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Committee on the Judiciary, U.S. House of Representatives,
Oversight Hearing on Derivative Rights, Moral Rights, and Movie Filtering Technology

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Good morning, and thank you for the opportunity to address you today regarding movie filtering, the First Amendment, and the whole issue of “media effects” on young people.

I became intrigued by this subject a decade ago, when, as a First Amendment attorney at the ACLU, I discovered that the most common justification for censoring art is the assumed adverse effect that sexual or violent content will have on impressionable youth. Ultimately, I wrote a book, *Not in Front of the Children*, which examines the cultural and legal underpinnings of this widespread assumption of “harm to minors.” The book concludes not only that the harm is unproven, but that it is probably unprovable, and that, ironically, censoring the young may actually have ill effects on their imaginations, their psychological growth, and their ability to confront and understand troubling aspects of human life.

After finishing *Not in Front of the Children*, I created the Free Expression Policy Project – or FEPP, for short – whose goal is to provide research and analysis on difficult censorship issues. Just a few weeks ago, FEPP became part of the Brennan Center for Justice at NYU School of Law.

Some of you may be troubled by my references to “censorship,” so let me explain that I use the term simply to describe any effort to suppress expression that is considered inappropriate or unacceptable. Some say that filtering is simply a way for parents or others who object to sex, violence, or profane language in movies to control what is viewed in their home. Fair enough; but it is a form of censorship nonetheless.

It’s true that the manufacture and use of this technology does not violate the First Amendment, which generally applies only to the government. (Whether it violates copyright law is another matter.) But if Congress were to endorse the technology through law, it *would* create First Amendment problems. Singling out constitutionally protected expression for adverse treatment under the law – in this instance, scenes and dialogue from films that a private company has decided contain unacceptable levels of sex or violence – is precisely what the First Amendment condemns.

Moreover, this technology is a bad idea, because it reflects a simplistic and erroneous view of how art affects human beings. It suggests that the way to protect our children and adolescents from controversial or troubling media content is to censor rather than educate them. But on the contrary, education in media literacy skills –

understanding moviemaking methods, identifying racial and gender stereotypes, and testing media messages against community values – is far more likely than filters, v-chips, or censorship laws to produce healthy, nonviolent, and sexually responsible adults.

As the National Research Council, a part of the National Academies, wrote in a 2002 report (on the related subject of Internet filters):

"Information and media literacy provide children with skills in ... critically evaluating the content inherent in media messages. A child with these skills is less likely to stumble across inappropriate material and more likely to be better able to put it into context if and when he or she does. ...

"Swimming pools can be dangerous for children. To protect them, one can install locks, put up fences, and deploy pool alarms. All of these measures are helpful, but by far the most important thing that one can do for one's children is teach them to swim."¹

FEPP's recent report, *Media Literacy: An Alternative to Censorship*,² describes the work that has been done in America and elsewhere to advance this productive and non-censorial approach to concerns about popular culture.

In the time remaining, let me address the claims that are so frequently made that social science research has proved "media violence" to cause aggressive behavior. I was quite willing to accept this conventional wisdom when I began research for *Not in Front of the Children*, but I what discovered, like many independent reviewers before me, was that:

- (1) Most of the research has actually produced "null" results.
- (2) Claimed positive results are often based on manipulation of statistics, or flawed measures of aggression, such as punching a Bobo doll (a socially accepted form of play aggression), recognizing "aggressive words" on a computer screen, or popping a balloon.
- (3) There is no uniformity in research results – the first requirement for scientific validity. Some studies have found children more aggressive after watching *Sesame Street* and *Mr. Rogers' Neighborhood*. Joanne Cantor's book, *Mommy, I'm Scared*, documented anxiety reactions among children exposed to such relatively nonviolent TV fare as *Little House on the Prairie*, *Sleeping Beauty*, and *Alice in Wonderland*.³ No filter, v-chip, or censorship law can identify what, from the vast array of art and literature, might frighten a particular child. (When

¹ National Research Council, *Youth, Pornography, and the Internet* (2002), http://bob.nap.edu/html/youth_internet, Executive Summary.

² Available at <http://www.fepproject.org/policyreports/medialiteracy.pdf>.

³ Joanne Cantor, *Mommy, I'm Scared* (New York: Harcourt Brace, 1988).

my now-grown son was 6 or 7 years old, he became frightened while watching the opening scene of *Treasure Island* and hearing the scary music.)

- (4) Even correlational research – which can be suggestive, but does not show causation – is inconclusive. Violent crime rates for youth have been declining even as media violence has become more intense. In 1986, one researcher found *negative correlations* between exposure to violent TV and violent crime in 281 metropolitan areas. He stated: "The data consistently indicate that high levels of exposure to violent television content are accompanied by relatively low rates of violent crime."⁴
- (5) There is no uniform definition of “media violence” in either experimental or correlational studies. Some researchers use cartoons; others use *Batman*, *Superman*, or fight scenes in movies. Indeed, some studies simply look for relationships between “aggressive behavior” and general TV viewing, not violent viewing. Even the American Psychological Association, which speaks guardedly in terms of “risks” rather than proof, acknowledges that “violence *per se* is not the problem; it is the manner in which most violence on television is shown that should concern us.”⁵ Yet social science studies rarely test the context in which violence is shown: Is used by a villain or a hero? Is it used in self-defense? Does it have outstanding artistic value? Certainly, movie filters do not make these distinctions.

We do not have time today to go into additional detail about the media effects research. I have, however, attached to this testimony a “friend of the court” brief on behalf of 33 media scholars in a recent case challenging a law restricting minors’ access to video games containing violence. The brief explains in detail why, despite several decades of studies, there is no credible evidence of a causative relation between fantasy violence and the real thing.

As a 2000 study by our own Federal Trade Commission reported, no firm conclusions about adverse effects can be drawn from media violence research.⁶ Similarly, in 1999, the British medical journal *The Lancet* criticized U.S. medical associations for falsely claiming that thousands of studies had proven adverse effects. The editors wrote: "it is inaccurate to imply that the published work strongly indicates a causal link between virtual and actual violence."⁷

No doubt, there is common-sense appeal to the notion that impressionable viewers will imitate what they see onscreen. It may be that some forms of media violence do have harmful effects, even though social-science studies are unlikely to prove it. But to

⁴ Steven Messner, "Television Violence and Violent Crime," 33(3) *Social Problems* 218, 228 (1986).

⁵ Comments of the American Psychological Association in FCC No. 97-55, Apr. 8, 1997 (proceedings on the v-chip), quoted in *Not in Front of the Children*, p. 196.

⁶ Federal Trade Comm'n, *Marketing Entertainment Violence to Children*, Appendix A, "A Review of Research on the Impact of Violence in Entertainment Media" (2000).

⁷ "Guns, Lies, and Videotape," 354(9178) *The Lancet* 525 (1999).

address these concerns, education is far more effective than privately manufactured filters which are marketed to families on the false premise that a blunt and mechanical censorship tool will keep their children safe.

Ultimately, movie filters, like other forms of censorship, are a distraction from the more difficult, and less sensational, work of educating kids to be discriminating viewers, and fighting the real causes of violence in society, including poverty, firearms, drugs, alcohol, peer pressures, and domestic abuse.