

Responsibilities of
Television Towards
Society

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RESPONSIBILITIES OF TELEVISION TOWARDS SOCIETY

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THE IMPACT OF INTERNAL ORGANIZATION OF TELEVISION CHANNELS ON SOCIALY RESPONSIBLE PERFORMANCE

The policies and practices governing editorial responsibility over program content have their basis in the federal license requirement to operate "in the public interest." An internal structure was created to serve the primary needs of a profit driven free enterprise system encapsuled in the regulatory requirement of serving the public interest. Additionally, a locally mandated system - to serve the community for which the channel was licensed - had to find accommodation for a national structure (the networks) that had the financial ability to underwrite and sell costly programs.

Localism: The Primary Obligation

Over the air broadcast facilities are granted to individual stations serving a particular community. While the federal government grants the license the social responsibility is local- to serve the community within the concentric of the station's signal. National television networks, i.e. CBS, ABC, NBC, Fox, are not licensed, but each of the national television networks owns a complement of stations (station is used interchangeably with channel) which are licensed to "operate in the public interest".

Accordingly, the ultimate responsibility for the program selection process and implementation of standards for the acceptability of program content rests with the local executive in charge of the station operation-the Station Manager. The manager may delegate program decisions to the program director in the case of entertainment programs or to the news director for news and public affairs offerings. However, if a station is affiliated with a national network this responsibility becomes one of negative option since the control of program content and the selection process is primarily that of the program and standards executives at the national networks. Additionally at the local level the sales manager also has some influence in the decision making process. He often reflects the advertising community's values. The commercial over the air broadcasting system is dependent upon advertiser

values. The commercial over the air broadcasting system is dependent upon advertiser support to sustain a profit motivated enterprise. While structurally the station owner/operator, the program supplier, and the advertiser impact the decision making process, it is the viewer that makes the ultimate choice. Commercial broadcasting is a mass medium dependent upon popularity and audience acceptability. Special interest groups as noted below often try to influence and pressure the decision makers to adopt their agendas by means of threatened boycotts or complaints to regulatory bodies.

Localism and the profile of management of an individual, group or network owned station in a particular market has a decided interactive effect upon program choice in a community. Where the management has its origins in the community either through birth, family, or longtime business ties such as newspaper ownership (as distinguished from absentee ownership) it often reflects the social, political and value preferences of the community to a greater degree than does an absentee owner. Regional proclivities and family values reflecting greater concern with depictions of sexuality in program content on stations in the South and Midwest would be evident in program clearances by a local station for network offerings or syndication choices in such markets.

Many of the early television licenses were sought after and granted to radio broadcasters or newspaper controlled families as distinguished from latter day entrepreneurs whose orientation was purely profit motivated emphasizing return on investment rather than "public interest". Before the days of cable the old line management structure took greater cognizance of its public interest responsibilities. In the decades of the 60's-80's license challenges by watchdog or special interest groups were more prevalent and competition was not as fierce. A sense of journalistic pride, community leadership, and business acumen served to enhance greater diversity and educational and civic (public affairs) program offerings. This was especially so for programs directed toward children when for example in the 60's and early 70's the CBS Network and stations affiliated with it carried the early morning Captain Kangaroo program. In the 90's NBC has elected to discontinue Saturday morning childrens programming and CBS' Capt. Kangaroo has been off the air for a number of years. When new owners or absentee owners installed management with sales and marketing expertise the traditions of the past lost their preeminence in the decision making process. When the rules changed in the 80's permitting a station to be sold without a three year holding period further inroads were made on the "public interest" standard. The goal was greater profitability derived from programs that delivered large audiences (as differentiated from providing some programming for special niche audiences to meet the diversification needs of "public interest"). Regionalism played a role in the defining of social responsibility. Southern and Midwestern communities were more reluctant to accept programs with open sexuality (but not so much concerned with violence). Their constituency was more politically and religiously conservative or fundamentalist than their counterparts on the East and West Coasts and in the large cities. In the latter, political and social concerns found station management more receptive to programs that dealt with minority issues, race relations, feminism, and different sexual preferences, as the urban community was more tolerant of such depictions and the station management less fearsome of advertiser or public

recrimination because of their presentation.

The Oversight Structure and Process

The implementation of public interest standards was a self regulatory process. Government could not "censor". It was prohibited from doing so by section 326 of the Communications Act of 1934 as well as by the First Amendment to the Constitution. Of course, the FCC could take into consideration at renewal time or in the event of a challenge by a third party outrageous conduct or programming that might be considered to fall outside of the "public interest" criteria but such has not been the case. Private enterprise could set standards for compliance with its policies, but highly valuable licenses were at risk and "jawboning" by Congressional committees and officials became a powerful means of affecting program choices and content.

In the entertainment area, in the early days of radio an administrative department was created to review commercials for questions of taste and accuracy and oversee program offerings to guard against offensive material and bad language, and prohibit programs such as fortune telling or race track information. These departments were called "Continuity Acceptance". The function of detailed program review and with it the power to "censor" program material came into force in the early 60's following the quiz scandals and payola hearings. Up until the 60's many programs were furnished to the networks by advertising agencies in behalf of one or two clients. The agency produced the program and retained creative control. Continuity departments performed an oversight function but did not review scripts, screen film or kinescopes to any significant degree. In the 60's the Continuity Acceptance Departments for the reasons noted below were empowered to review program content for conformity with a station's standards and guidelines, and became known as the "Standards and Practices Department". In the 90's, at the local station, this duty has pretty much fallen upon the program director. Similarly the function of copy clearance for commercials which at one time was a responsibility of an independent standards editor has fallen within the domain of the local sales department, subject to the station manager's review. What this means is that: (1) a check and balance system for independent and objective evaluation of the inclusion or exclusion of program choices and content no longer exists in the process at many channels. (2) Program control is determined locally only part of the time. (If a station is owned or is affiliated with a network, the station makes local program choices that fall within the local time periods when it has elected not to carry network supplied programs). This applies to some 825 out of 1620 channels in the U.S. -i.e. 51% of the stations are affiliated with a national network.

The National Networks

The national television networks on the other hand are not licensed and therefore not technically bound by the requirement of operating in the public interest and are not subject to license renewal every five years. Nevertheless as surrogates for the owned and affiliated stations they carry the weight of administering governmental rules and regulations and self-

regulatory standards and guidelines governing program content.

A sea change took place in the early sixties which gave rise to a shift in management duties. The quiz scandals drew Congressional hearings and caused embarrassment as well as fixing blame for lack of responsible management upon the network broadcasters who had neglected to prevent producers from misleading the public. Producers had provided answers in advance to contestants on such programs as "Twenty-one" and the "\$64000 Challenge". Payola (the acceptance of consideration -money, gifts, favors,- for the introduction of material (records, a product mention) into program content in place of objective selection) was also discovered as producers received same for the mention of a product or service in the content of the program without disclosing same. Congress enacted amendments to the Communications Act, Sections 317 and 508 to prevent such happenings in the future. The big money quiz shows vanished from the air and payola practices were severely curtailed.

At this time, the networks took the opportunity to change the creative/production relationship by becoming "masters of their own house". They sought diversity in program offerings and control of their program schedules. Contractually and in practice they took creative control of programs and ownership of production. (Some years later, persuaded by independent producers and the major studios that such "monopolistic" practices foreclosed entry into the program supply business, the FCC and US Justice Department introduced the financial interest/syndication rules restricting network ownership of programs and prohibiting syndication operations in the U.S. In the 90's the FCC and Justice relented and by 1995 the rules will have been totally rescinded).

Another factor in the strengthening of Continuity Acceptance Departments hereafter to be known as Standards and Practices Departments was the rising concern with the amount of violence contained in television programs as well as the inclusion of sexually explicit material. A series of Congressional hearings, academic criticism and parental concerns raised the question of broadcaster responsibility in carrying out its mandate to operate in the public interest.

In the 60's and 70's each of the networks enlarged their Standards and Practices Departments and structurally endowed them with independent authority over entertainment program content. While each network operated independently, they had similar codes. All eschewed violence for the sake of violence; while one network would permit only one incident of violence per act, another would limit the length of the action, but place no limit on the number of incidents but look to the overall count. The networks were given the responsibility of effecting self-regulation in protecting the station licenses in establishing and implementing the guidelines for acceptable program production. Their duties and operations were distinct and independent from the news departments which through their editorial management exercised in the traditional manner journalistic review of news product and content. Moreover this was a time of growing consumerism and advocacy. Network departments of Standards and Practices were given the responsibility of reviewing and pre-screening prior to telecast all network commercial and program material other than news,

news documentaries, public affairs and sports events. They answered to senior management and often disputes between the program and the standards executives were resolved at the CEO level. Their task was to assure compliance with the then existing (now defunct) Television Code of the National Association of Broadcasters (see below) as well as with the internal policies of the broadcasting entity itself.

The Standards Departments also reviewed commercial material for taste and truthfulness in advertising seeking substantiation and documentation of claims from the advertiser. These activities were all grounded in the "public interest, convenience and necessity" criteria which was never - even to this day- explicitly defined.

Network standards departments operate independent of the program and sales departments so that in effect a system of "checks and balances" prevails. As a result the work of the departments is separate from the creative evaluations and audience hyping tactic of the programmers, as well as the considerations of the sales department in acquiescing to sponsor influence. Until the early 80's a truly effective system of exercising editorial responsibility over programs designed for a mass audience was operative. The advent of cable, VCR's and a plethora of program offerings would change all that.

Each entertainment program, series and made for television movie was reviewed from treatment to script through final production and editing. Where a particular program or series included violent portrayals, sensitive material, or controversial issue matter which required balance for a fair presentation extensive discussions would be held with the producer to ascertain the manner in which he/she intended to treat the material and to insure that the applicable policies and standards were adhered to. A report prepared by the editor would be furnished to the producer and the program executive in charge of the project indicating the revisions required and/or the acceptable portions of the script. Prior to broadcast the program would be reviewed at the rough cut, final cut and editing stages, where additional revisions were made if necessary.

Feature films initially produced for theatrical release would follow a similar process. They would be screened prior to acquisition to determine acceptability with or without deletions. Often supplemental footage would be on hand to substitute for unacceptable material and in some cases the audio track would be rerecorded or edited.

In certain circumstances an audio and video advisory was broadcast before the start of a program to give parents the opportunity to exercise discretion in regard to young viewers. The advisory would be included in on air promotional announcements as well as in print advertising and program listings. Also prior to broadcast all affiliated and owned stations would receive an advanced program advisory informing them of the content of the program scheduled so as to enable them to exercise their licensee prerogative as to whether or not to carry the program. Closed circuit previews of programs would also be provided for this purpose.

Editorial responsibility in news and news related programs produced under the auspices of the news departments remained over the years with an independent news management. Here traditional journalistic precepts carried the day for many years. However, in the 90's competition brought about by technological change and the proliferation of news and news type formats have accelerated a relaxation of standards. Note here that the advent of the cable distribution system not only brought new program services to the television household but created another competitor. Cable delivery enhanced reception of the UHF signal and long non-profitable stations came to the fore. Traditional school taught journalistic standards, investigative reporting, fact checking, objectivity and impartiality have begun to feel the effects of competitive stress and pressure. The rush to the screen to be first, to have the "exclusive", to exploit for audience attention has led to such questionable practices as laxity in fact checking, "checkbook" journalism (paying for the interview) and tabloid (crash and burn) stories. In some cases the line between news and entertainment has become blurred as recreations and dramatizations, although disclosed, are included in news reportage. While the framework of the internal organization, procedurally and substantively exists today as in the past there has been a diminution of staffing and relaxation of the more rigid guidelines. As network audience shares have decreased and costs continue to rise there has been a tendency to take fewer risks and accordingly there is less innovation and less diversity of programs on the national over the air commercial networks. However program choices have increased as cable channels soar to 70 to 150 in number in some communities. Along with this increase of diverse programming has come less restrictive program standards for the traditional broadcast networks. The competitive fervor has caused the network standards departments to relax their vigilance in so far as the degree and amount of violence portrayed in certain programs are concerned, the extent of graphic depictions of sexuality and the inclusion of language heretofore deleted. With the Fairness Doctrine abandoned by the FCC, the requirement to present conflicting points of view on controversial issue program matter is diminishing.

The Industry Creates An Oversight Procedure

The National Association of Broadcasters Television Code Authority and Code Review Board had its origins in the early days of radio when stations sought a self-regulatory mechanism for the industry which would serve to hold off Congressional regulation with respect to program content and the amount of permissible commercial announcements. The Television Code and the Code Review Board were strengthened in the 60's by the affiliated stations seeking a voluntary means of self-regulation for political/public relations purposes as well as a means of having some control on an industry-wide basis over the networks in the area of violence and sexual content. Questions of commercial practices, i.e. amount of commercial time permitted in different program lengths at different times of the day or night, or complaints with respect to program content on stations or competitive networks would be brought to the Code Authority and/or the Code Board for adjudication. The entire apparatus was struck down by the federal courts in two actions in the 80's. Commercial portions of the Code which restricted multiple product announcements were found to be in violation of the anti-trust laws and program guidelines, namely the institution of a Family Viewing Policy

restricting programming "inappropriate for viewing by a general family audience" prior to 9:00 P.M. EST were found to be in violation of the First Amendment by a lower federal court. That ruling was reversed on appeal on procedural grounds but effectively these decisions brought about the downfall of the Code.

The Introduction of Cable

The advent of cable introduced a double standard. Cable operators are not licensed by the federal government as are over-the-air broadcasters. Local franchises are granted to wire homes by local municipalities. Although federal legislation is in place to govern rates and access, the courts have granted a greater First Amendment program protection to cable operators than to over the air broadcasters. There is no specific mandate to operate in the "public interest, convenience and necessity." Although some standards exist they are minimal. Some cable program services have small standards departments but by and large (except as noted later with respect to violent programs) there is little written policy. Program services offered by cable operators are varied but each service is dedicated to a particular genre, e.g. sports, news, children, arts and entertainment, movies, etc. without specific reference to any public interest requirement. A significant distinction of course is that the viewer pays for the service. There is little advertiser influence over program content. While it is true that the cable operator chooses the program services he wishes to carry and thereby selects the content genre, it is the viewer that ultimately exercises the social responsibility ethos by his purchasing decisions.

The Public Broadcasting Structure

Finally, the federal government made provision for a public telecommunications system by legislation setting up a structure and funding for the Corporation for Public Broadcasting. (Subpart C Communications Act 1934-sec.396) The Corporation is a private non profit organization serving the individual public broadcast licensees in the development of "...programs of high quality, diversity, creativity, excellence and innovation, which are obtained from diverse sources,...with strict adherence to objectivity and balance in ...programs of a controversial nature."³⁶ Operating grants are made to the individual channels who have the obligation to operate in the public interest and carry out the mandate of the license requirement to serve the community much in the same fashion as commercial stations except that public/governmental influence and pressures replace that of the advertiser. The individual channels formed the Public Broadcasting Service (PBS) as a co-op to commission the production of "network" programs in part from pool funding as well as provide for satellite distribution. PBS retains standards review for product it distributes and often produces two versions of a program so that an individual station can choose the one that suits its community's standards.

³⁶Communications Act 1934 sec.396(g)(1)(A)

Many controversies have erupted over program choice and content carried on public channels primarily where political issues are involved. However, public broadcasting channels have been responsible for a far greater amount of educational, intellectual and thought provoking programs by sheer weight if not necessarily by individual endeavor than commercial broadcasters.

Thus internal structure reflects bottom line objectives, but taken as a whole incorporates a consensus value system that enables it to serve the public interest mandate from which its origins stem.

HOW EDITORIAL RESPONSIBILITY AFFECTS PUBLIC INTEREST PERFORMANCE OF TELEVISION

An ethos of social values in television programming exists. Its expression is individual to the particular network, its senior management and creative executives and the production community it selects to deal with in program production. Even under difficult market driven competitive pressures each national commercial network seeks innovative and diverse programs to attract a mass audience and establish an integrity and culture of its own. How then is this goal achieved when the objective is to furnish "most of the audience most of the time" in order to profit in an advertiser supported medium that is dependent upon a distribution system pluralistic in nature that can select or reject programs offered by the network in accordance with its own independent culture? The complexity of the answer to that question suggests that the impact of editorial responsibility -- while ever present, overtly or subliminally- in the program decision making process-- on the public interest aspects of a station's operation is at best ephemeral.

Whose Values

Television is ultimately the culture in a free society. Whether it leads or mirrors its content is subject to many forces, social, economic and political all of which impact the definition of responsibility and accountability. The final judge in a democratic society where choice is basic to principle is the viewer. It is the viewer who brings to the set his/her own baggage that causes standards to shift in time and upon which corporate responsibility is built.

While localism causes channels to bear the primary obligation to serve the community in which their license is granted with entertaining, educational and informative programs "in the public interest" and they attempt to meet this goal through their news, public affairs, and locally produced programs, the economics of the business is such that major program offerings that impact large audiences and deal with a variety of social and political values are scheduled, produced or presented primarily by the national television networks.

To examine editorial responsibility in the production process requires an analysis of two distinct areas of operation: They are NEWS and ENTERTAINMENT.

News Programs and Editorial Responsibility

In the news area there is a degree of independence (some say autocracy) that cuts across the different types of management structure, local, corporate, individual. Its origin stems from the traditional tenants and journalistic principles of objectivity and impartiality, fairness, freedom of expression, truth and accuracy. While senior management chooses its news manpower and leadership to conform with its culture and business objectives, by and large once in place and of course subject to successful operation it has a degree of discretion that is distinct and independent unlike program management in the entertainment area. Such has been the case until recent events. Clearly the winds of change in the 90's are affecting electronic journalism standards and news management autonomy. As profit center structure and cost control measures are instituted in what had been a free and open spending style, news management now finds itself weighing business considerations versus news gathering and reporting independence. Yet the strength of the star system used to attract and keep an audience (still the sine qua non) by reason of a presenter's popularity status throws chaos into management cost control efforts where salaries are concerned. Moreover vocal monitoring groups like Accuracy in Media Inc.(Conservative), Fairness and Accuracy in Reporting (Liberal) and the Radio and Television News Directors Association (industry) bring their agendas forward to contest biases and policies in news reporting impacting the decision process.

Cable's ability to strengthen the hand of independent stations along with the introduction of innovative syndication product, (talk shows and reality based action programs) wrought change in editorial responsibility affecting electronic journalistic standards as well. "Happy News" a format developed by outside consultant organizations seeking to broaden the audience for early and late news on local stations and establishing core franchises began the shift to "tabloid" (crash and burn-crime and sensationalism) journalism. Emphasis was on levity. Delivery and appearance took precedence over issues and analysis. If a station was #1 in news ratings in its market it was very likely to be #1 throughout the day and night. The result was outstanding profitability and advertiser acceptance. Thus news pre-eminence dictated the coverage and topic selection process.

In the late 80's and early 90's the television networks, challenged by cable and VCR audience reach and encumbered with a production cost structure that is difficult to control (as distinguished from the administrative, sales and services areas) turned to the news magazine format as a more cost efficient manner of program supply. Cost alone would not sustain the genre. Audience response to the reality event type syndicated local program format clearly was a factor. The subject matter of such news magazine type programs designed to attract the widest possible audience led to choices that abandoned the traditional documentary field of issue oriented political or social agenda topics. Producers sought the more sensational and exploitative sex and violence subjects of entertainment programs. In the process strict

journalistic standards of diligent investigatory procedures, balance, analysis and research in depth gave way to expediency and the race to be first to attract the audience before the competition did, leaving to the public broadcasting system and an occasional commercial network offering an in depth appraisal of demanding issues such as health care or education reform. Not only did they now compete with other networks, but an internal competitiveness arose over control of the time period between the news and entertainment departments.

Entertainment Programs and Editorial Responsibility

In the entertainment area the need to attract a varied, diversified and demographically specific audience (young adults) drives the program development process to seek innovative program offerings. Experimentation and development are high risk and costly pursuits in product research. With one-half hour prime time (8-11p.m.) programming costing in the range of \$550,000 to \$850,000 and hours \$1,000,000 to \$1,500,000 production becomes a national endeavor rather than a local or regional opportunity. This is in contrast to regulatory policy of basing the system on local service. Essentially the system is geared economically to national program networks or national syndicators which serve as production and sales arms of and to the local station. Similarly cable did not reach its true potential until the advent of satellite distribution made feasible simultaneous and cost efficient distribution of national program services like ESPN or CNN.

In the search for new and different programs to counterprogram (a program strategy) individual and corporate entertainment entities are sought to contribute ideas and formats. Because of diminishing share of total audience (down to 59% of households from 90%), the commercial broadcast networks have in the last several years taken less risk in experimental product, therefore less diversity has resulted. It, however, can be argued that there is more product choice available to the viewing audience by reason of competition from cable as channel capacity increases. Yet much of the most watched offerings on cable are reruns of old over-the-air programs and movies originally made for theatrical distribution. In the 70's and 80's when the three networks competed sans cable inroads for audience and advertiser support greater experimentation prevailed. It is unlikely that such miniseries as WINDS OF WAR or WAR AND REMEMBRANCE costing in excess of \$100,000,000 each would be produced today.

At present, if by the second episode a program in a new series has not achieved a respectable rating (depending on the time, day, and competition), it will be summarily cancelled. Thus it was more likely that controversial issues of social concern would be offered in the days of high risk when the political and economic environment contributed to not only greater viewer interest but there was less opportunity for quick and costly failure.

Current practice notwithstanding, over the past 30 years the networks, through program offerings scheduled for broadcasts in prime time, when most of the audience is available for watching, have promoted societal values that have brought about an opening of the mind to

such arenas as social integration, alternate sexual life-styles, treatment of minorities, feminism, abhorrence of violence, invasion of privacy, just to name a few. These subjects, chosen by program executives at the networks and developed by a social and liberal minded production community, reflected the then current topics of viewer interest. The nation in that period of television growth was proceeding through a series of culture and value shifts that engaged the populace in debate and examination that lent itself to such program fare. The breaking of taboos in television fare, such as occurred in the televising of the two hour made for television movie SOMETHING ABOUT AMELIA, a full story treatment of the subject of incest, or the three hour film entitled THE DAY AFTER, dealing with the after effects of a nuclear holocaust, illustrate this point. Affecting this role is the complexity of a system of free enterprise that depends on advertiser support for its maintenance, local channel acceptance for its distribution and varied viewer tastes and values for its success. If an advertiser will not pay for the commercial or asks to be relieved of his obligation to do so (as several did when the program THIRTY SOMETHING ran an episode with two homosexuals in bed embracing), or a local station refuses to clear a program (as a station did when the network offered an episode in a series which was critical of a nuclear power plant), or a pressure group threatens to boycott sponsors (such as the American Family Association, Dr. Donald E. Wildmon) the editorial responsibility factor withers.

Sex and Violence and Editorial Responsibility

A paramount concern has been the treatment of sex and violence in programs. To briefly examine these concerns:

A. Sex

A watershed program occurred in November of 1972 when the ABC Television Network telecast the two hour movie entitled "That Certain Summer". It was the first time a mass audience was exposed to the depiction of a sympathetic, non-stereotypical portrayal of a homosexual relationship. A son learns of his father's election to live with another male companion. In a visit to the father, the son, a teenager, confronts the homosexual relationship. By 1972, ABC had adopted the then industry Code standard "Special sensitivity is necessary in the use of material relating to sex,..."³⁷ to replace its former proscription "sex perversion as a theme or dialogue ...may not be used". It was time to be more reflective of changing values and the sexual revolution was at hand. The "pill" had liberated sexual practices. But a difficult negotiation developed when the Standards editors required the inclusion of a script line which stated "...A lot of people --most people, I guess --think it's wrong. They say it's a sickness...they say it's something that has to be cured . Maybe they're right, I don't know...if I had a choice it's not something I'd pick for myself ...But

³⁷ The NAB TV Code 19th edition 9/77

it's the only way I can live".³⁸ The producers William Link and the late Richard Levinson were not pleased with the line. Greater latitude exists today and just recently in January 1994 the public broadcasting service distributed a program in which two male performers were permitted to kiss each other on the lips, and in an episode of ROSANNE on the ABC Television network two women acted similarly.

B. Violence

The nation in 1994 is beset with concern over violence in society. We as a society search for the quick fix and someone to censure. The all pervasive television medium with its action-adventure, mystery-detective and reality based crime depicting programs is a natural culprit to seek out for blame. Not that it is devoid of excesses! But, although the debate continues as to whether or not and to what extent television violence has a harmful effect on the behavior of children, nevertheless the industry has attempted to deal with the problem in real terms.

Each of the networks as well as individual stations have prescribed guidelines for the portrayal of violence. While each independently formulates policy and implementation, essentially the guidelines are straightforward. The portrayal of violence for the sake of violence is prohibited. When violence is portrayed it must be reasonably related to plot development and character delineation. Consequences should be depicted. Specific, unique, detailed techniques involved in the use of weapons, the commission of crimes, or the avoidance of detection should be avoided. Recently the commercial television networks renewed their commitment to place advisories before certain programs that contain an inordinate amount of violence and to warn that parental discretion should be used to monitor children's viewing. In addition, commercial broadcasters joined with the cable industry to explore the engagement of an independent monitor to report annually on violent programming. The cable industry intends to consider a rating system in the future. The commercial over-the-air broadcasters have opposed a rating system because of concern over loss of advertiser support, the fact that a rating system does not go to the essence of effecting implementation of guidelines and together with advisories can be read as clarion call to the set. The cable industry has supported the use of a "V-chip" a computer technology that could be used by the parent to lock out certain kinds of programming. The problem with the latter is that the parent has to exercise the restraint which is not where the problem is.

So long as our society fosters the conditions that create violence, crime, or anti-social behavior, violent depictions whether in news coverage or dramatic portrayal will be with us. So long as good story telling relies on conflict, as by definition it does, crimes of passion, "who done-its", horror, and jeopardy will be subjects of the play. To scapegoat the messenger for the ills of society or to stifle creative efforts to shock, create suspense, frighten, enlighten, and entertain the audience will not diminish the problem. The industry's-

³⁸ "That Certain Summer" Levinson and Link 1972

i.e. management, programmers, creators, editors task is to exercise a standard of reasonableness. The amount and frequency of such material is within the control of the broadcaster or cable operator. The quality and depth of character portrayal and plot delineation is within the control of the writer/producer. What is excessive or gratuitous changes with the story telling. Context, consequences, humor, direction, and performance all serve to determine how much is too much or how little is illusory.

Warnings, ratings, disclosures are devices to prepare an audience. However, a definitive commitment must be present. A commitment to continuity, consistency, and conscience. The commitment must be a shared one between the broadcaster and parent. Each has a role in containing violence, its portrayal and digestibility. The parent must know his child; what he can absorb, when he can be permitted to watch, and how much. The broadcaster must set the limits and prescribe the guidelines; guidelines that provide some flexibility for innovation and experimentation and that respect creative freedom with a sense of accountability.

Controversial Issues and Editorial Responsibility

"All in the Family" a long running series on CBS in the mid- 70's marked a major turning point in the trail of change in social values. Not only did this program use language, epithets, expression, and behavior heretofore prohibited but also introduced political issues, conservative and liberal, traditional and new, for the first time on television. Mrs. Laura Hobson the renowned author (Gentlemens Agreement) engaged the producer Norman Lear in a lengthy debate over the treatment of bigotry. The question was whether the lead character played by Carol O'Connor in his remarks, which contained racial and religious slurs and epithets, was reinforcing bigotry, or was satirical and exposed bigotry and embarrassed its advocates. Today, programmers would be more circumspect about such content as indicated in a Time magazine article in September 1992 in which it was reported

"...the structure of network television serves to keep entertainment from wandering too far from the safe political center. Advertisers ... shy away from any program that takes a controversial political stand or gets too explicit about sensitive subjects like homosexuality. No leading character in a prime-time TV series since "Maude" has had an abortion, mainly because of advertiser skittishness."³⁹

As mentioned above, today's competitive climate has diminished the number of programs dealing with controversial issues. Nevertheless, networks continue to deal with difficult subjects. NBC, despite lack of full advertiser support, financed and scheduled a two hour television docudrama entitled "Rowe v. Wade" chronicling that historical case affirming a woman's right to an abortion.

Truth and Accuracy and Editorial Responsibility

³⁹ Time 9/21/92 Jordan Bonfante and Martha Smilgis/LA and Janice C. Simpson/NY

Another area of particular concern in implementation of the public interest requirement involves the production of the "docudrama". While the news division has the documentary form, governed by the principles of journalistic endeavor, the "docudrama" evolved in the late 70's as an entertainment genre for the presentation of real events about real people in dramatic form. Dramatic license is used to recreate happenings and in many cases imagination is invoked to create dialogue between parties where there is no record other than surmise or circumstantial evidence. Not only does this raise the question of truth and accuracy by reason of mixing fact and fiction, it also brings up questions of the right of privacy and libel when the person or persons are not deemed to be public officials or public figures. Standards are especially appropriate in the production of this genre. It is through television that the viewer may be receiving the only recounting of a particular event. Visiting the television docudrama is different than visiting a library with numerous resource materials available. In television docudrama the plot appears once, may have momentary review and except for the implant of idea/fact/fiction in the mind of the viewer, is forever gone. The difficult administrative problem is to balance the interests of the Entertainment division that seeks to embellish the facts to create an attractive story and the Standards department's objective of achieving fairness and accuracy and the avoidance of litigation in the recounting of the event.

Ancillary Problems Impacting Performance

Libel, the right of privacy, and intentional infliction of emotional distress cases abound in the mass media. While the U.S. Supreme Court has dealt extensively with libel law as it has effected the mass media, the right of privacy and emotional distress cases still remain in the realm of state law and therefore subject to greater diversity in holdings and privilege. As to libel in the media, even an honest mistake, a falsehood rendered against a public official or a "public figure" is protected against a libel action under the First Amendment unless "actual malice" is shown by means of a statement that is made with knowledge that it was false or with reckless disregard of whether it was false or not. If a person is found not to be a public figure by definitions established in certain case law, then actual malice need not be proven and the plaintiff can recover on the reasonable man ground. There can be no recovery for libel based on a false idea-i.e. opinion, nor is there a cause of action if the defamed is deceased.

A more difficult problem arises with respect to a person's right to privacy. This right varies from state to state and has many facets; from the right to be let alone, to not being presented in a false light, to public disclosure of embarrassing private facts, (truth is irrelevant) to disclosure of a rape victim's identity. A recent debate centered on a television network revealing in a news program the identity of a rape victim on the air contrary to long standing procedure. The network defended its action by referring to the fact that print had already done so. To avoid extensive litigation releases are sought, public documents or court transcripts are used to support the script content in connection with many television presentations.

Reality based programming, where television producers follow police action, raise serious problems of invasion of privacy and trespass. Surreptitious surveillance-i.e. the use of hidden microphones and hidden cameras, present particular problems in the news gathering field. CBS recently settled a case brought by a woman and her son who charged that the network violated their rights when a camera crew videotaped Government agents searching their apartment. There was a question as to the legality of allowing the news camera crew accompanying the agents into the apartment. While Jackie Onassis (ne Kennedy) because of her status as public figure is barred from entering a suit with respect to a movie of the week about her life (assuming she might have cause to) or Gen. Westmoreland drops an extended litigation against CBS feeling that he may not have the "knowing and reckless disregard proof" to win, private parties have been successful in suing for invasion of privacy when programs treat of their experiences without proper legal clearances.

A more vexing problem facing the commercial over the air broadcasting and cable industries relates to the question of indecent programming. Obscene programs can be prohibited from broadcast in any case. Obscenity has been defined by the Supreme court;⁴⁰ (a) whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Indecent programming has been defined by the FCC⁴¹ as "language or material that depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs." The FCC has stated that "Indecency will be actionable if broadcast at a time of day when there is a reasonable risk that children are in the audience." Even though Congress has given the FCC the authority to regulate, the question as to whether the FCC can declare "safe harbors" for indecent material or prescribe rules for the carriage of same on cable remains in litigation in the courts. The FCC has fined radio broadcasters for broadcasting "indecent " material before 12:00p.m. as well as during the hours of 6:00a.m. and 11:00a.m., and today has in effect a "safe harbor" for radio programs from 8:00p.m. to 6:00a.m. The FCC, except for one case which has been dismissed, has not applied its definition of indecency to television programs. There has been some discussion as to whether or not in the interest of protecting the welfare of children in so far as violent programs are concerned the FCC may take the safe harbor approach.

Other areas of public interest concern relate to the treatment of minorities, stereotyping, the treatment of the aged, and of course, programming designed for children.

⁴⁰ Miller v. California, 413 U.S. 15,1973

⁴¹ Memorandum Opinion and Order (FCC 87-141)1987

In 1990 the Congress passed national legislation requiring stations to "serve the educational and information needs of children through the licensee's overall programming, including programming specifically designed to serve such needs". The provisions of the act are somewhat ambiguous but the FCC determined that programs like "Flinstones", "G.I. Joe", and "Leave it to Beaver" did not meet the requirement. The Act also set a limit on the amount of advertising commercial television broadcasters and cable operators could carry in children's programming to not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays.

Conclusion

No other communication medium in the history of our nation has had as much effect upon the nature and content of information and entertainment as has television. More people get their news and information from television than from any other source. Television helps shape their sexual attitudes, exposes them to violent behavior, and confronts them with discussions of controversial issues in fiction and non-fiction programming with opinion forming effects. Guiding the dissemination of this material over the licensed public airwaves have been two sets of rules, one for news and the other for entertainment programming. Technological changes, increased competition, diversity of program and distribution sources have caused erosion in some of the stricter standards governing the telecasting of content into the home. Social change in the shifting of values, tastes and mores have also contributed to revisions and restructuring of the ground rules. In a democracy where freedom of expression and freedom of choice are paramount principles it shall ever be thus. But an essential of democracy is the absorption of change. And the beauty of the U.S. broadcasting system is that the structure adopts to change - competitively, technologically, socially, and in terms of the continuum of changing values,- responsibly. Not all will agree, nor will the medium ever please all the people all of the time but each day somewhere at sometime over the most diversified communications system in the world one can find a program that editorially is fulfilling, intelligent, and contributes positively to the public weal.