

105TH CONGRESS  
1ST SESSION

# S. 539

To exempt agreements relating to voluntary guidelines governing telecast material from the applicability of the antitrust laws.

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IN THE SENATE OF THE UNITED STATES

APRIL 9, 1997

Mr. BROWNBACK (for himself, Mr. LIEBERMAN, Mr. DEWINE, and Mr. KOHL) 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 from the applicability of the antitrust laws.

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 “Television Improve-  
5 ment Act of 1997”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) Television is seen and heard in nearly every  
9 American home and is a uniquely pervasive presence

1 in the daily lives of Americans. The average Amer-  
2 ican home has 2.5 televisions, and a television is  
3 turned on in the average American home 7 hours  
4 every day.

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

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

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

20 (5) Hundreds of studies have proven conclu-  
21 sively that children who are consistently exposed to  
22 violence on television have a higher tendency to ex-  
23 hibit violent and aggressive behavior, both as chil-  
24 dren and later in life.

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

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

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

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

22                 (A) “[I]n selecting program subjects and  
23                 themes, great care must be exercised to be sure  
24                 that the treatment and presentation are made  
25                 in good faith and not for the purpose of sensa-

1           tionalism or to shock or exploit the audience or  
2           appeal to prurient interests or morbid curios-  
3           ity.”

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

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

21          (D) “The presentation of marriage, family,  
22          and similarly important human relationships,  
23          and material with sexual connotations, shall not  
24          be treated exploitatively or irresponsibly, but  
25          with sensitivity.”

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

9           (10) The NAB abandoned the code of conduct  
10          in 1983 after three provisions of the code restricting  
11          the sale of advertising were challenged by the De-  
12          partment of Justice on antitrust grounds and a Fed-  
13          eral district court issued a summary judgment  
14          against the NAB regarding one of the provisions on  
15          those grounds. However, none of the programming  
16          standards of the code were challenged.

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

20          (12) Since the NAB abandoned the code of con-  
21          duct, programming standards on broadcast and  
22          cable television have deteriorated dramatically. Lurid  
23          and sensational talk shows are aired regularly  
24          throughout the day and profanities have become

1       commonplace during the early hours of prime time,  
2       when millions of young children are watching.

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 this year.

3           (16) Despite these recent efforts to respond to  
4       public concern about the impact of television on chil-  
5       dren, millions of Americans, especially parents with  
6       young children, remain angry and frustrated at the  
7       sinking standards of television programming, the re-  
8       luctance of the industry to police itself, and the  
9       harmful influence of television on the well-being of  
10      the children 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 **SEC. 3. PURPOSE.**

12 (a) PURPOSE.—The purpose of this Act is to permit  
13 the broadcast and cable television industry—

14 (1) to work collaboratively to respond to grow-  
15 ing public concern about the current content of tele-  
16 vision programming and the harmful influence of  
17 such programming on children;

18 (2) to develop a set of voluntary programming  
19 guidelines similar to those contained in the Tele-  
20 vision Code of the National Association of Broad-  
21 casters; and

22 (3) to implement the guidelines in a manner  
23 that alleviates the negative impact of television pro-  
24 gramming on the development of children in the  
25 United States and stimulates the development and

1 broadcast of educational and informational program-  
2 ming for such children.

3 (b) CONSTRUCTION.—This Act may not be construed  
4 as—

5 (1) providing the Federal Government with any  
6 authority to restrict the content of television pro-  
7 gramming that is in addition to the authority to re-  
8 strict such programming under law as of the date of  
9 enactment of this Act; or

10 (2) approving any action of the Federal Govern-  
11 ment to restrict the content of such programming  
12 that is in addition to any actions undertaken for  
13 that purpose by the Federal Government under law  
14 as of such date.

15 **SEC. 4. EXEMPTION OF VOLUNTARY AGREEMENTS ON**  
16 **GUIDELINES FOR TELECAST MATERIAL**  
17 **FROM APPLICABILITY OF ANTITRUST LAWS.**

18 (a) EXEMPTION.—Subject to subsection (b), the anti-  
19 trust laws shall not apply to any joint discussion, consider-  
20 ation, review, action, or agreement by or among persons  
21 in the television industry for the purpose of developing and  
22 disseminating voluntary guidelines designed—

23 (1) to alleviate the negative impact of telecast  
24 material such as, but not limited to, violence, sexual  
25 content, criminal behavior, or profane language; or

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

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

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

8           (2) concerns the purchase or sale of advertising,  
9           including (without limitation) restrictions on the  
10          number of products that may be advertised in a  
11          commercial, the number of times a program may be  
12          interrupted for commercials, and the number of con-  
13          secutive commercials permitted within each interrup-  
14          tion.

15          (c) DEFINITIONS.—In this section:

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

21          (2) PERSON IN THE TELEVISION INDUSTRY.—  
22          The term “person in the television industry” means  
23          a television network, any entity which produces pro-  
24          gramming for television distribution (including the-  
25          atrical motion pictures), the National Cable Tele-

1 vision Association, the Association of Independent  
2 Television Stations, Inc., the National Association of  
3 Broadcasters, the Motion Picture Association of  
4 America, and each of the affiliate organizations of  
5 the television networks, and includes any individual  
6 acting on behalf of such person.

7 (3) TELECAST.—The term “telecast” means  
8 any program broadcast by a television broadcast sta-  
9 tion or transmitted by a cable television system.

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