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To exempt agreements relating to voluntary guidelines governing telecast material, movies, video games, Internet content, and music lyrics from the applicability of the antitrust laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 1, 2000

Mr. BROWNBACK introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To exempt agreements relating to voluntary guidelines governing telecast material, movies, video games, Internet content, and music lyrics from the applicability of the antitrust laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Children’s Protection
5 Act of 2000”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) Television is seen and heard in nearly every
2 United States home and is a uniquely pervasive
3 presence in the daily lives of Americans. The average
4 American home has 2.5 televisions, and a television
5 is turned on in the average American home 7 hours
6 every day.

7 (2) Television plays a particularly significant
8 role in the lives of children. Figures provided by
9 Nielsen Research show that children between the
10 ages of 2 years and 11 years spend an average of
11 21 hours in front of a television each week.

12 (3) Television has an enormous capability to in-
13 fluence perceptions, especially those of children, of
14 the values and behaviors that are common and ac-
15 ceptable in society.

16 (4) The influence of television is so great that
17 its images and messages often can be harmful to the
18 development of children. Social science research
19 amply documents a strong correlation between the
20 exposure of children to televised violence and a num-
21 ber of behavioral and psychological problems.

22 (5) Hundreds of studies have proven conclu-
23 sively that children who are consistently exposed to
24 violence on television have a higher tendency to ex-

1 hibit violent and aggressive behavior, both as chil-
2 dren and later in life.

3 (6) Such studies also show that repeated expo-
4 sure to violent programming causes children to be-
5 come desensitized to and more accepting of real-life
6 violence and to grow more fearful and less trusting
7 of their surroundings.

8 (7) A growing body of social science research
9 indicates that sexual content on television can also
10 have a significant influence on the attitudes and be-
11 haviors of young viewers. This research suggests
12 that heavy exposure to programming with strong
13 sexual content contributes to the early commence-
14 ment of sexual activity among teenagers.

15 (8) Members of the National Association of
16 Broadcasters (NAB) adhered for many years to a
17 comprehensive code of conduct that was based on an
18 understanding of the influence exerted by television
19 and on a widely held sense of responsibility for using
20 that influence carefully.

21 (9) This code of conduct, the Television Code of
22 the National Association of Broadcasters, articulated
23 this sense of responsibility as follows:

24 (A) “In selecting program subjects and
25 themes, great care must be exercised to be sure

1 that the treatment and presentation are made
2 in good faith and not for the purpose of sensa-
3 tionalism or to shock or exploit the audience or
4 appeal to prurient interests or morbid curi-
5 osity.”.

6 (B) “Broadcasters have a special responsi-
7 bility toward children. Programs designed pri-
8 marily for children should take into account the
9 range of interests and needs of children, from
10 instructional and cultural material to a wide va-
11 riety of entertainment material. In their total-
12 ity, programs should contribute to the sound,
13 balanced development of children to help them
14 achieve a sense of the world at large and in-
15 formed adjustments to their society.”.

16 (C) “Violence, physical, or psychological,
17 may only be projected in responsibly handled
18 contexts, not used exploitatively. Programs in-
19 volving violence present the consequences of it
20 to its victims and perpetrators. Presentation of
21 the details of violence should avoid the exces-
22 sive, the gratuitous and the instructional.”.

23 (D) “The presentation of marriage, family,
24 and similarly important human relationships,
25 and material with sexual connotations, shall not

1 be treated exploitatively or irresponsibly, but
2 with sensitivity.”.

3 (E) “Above and beyond the requirements
4 of the law, broadcasters must consider the fam-
5 ily atmosphere in which many of their programs
6 are viewed. There shall be no graphic portrayal
7 of sexual acts by sight or sound. The portrayal
8 of implied sexual acts must be essential to the
9 plot and presented in a responsible and tasteful
10 manner.”.

11 (10) The National Association of Broadcasters
12 abandoned the code of conduct in 1983 after three
13 provisions of the code restricting the sale of adver-
14 tising were challenged by the Department of Justice
15 on antitrust grounds and a Federal district court
16 issued a summary judgment against the National
17 Association of Broadcasters regarding one of the
18 provisions on those grounds. However, none of the
19 programming standards of the code were challenged.

20 (11) While the code of conduct was in effect, its
21 programming standards were never found to have
22 violated any antitrust law.

23 (12) Since the National Association of Broad-
24 casters abandoned the code of conduct, program-

1 ming standards on broadcast and cable television
2 have deteriorated dramatically.

3 (13) In the absence of effective programming
4 standards, public concern about the impact of tele-
5 vision on children, and on society as a whole, has
6 risen substantially. Polls routinely show that more
7 than 80 percent of Americans are worried by the in-
8 creasingly graphic nature of sex, violence, and vul-
9 garity on television and by the amount of program-
10 ming that openly sanctions or glorifies criminal,
11 antisocial, and degrading behavior.

12 (14) At the urging of Congress, the television
13 industry has taken some steps to respond to public
14 concerns about programming standards and content.
15 The broadcast television industry agreed in 1992 to
16 adopt a set of voluntary guidelines designed to “pro-
17 scribe gratuitous or excessive portrayals of violence”.
18 Shortly thereafter, both the broadcast and cable tele-
19 vision industries agreed to conduct independent
20 studies of the violent content in their programming
21 and make those reports public.

22 (15) In 1996, the television industry as a whole
23 made a commitment to develop a comprehensive rat-
24 ing system to label programming that may be harm-

1 ful or inappropriate for children. That system was
2 implemented at the beginning of 1999.

3 (16) Despite these efforts to respond to public
4 concern about the impact of television on children,
5 millions of Americans, especially parents with young
6 children, remain angry and frustrated at the sinking
7 standards of television programming, the reluctance
8 of the industry to police itself, and the harmful in-
9 fluence of television on the well-being of the children
10 and the values of the United States.

11 (17) The Department of Justice issued a ruling
12 in 1993 indicating that additional efforts by the tele-
13 vision industry to develop and implement voluntary
14 programming guidelines would not violate the anti-
15 trust laws. The ruling states that “such activities
16 may be likened to traditional standard setting efforts
17 that do not necessarily restrain competition and may
18 have significant procompetitive benefits... Such
19 guidelines could serve to disseminate valuable infor-
20 mation on program content to both advertisers and
21 television viewers. Accurate information can enhance
22 the demand for, and increase the output of, an in-
23 dustry’s products or services.”.

24 (18) The Children’s Television Act of 1990
25 (Public Law 101–437) states that television broad-

1 casters in the United States have a clear obligation
2 to meet the educational and informational needs of
3 children.

4 (19) Several independent analyses have dem-
5 onstrated that the television broadcasters in the
6 United States have not fulfilled their obligations
7 under the Children’s Television Act of 1990 and
8 have not noticeably expanded the amount of edu-
9 cational and informational programming directed at
10 young viewers since the enactment of that Act.

11 (20) The popularity of video and personal com-
12 puter (PC) games is growing steadily among chil-
13 dren. Although most popular video and personal
14 computer games are educational or harmless in na-
15 ture, many of the most popular are extremely vio-
16 lent. One recent study by Strategic Record Research
17 found that 64 percent of teenagers played video or
18 personal computer games on a regular basis. Other
19 surveys of children as young as elementary school
20 age found that almost half of them list violent com-
21 puter games among their favorites.

22 (21) Violent video games often present violence
23 in a glamorized light. Game players are often cast
24 in the role of shooter, with points scored for each
25 “kill”. Similarly, advertising for such games often

1 touts violent content as a selling point—the more
2 graphic and extreme, the better.

3 (22) As the popularity and graphic nature of
4 such video games grows, so do their potential to neg-
5 atively influence impressionable children.

6 (23) Music is another extremely pervasive and
7 popular form of entertainment. American children
8 and teenagers listen to music more than any other
9 demographic group. The Journal of American Medi-
10 cine reported that between the 7th and 12th grades
11 the average teenager listens to 10,500 hours of rock
12 or rap music, just slightly less than the entire num-
13 ber of hours spent in the classroom from kinder-
14 garten through high school.

15 (24) Teens are among the heaviest purchasers
16 of music, and are most likely to favor music genres
17 that depict, and often appear to glamorize violence.

18 (25) Music has a powerful ability to influence
19 perceptions, attitudes, and emotional state. The use
20 of music as therapy indicates its potential to in-
21 crease emotional, psychological, and physical health.
22 That influence can be used for ill as well.

23 **SEC. 3. PURPOSES; CONSTRUCTION.**

24 (a) PURPOSES.—The purposes of this Act are to per-
25 mit the entertainment industry—

1 (1) to work collaboratively to respond to grow-
2 ing public concern about television programming,
3 movies, video games, Internet content, and music
4 lyrics, and the harmful influence of such program-
5 ming, movies, games, content, and lyrics on children;

6 (2) to develop a set of voluntary programming
7 guidelines similar to those contained in the Tele-
8 vision Code of the National Association of Broad-
9 casters; and

10 (3) to implement the guidelines in a manner
11 that alleviates the negative impact of television pro-
12 gramming, movies, video games, Internet content,
13 and music lyrics on the development of children in
14 the United States and stimulates the development
15 and broadcast of educational and informational pro-
16 gramming for such children.

17 (b) CONSTRUCTION.—This Act may not be construed
18 as—

19 (1) providing the Federal Government with any
20 authority to restrict television programming, movies,
21 video games, Internet content, or music lyrics that
22 is in addition to the authority to restrict such pro-
23 gramming, movies, games, content, or lyrics under
24 law as of the date of the enactment of this Act; or

1 (2) approving any action of the Federal Govern-
 2 ment to restrict such programming, movies, games,
 3 content, or lyrics that is in addition to any actions
 4 undertaken for that purpose by the Federal Govern-
 5 ment under law as of such date.

6 **SEC. 4. EXEMPTION OF VOLUNTARY AGREEMENTS ON**
 7 **GUIDELINES FOR CERTAIN ENTERTAINMENT**
 8 **MATERIAL FROM APPLICABILITY OF ANTI-**
 9 **TRUST LAWS.**

10 (a) EXEMPTION.—Subject to subsection (b), the anti-
 11 trust laws shall not apply to any joint discussion, consider-
 12 ation, review, action, or agreement by or among persons
 13 in the entertainment industry for the purpose of devel-
 14 oping and disseminating voluntary guidelines designed—

15 (1) to alleviate the negative impact of telecast
 16 material, movies, video games, Internet content, and
 17 music lyrics containing violence, sexual content,
 18 criminal behavior, or other subjects that are not ap-
 19 propriate for children; or

20 (2) to promote telecast material that is edu-
 21 cational, informational, or otherwise beneficial to the
 22 development of children.

23 (b) LIMITATION.—The exemption provided in sub-
 24 section (a) shall not apply to any joint discussion, consid-
 25 eration, review, action, or agreement which—

1 (1) results in a boycott of any person; or

2 (2) concerns the purchase or sale of advertising,
3 including (without limitation) restrictions on the
4 number of products that may be advertised in a
5 commercial, the number of times a program may be
6 interrupted for commercials, and the number of con-
7 secutive commercials permitted within each interrup-
8 tion.

9 (c) DEFINITIONS.—In this section:

10 (1) ANTITRUST LAWS.—The term “antitrust
11 laws” has the meaning given such term in the first
12 section of the Clayton Act (15 U.S.C. 12) and in-
13 cludes section 5 of the Federal Trade Commission
14 Act (15 U.S.C. 45).

15 (2) INTERNET.—The term “Internet” means
16 the combination of computer facilities and electro-
17 magnetic transmission media, and related equipment
18 and software, comprising the interconnected world-
19 wide network of computer networks that employ the
20 Transmission Control Protocol/Internet Protocol or
21 any successor protocol to transmit information.

22 (3) MOVIES.—The term “movies” means theat-
23 rical motion pictures.

24 (4) PERSON IN THE ENTERTAINMENT INDUS-
25 TRY.—The term “person in the entertainment indus-

1 try” means a television network, any entity which
2 produces or distributes television programming (in-
3 cluding theatrical motion pictures), the National
4 Cable Television Association, the Association of
5 Independent Television Stations, Incorporated, the
6 National Association of Broadcasters, the Motion
7 Picture Association of America, each of the affiliate
8 organizations of the television networks, the Inter-
9 active Digital Software Association, any entity which
10 produces or distributes video games, the Recording
11 Industry Association of America, and any entity
12 which produces or distributes music, and includes
13 any individual acting on behalf of such person.

14 (5) TELECAST.—The term “telecast” means
15 any program broadcast by a television broadcast sta-
16 tion or transmitted by a cable television system.

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