

107TH CONGRESS  
1ST SESSION

# S. 124

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.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2001

Mr. LOTT (for Mr. BROWNBACK (for himself, Mr. DEWINE, Mr. KOHL, and Mr. DORGAN)) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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# 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 2001”.

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.

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—

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

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 educational, informational, or otherwise beneficial to the  
21 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—

8 (c) DEFINITIONS.—In this section:

23 (4) PERSON IN THE ENTERTAINMENT INDUS-  
24 TRY.—The term “person in the entertainment indus-  
25 try” means a television network, any entity which

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

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

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