, is trading off the benefits and costs of becoming informed.¹⁴ There may be

11. In describing the incentives individuals have to learn about public policy, Downs concluded that "[i]n general, it is irrational to be politically well-informed because the low returns from data simply do not justify their cost in time and other scarce resources." ANTHONY DOWNS, *AN ECONOMIC THEORY OF DEMOCRACY* 259 (1957). Political scientists now refer to this as the "rational ignorance" hypothesis. For a debate over the validity of this claim, see DONALD P. GREEN & IAN SHAPIRO, *PATHOLOGIES OF RATIONAL CHOICE THEORY: A CRITIQUE OF APPLICATIONS IN POLITICAL SCIENCE* 94-97 (1994).

12. See DOWNS, *supra* note 11, at 215.

13. *Id.* at 253-55.

14. *Id.* at 208-19.

a large difference for a voter between the positions of Candidate A versus Candidate B, and there may even be a high probability that additional information would help the voter make the correct voting decision (from the voter's perspective) between the candidates. In most elections, however, the probability that one's vote will be decisive is minuscule. The costs of becoming informed, however, are not negligible, because they involve the opportunity cost of time involved in viewing and the additional costs of charges that may be imposed to obtain such viewing material. The net benefits of becoming informed about the details of policies, defined as: (Benefit of Candidate A versus Candidate B) x (Increase in probability that voter makes the correct decision) x (Probability vote is decisive) - (Costs of becoming informed), is negative for nearly all individuals.¹⁵ Thus, individuals "rationally" choose to remain ignorant of the details of policy, which translates into lower incentives for broadcast and cable coverage of these issues. On the other hand, if broadcasters were led to internalize the gains to voters from becoming informed about policies, then coverage of the details of policies would increase.

Despite Downs' predictions about political participation, some people do vote and some people do watch public affairs programming. For some individuals, the ideological satisfaction of "doing the right thing" may lead them to the voting booth. To the extent that such individuals feel a duty to become informed about their vote, there will also be an expressed demand for public affairs reporting. Moreover, the human elements and sporting nature of politics lead many people to view political news as entertainment. This means that the private market for entertainment will provide coverage of politics as human drama (thus the prevalence of character issues) or as a horse race (thus the preoccupation with "who's ahead").¹⁶ However, voters are likely to choose to remain rationally ignorant about the *details* of many policies even as they express a demand for politics as theater and sport. Thus, the amount of detailed public affairs programming is likely to stay below the socially optimal level.

15. *Id.* at 240-59.

16. For an introduction to recent research on political coverage, see STEPHEN ANSO-LABEHERE ET AL., *THE MEDIA GAME: AMERICAN POLITICS IN THE TELEVISION AGE* (1993).

C. *Indecent or Violent Programming*

Both indecent and violent television programs may involve negative externalities if they are viewed by children. Because the logic behind the production and viewing of such programs is similar in some ways, this section will focus on violent programming. The social science literature suggests that viewing violent television programs may lead some children in the short run to behave more aggressively and in the long run to behave more violently.¹⁷ However, the social costs from crime and aggression engendered by television are not reflected in the programming calculus of broadcasters or advertisers. Instead, a broadcaster considering whether to air a violent program will calculate the number of likely viewers and multiply this figure by the advertising revenues realized by marketing these viewers to advertisers. In simplified terms, profits from the program are: (Advertising rate per thousand viewers x Number of thousands of viewers) - (Production costs of the program), and broadcasters will choose to air programs that maximize these profits. On the other hand, if broadcasters factored in the expected costs of violence to society in their programming decisions, returns on these shows would be lowered and their production made less likely.¹⁸

If violence on television does generate violence in society, why not rely on parents to monitor their children's consumption? Here again the calculus by individuals of their private interests leads to social outcomes that are not fully optimal. Parents will consider the benefits to their children's development that may result from shielding them from violent programming, but they likely will not consider the additional benefits to society—lower expected overall crime and punishment costs—that would also arise. The costs of monitoring consumption can be high; parents must search out information on program content and then monitor television use

17. See GEORGE COMSTOCK WITH HAEJUNG PAIK, TELEVISION AND THE AMERICAN CHILD 236-39 (1991); JAMES T. HAMILTON, COMMISSION ON RADIO AND TELEVISION POLICY, VIOLENCE AND THE MEDIA: RESEARCH PERSPECTIVES AND POLICY IMPLICATIONS 3-13 (1994); MATTHEW L. SPITZER, SEVEN DIRTY WORDS AND SIX OTHER STORIES 95-118 (1986); Barrie Gunter, *The Question of Media Violence*, in MEDIA EFFECTS: ADVANCES IN THEORY AND RESEARCH 163 (Jennings Bryant & Dolf Zillman eds., 1994).

18. Formal models of the economics of violent programming and tests of these models can be found in James T. Hamilton, *Channeling Violence: The Economic Market for Violent Television Programming* (1996) (unpublished manuscript, on file with author).

by children. Faced with these incentives, even parents who believe that violent programming is damaging to their children will engage in less than the ideal amount of television monitoring.

In each of these areas, individuals following their own private viewing or broadcasting interests generally will fail to incorporate all the benefits and costs to society in their decisions. Thus, the pursuit of private interests leads to inefficient outcomes, which are often characterized as failures of the "public interest."¹⁹

II. THE DIRECTIONS, BUT NOT THE DETAILS, OF POLICY ARE CLEAR

Economic theory indicates that educational programming for children, public affairs coverage, and indecent and violent programming all exhibit market failures. Because of these failures, the programs that generate positive externalities are underprovided while those generating negative externalities are overprovided. Social science research to date cannot determine the exact magnitudes of the market failures.²⁰ Nonetheless, the inability to quantify the precise measure of adjustment needed should not deter government officials from taking some corrective action in these areas.

For example, if broadcasters are required, in exchange for spectrum use, to show more programs that generate positive externalities, viewers will still not watch them in amounts that are optimal from society's perspective. However, more program offerings should draw more viewers to these types of programming, and thus would at least bring viewership closer to socially optimal levels. Moreover, if fees from a spectrum auction were designated for programming in these areas (through a fund for public broad-

19. The term "public interest" is placed in quotations in parts of this Comment because it has a specific definition in economic discourse: a social welfare function that aggregates individual preferences into a social decision that satisfies a set of conditions about rationality and fairness. Ken Arrow established that such a function does not exist, so that in this sense the "public interest" does not exist. See DANIEL A. FARBER & PHILIP P. FRICKEY, *LAW AND PUBLIC CHOICE: A CRITICAL INTRODUCTION* 38-42 (1991). When terms such as "optimal" and "ideal" are used in this Comment, the judgment of broadcasting outcomes is based on the criteria of economic efficiency.

20. For a review of literature focusing on the magnitude of the impact of violence programming, see generally GEORGE COMSTOCK & HAEJUNG PAIK, NATIONAL RESEARCH COUNCIL, *THE EFFECTS OF TELEVISION VIOLENCE ON AGGRESSIVE BEHAVIOR: A META-ANALYSIS* (1990) (preliminary report for the Panel on the Understanding and Control of Violent Behavior).

casting) then viewership might rise; audiences likely would be more attracted to such programs if the resources devoted to them were higher.²¹

There is also compelling social science evidence suggesting that some efforts to reduce viewership by children of programs generating negative externalities may be appropriate. Social science research demonstrates that violent television programming leads to short-term increases in aggression in children and may lead to increases in fear, increased desensitization toward violent acts, and ultimately to longer-term increases in violence and crime as children mature into adolescents and adults.²² Research also indicates that the impact of violent programming varies according to the nature and context of the programming. Children are more likely to emulate violence if it is seen as realistic or perpetrated by a hero. They are also more likely to be affected if the violence is rewarded or left unpunished or if the negative outcomes of violence are not shown.²³

Researchers have recently developed a coding scheme for violent programming based on these media effects. Under this scheme, violent programming is defined according to the different contexts in which violence is presented. The scheme incorporates information on the perpetrator, action, and target of the violence and codes for such elements as whether the violence is portrayed in a realistic context or whether the violence is rewarded or punished.²⁴ Social science research on violent programming, which is conducted largely in the laboratory, where aggressive behaviors rather than criminal acts are observed, admittedly cannot pinpoint the exact damage likely to be caused by a particular program. However, the research does indicate generally which programs and which types of acts within programs are more likely to be damaging to children.

In fact, regulators frequently must—and do—take action without knowing the precise nature of the externalities to be regulated.

21. See, e.g., David Waterman, "Narrowcasting" and "Broadcasting" on Nonbroadcast Media: A Program Choice Model, 19 COMM. RES. 3 (1992) (describing the relationship between monetary investment in programming and viewership).

22. See *supra* note 17 for summaries of the impact of violent television programming.

23. *Id.* For an excellent precis of the importance of context in the presentation of violence, see Dale Kunkel et al., *Measuring Television Violence: The Importance of Context*, 39 J. BROADCASTING & ELEC. MEDIA 284-91 (1995).

24. Kunkel et al., *supra* note 23, at 288.

In the context of violent television programming, the uncertainty surrounding the magnitude of damages implies neither that inaction is the most desirable course nor that a regulatory response entailing a total ban on such programming would improve net social welfare. Although a ban (if held to be constitutional) might eliminate the negative impacts on children arising from violent programming, it would also lessen the viewing enjoyment of adults who consume such programming. Therefore, the imprecise quantification of harm in this area should prompt regulators to pursue narrowly focused regulatory options that minimize the impact on adult viewing options and that have a high degree of probability of obtaining desired results. As described below, provision of information about programs might satisfy these criteria. Information provision might also be an especially effective regulatory mechanism to use in an area such as television violence because its operation relies on individual choice rather than command and control measures.

III. INFORMATION AS A POLICY INSTRUMENT IN INFORMATION MARKETS

Chairman Hundt has noted that the license renewal process has devolved into a process of nearly automatic approval.²⁵ The definitions of "public interest" standards are vague, leaving broadcasters free to pursue a low-cost strategy of compliance that does not significantly increase the probability that they will provide programs with positive externalities. The Chairman has argued that broadcasters should be required to satisfy certain clear public interest standards as a condition for license renewal.²⁶ For example, in the area of children's educational programming, the Chairman has proposed a requirement of three hours per week for licensed broadcast stations.²⁷ If requirements for broadcast licenses are in fact made more explicit, an additional way to ensure compliance is to provide the public with a larger role in monitoring contract performance.

Currently, viewers can participate in the license renewal process by reviewing a broadcast station's public inspection file. Maintained at the station, the file contains a listing of public affairs

25. See Hundt, *supra* note 3, at 1094.

26. *Id.* at 1096.

27. *Id.* at 1110.

issues the station is covering that are of concern to the community, a listing of educational children's programs that the station believes demonstrate compliance with the Children's Television Act, data on political advertising sales, equal employment opportunity information on workforce composition, and viewer complaints. Additional information on station ownership and performance, including a history of fines for regulatory violations, is maintained at the FCC's Washington office.

The dispersion of information and the lack of a consistent reporting format currently make it costly for viewers to determine how a broadcast station is complying with the statutory public interest standards. The FCC could remedy this by requiring stations to report information electronically to the agency, which could in turn maintain an Internet-accessible database of station information (including viewer complaints).²⁸ Admittedly, the logic of collective action suggests that the majority of viewers will never use this data. However, local PTAs, national media organizations, local journalists, and some viewers will use the information to monitor station performance more closely. Consider the transformation of the debate over the provision of children's television programming that would likely occur if such a database were available. Viewers or interest groups could determine how the provision of such programming varied within markets and across ownership types. They could study the degree to which stations shirked their public interest requirements by preempting educational programs and scheduling them for early morning hours. They could also examine which programs were claimed to be educational, so such programs could be studied for their content. Individuals could also use data on children's programming to determine whether stations which schedule low levels of educational programming for children are also more likely to schedule their community service programs at the earliest hours and to offer violent programming in hours with large numbers of children in the viewing audience.

By lowering the transaction costs to viewers of monitoring station performance, the FCC could increase the incentives for broadcasters to comply with public interest requirements. Stations will be less likely to claim that "Geraldo" or "Beverly Hills 90210"

28. See generally Comments of Professor James T. Hamilton, *In re* Policies and Rules Concerning Children's Television Programming, MM Docket 93-48 (FCC 1995) (reviewing programming policies).

are educational for children if such claims are likely to be seen by viewers.²⁹ During the era of the New Deal, Justice Louis Brandeis supported the provision of information to the public on the grounds that "sunlight . . . is the best of disinfectants."³⁰ The Internet offers the FCC the opportunity to extend this principle to electronic reporting of station data. The future of digital broadcasting may also provide the Commission with an opportunity to alter incentives to comply with public interest standards. If part of the spectrum continues to be allocated rather than auctioned, the future ability of local stations to offer multiple programs at once may give the FCC the chance to provide a credible sanction for those who do not comply with public interest standards. At present, although it can issue fines for violation of specific regulations, the FCC's single major enforcement tool is license denial. License denial is not a credible threat to broadcasters who fail to broad-

29. In 1992, the Center for Media Education released its *Report on Station Compliance with the Children's Television Act*, which indicated that programs viewed by some as more commercial than educational are often cited by stations as part of their compliance with the CTA. See Edmund L. Andrews, *Broadcasters, to Satisfy Law, Define Cartoons as Education*, N.Y. TIMES, Sept. 30, 1992, at A1. Data from the public inspection files in the Raleigh, North Carolina market demonstrate the types of claims made by some broadcasters. In WFLF-TV 22, CHILDREN'S EDUCATIONAL/INFORMATIONAL PROGRAMMING REPORT (3d Quarter 1993), submitted by Gayle Hurd, Public Affairs Director, this Fox affiliate station in the Raleigh market listed the following episodes of "Geraldo" as educational/instructional programming for children 16 and under: *Underaged and Oversexed; Overweight Kids and their Mothers; When Love Doesn't Make the Grade; Daughters in Distress; and Hooked Hollywood*. The description of *When Love Doesn't Make the Grade* states that: "This edition of Geraldo addresses teacher-student affairs. Information on how parents can recognize the warning signs of this situation and the psychological affects [sic] it can have on young, impressionable teenaged girls, and how to prevent it from happening." In its 1992 programming report, WFLF-TV lists episodes of "Beverly Hills 90210" as educational/instructional programming for children 16 and under. The description of the episode *Beverly Hills 90210: Spring Dance/Beach Blanket Brandon* states that: "In this episode of 90210, the gang at West Beverly High goes to the prom after which Brenda and Dylan confront the responsibilities and potential repercussions of having sex. Although Brenda finds out she is not pregnant, the scare makes her think more clearly about the issue of sex and causes her to want to slow things down with Dylan. And Steve deals with the news that he's adopted." WFLF-TV 22, CHILDREN'S EDUCATIONAL/INFORMATIONAL PROGRAMMING REPORT (3d Quarter 1992). For an examination of the state of children's programming, see generally NEWTON N. MINOW & CRAIG L. LAMAY, *ABANDONED IN THE WASTELAND: CHILDREN, TELEVISION, AND THE FIRST AMENDMENT* (1995) (advocating improvements in children's telecommunications programming).

30. Louis Brandeis wrote "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." LOUIS BRANDEIS, *OTHER PEOPLE'S MONEY* 62 (1933).

cast in the "public interest" because it is such a blunt instrument. If the agency could deny a station part of its allotment of multiple programming signals, however, the FCC would have additional flexibility to penalize stations which failed to follow the public interest terms of their licenses.

The V-chip, a television component capable of blocking television programs based on ratings for violence or other objectionable content, represents another way to use information as a regulatory tool. Premium cable channels currently rate their programs, and parents concerned about the content of the programming can simply choose not to subscribe to these channels. Basic cable and broadcast networks also have announced that they will provide on-air advisories for violent programs. After a meeting with President Clinton and Vice President Gore at the White House on February 29, 1996, representatives of broadcast networks, cable networks, and production companies announced plans to develop a ratings system for television programming (except for news and sports) to be implemented by January 1997.³¹

Historically, however, broadcasters have been reluctant to rate or place warnings on their programs. Their opposition to warnings may be motivated in part by a fear that advertisers will avoid programs with ratings for violence. Although the actual probability that an individual consumer would boycott a company advertising on programs labelled as violent is extremely low,³² companies nonetheless may refuse to advertise during labelled programs to avoid the association of their brand name with controversy.

Under the threat of legislative action on television violence, broadcasters are labeling more programs as violent. From 1987 to 1993, only 2% of the 2,300 movies carried on prime time network broadcast television had viewer discretion warnings. From May through December 1995, on the other hand, nearly 14% of the

31. Mitchell, *supra* note 5.

32. In a 1993 Roper poll, 55% of those surveyed said that they had seen something "personally offensive or morally objectionable" within the previous few weeks of television viewing, but only 1% indicated that they had stopped buying a product advertised on the program the last time they had been offended (45% reported that they simply turned the channel). ROPER ORGANIZATION, INC., AMERICA'S WATCHING: PUBLIC ATTITUDES TOWARD TELEVISION 26 (1993). These results are consistent with the logic of collective action, according to which the small probability that an individual will lead a company to change its advertising policy leaves most consumers reluctant to bear the costs of switching brands, unless they gain ideological satisfaction from participation in the boycott.

prime time movies on broadcast network television carried viewer discretion warnings.³³ Despite this increase, however, broadcast networks still appear reluctant to label movies as violent, even if viewers outside the network might feel that the movies merited such a warning. A study of the 1994–95 television season by the UCLA Center for Communication Policy found that broadcast networks failed to place advisories on particularly violent movies shown in prime time.³⁴ Of 161 made-for-television movies or miniseries examined in the study, the authors felt that twenty-three raised concerns about violence.³⁵ Only two of these programs were preceded by viewer warnings.³⁶ Among the 118 theatrical films shown by the broadcast networks during the 1994–95 season, the UCLA viewers felt that fifty raised concerns about violence.³⁷ The networks failed to place advisories on twenty-two of these films.³⁸

If programs were rated and televisions had V-chips, the costs to parents of monitoring the consumption of violent programming would decline dramatically. Currently, parents must search for information about program content, which often is not even listed even in the daily television schedules provided in many newspapers.³⁹ The V-chip would lower the transaction costs to parents by allowing them to determine the level of content appropriate for their children and to set the V-chip accordingly. The lower costs should lead more parents to screen programs, which would reduce the externalities associated with the exposure of children to violent programs while preserving the viewing options of adult consumers.

The question remains whether the provision of information will actually work to reduce children's viewing of potentially harmful violent programming. Two examples suggest that it will. First, one type of information system, the Nielsen television ratings

33. See JAMES T. HAMILTON, DEWITT WALLACE CTR. FOR COMMUNICATIONS AND JOURNALISM, *MARKETING VIOLENCE: THE IMPACT OF LABELLING VIOLENT TELEVISION CONTENT* 13 (1995).

34. UCLA CENTER FOR COMMUNICATION POLICY, *THE UCLA TELEVISION VIOLENCE MONITORING REPORT* 65–69 (1995).

35. *Id.* at 64.

36. *Id.* at 71.

37. *Id.* at 77.

38. *Id.* at 87.

39. See Brooks Boliek, *Markey Says Networks Renege on Violence Warnings*, THE BALTIMORE SUN, Jan. 23, 1994, at 7H (discussing results of survey conducted by the House Telecommunications Subcommittee staff of Rep. Edward Markey, D-Mass.).

system, already influences the scheduling of violent programs. Four months each year (in February, May, July, and November) the Nielsen company conducts viewer surveys in the more than 200 local television markets throughout the United States, in order to develop the ratings data upon which local advertisers make their commercial buys. The networks during these months schedule programs to increase local ratings, both because they own local stations and because they wish to increase the value of network affiliation. As part of this programming strategy, the networks schedule a higher proportion of violent movies (for example, those that deal with murder or family crimes, and especially those that focus on true stories of murder or family crime) during the "sweeps" months than during non-sweeps months.⁴⁰ In this way, information collection and provision already directly affects the scheduling of violent programming on the networks.

More direct evidence of the impact of information on children's television viewing patterns comes from changes in the Nielsen ratings of programs accompanied by parental discretion warnings. From September 1987 through September 1993 the network placed parental discretion warnings on approximately 2% of the 2,300 films shown during prime time. Regression analysis of ratings data reveals that, controlling for other factors such as show times and movie genres, films that had viewer discretion warnings lost .6 ratings points among children of ages two to eleven. This translates into 222,000 fewer children in the audience for these movies, a 14% drop in the average viewership of prime time movies by children.⁴¹ The viewer warnings did not have a statistically significant impact on the ratings of teens or adults, indicating that these viewers are neither lured nor deterred by parental discretion warnings. Because these results are consistent with parents intervening and screening their children's viewing options if they are provided with information about program content, they suggest that additional information provision mechanisms such as the V-chip will be effective.

40. Approximately 2,300 movies shown from 1987 through 1993 on prime time broadcast network television were analyzed by content, including violent content. For those movies shown during sweeps months, there were (statistically significant) higher proportions of movies during the sweeps months that dealt with murder, family crime, true murder stories, and true family crime stories. See Hamilton, *supra* note 18.

41. See HAMILTON, *supra* note 33, at 13.

CONCLUSION

In "The Public's Airwaves," Chairman Hundt outlines the prospect for a new regulatory bargain with broadcasters. The areas of concern he identifies—educational programming for children, public affairs coverage, and indecent or violent programs—are all characterized by market failures, although the magnitude of these failures is unclear. In these program areas, broadcasters and viewers fail to incorporate the full costs and benefits to society in their calculation of the private costs and benefits of programming and viewing. Using the provision of information as a regulatory instrument—through measures such as the V-chip—offers a policy based on individual choice that is likely to reduce the externalities associated with violent programming. Although much of the debate around the V-chip may center on whether it is consistent with the First Amendment, theories of market failure and the calculus of individual decisionmaking demonstrate that the information policy embodied in the V-chip is consistent with the first principles of economics.