

## Regulating broadcast media adult content: A case of Kenya and selected other countries

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### Abstract

This study sought to examine regulation of broadcast media adult content in Kenya and selected countries. The study was conducted through desktop research. This includes searches on government websites, academic databases, relevant book and journal literature, online publications, and reviewing primary legislation and regulatory instruments. Five jurisdictions (the US, Canada, South Africa, Britain and Australia) were selected for comparative analysis. The findings demonstrate that Kenya's mainstream media frequently promotes unrealistic, sexually suggestive behaviour. It was also established that Kenyan television and radio are not adequately regulated. Furthermore, consistency and persistence in monitoring and rating media content prevent 'ratings creep' whereby, as earlier explained, content meant for adults is gradually and increasingly included in programs meant for children. A clear and consistent rating system must therefore be developed for Kenya by an independent regulatory authority to avoid ratings creep.

**Key Terms:** Legal framework, institutional framework, broadcast media, adult content.

## INTRODUCTION

The United States Supreme Court has defined sexually explicit content or otherwise obscene content as 'material judged by contemporary community standards, must appeal to the prurient interest in sex, must depict sexual conduct in a patently offensive manner, and must lack serious literary, artistic, political, and scientific value'. The court recognised that there are developmental differences between children and adults. Therefore, it was constitutional for the government to regulate the exposure of sexually explicit content to minors, even if contemporary community standards would not find the material obscene for an adult.

Sex on television and radio is much more than depictions of sexual intimacy or sexual intercourse. Children and adolescents can learn a lot about sex, such as what it means to be a man or a woman, what makes an individual attractive or 'cool', and how one should behave around someone of the opposite gender. However, prime-time television and radio are not always appropriate for adolescents whose bodies are still maturing and whose identities are still being discovered. For example, prime-time radio and television comedians may engage in cat-calling, ogling, leering or staring at human features of a certain shape or size. Similarly, there have been numerous broadcasts where presenters or actors make sexual remarks concerning body parts, nudity and sexual activities like petting, including sexual intercourse, frequently accompanied by laugh tracks.

## LITERATURE REVIEW

The Constitution is the supreme law in Kenya. It constitutes the fundamental principles of the State and binds all persons and State organs. The Constitution of Kenya recognises the vulnerability of children by calling upon state organs and the entire public officers to address the needs of vulnerable populations such as children. Article 27 of the Constitution provides that every person is equal before the law and entitled to equal protection and law benefit.

Chapter 4 of the Constitution contains the Bill of Rights. This chapter embodies numerous freedoms and their limitations. Freedom of expression is among

the rights guaranteed to the people of Kenya. However, like most other fundamental rights, it can be limited when it infringes on the rights of others. For example, article 33(3) goes on to provide that in exercising the right of freedom of expression, every person will respect the rights of others. Also, Article 29 (d) provides that every person has the right to freedom from torture, including psychological torture.

The Constitution provides that broadcast media in Kenya is subject to licensing procedures regulating airwaves. Article 34(5) provides:

'Parliament shall enact legislation that provides for the establishment of a body, which shall-

- (a) Be independent of control by government, political interests or commercial interests;
- (b) Reflect the interests of all sections of the society; and
- (c) Set media standards and monitor compliance with those standards.'

As earlier mentioned, international conventions ratified by Kenya form part of the Constitution of Kenya. In addition, Kenya has ratified international treaties relevant to this dissertation, including the ICCPR, CRC and ACRWC. As mentioned in the previous chapter, the above instruments provide the right to freedom of expression but also provide that the freedom of expression is not absolute and calls for media regulation (Centre for Law and Democracy, 2012). ICCPR provides everyone with the right to freedom of expression through any media of their choice. However, it goes on to provide that this freedom carries special duties and responsibilities and may therefore be subject to certain restrictions to protect public health and morals.

Article 13 of the CRC provides that the child shall have the right to freedom of expression, including seeking and receiving information regardless of frontiers. Similarly, to Article 19 of the ICCPR, article 13 of the CRC provides for media restrictions to protect public health and morals. Article 17 of the CRC focuses on limiting media content to protect children. The relevant part of Article 17 provides that State Parties recognise the important function the mass media performs and shall ensure that the child has access to material and information from a diversity of sources,

especially those aiming at the promotion of their social, spiritual and moral wellbeing and physical and mental health. To this end, the article provides that State Parties shall encourage the development of appropriate guidelines for protecting the child from information and material injury to their wellbeing, bearing in mind the provisions of Article 13 and 18.

Article 18 recognises that parents have primary responsibility for children. Article 12 of the CRC calls for child participation in matters affecting them and provides that State Parties shall assure the child who is capable of forming their own views the right to express those perceptions freely in all issues affecting the child, the perception of the child being given due weight in regards to the maturity and age and maturity of the child. Article 12 of the CRC provisions is repeated almost verbatim by Article 7 of the ACRWC, as well as section 4(4) of the Children Act of Kenya, as will be seen below.

## RESULTS AND DISCUSSIONS

### Regulation of Broadcast Media for Child Protection in Selected Countries

Various countries use different regulatory methods to balance between protecting children and respecting the fundamental right of freedom of expression. In this chapter, the broadcasting regulations of some democratic states are analysed. Countries' ranking as model states in media regulation by the United Nations Educational, Scientific and Cultural Organization (hereafter UNESCO) was taken into account in the choice of these countries. Australia and America were included in this comparative analysis because of their impressive media literacy programs and their continued research on ways of protecting children from adult content in broadcast media (Salomon, 2008).

As will be shown, the different countries follow a variety of different approaches. In the next chapter, consideration will be given to which of these approaches could be useful for improving the situation in Kenya.

#### Canada

The body with basic responsibility for regulating broadcasting in Canada is the Canadian Radio-

Television and Telecommunications Commission (hereafter CRTC); it was established pursuant to the Canadian Broadcasting Act 1991. This body has both a proactive and reactive function (Centre for Law and Democracy, 2012). In addition, in 1990, the Canadian Association of Broadcasters (hereafter CAB) created the Canadian Broadcast Standards Council (hereafter CBSC) as a self-regulatory, independent body to administer standards established by its members, Canada's private broadcasters. Of relevance to this dissertation is a CBSC Code covering sexual explicitness. The Code will be discussed in detail below.

Although the Canadian Broadcasting Act does not explicitly state that the CRTC is independent, this is implicit in the structure and function of the Commission and the fact that under the common law of Canadian, administrative bodies are entitled to a wide autonomy measure. In practice, the Commission operates at arms-length from the government and is fully independent.

The CBSC was created and funded by the Canadian Association of Broadcasters, but it is an independent body with a mixed representation of broadcasters and public members. The Canadian Association of Broadcasters adopts standards, but complaints are processed and implemented through the CBSC, thus providing distance from the industry. A study in 2008 by *Option Consommateurs*, a cross-Canadian not-for-profit organisation that aims to promote and defend the rights of media consumers, attempted to determine the effectiveness of the CBSC. It concluded that the Council's strict regulatory system was based on a view of children as vulnerable and was reasonably effective at protecting them. However, the report noted that the law on its own is not enough and needs to be backed up by proper funding of the body to continue its effectiveness. Also, the CBSC was praised for its flexibility, transparency and representativeness.

The Canadian 1990 Sex Portrayal Code for Television and Radio Programming calls on radio and television licensees to exercise responsibility in their broadcast content. Clause 4 of the Code specifically calls on broadcasters to be sensitive to broadcast content and sex-role portrayals. The Code lays out the primary

framework for the watershed: “Programming which contains sexually explicit material or coarse or offensive language intended for adult audiences shall not be telecast before the late viewing period, defined as 9 pm to 6 am”. The core standard is that material meant only for adult audiences must not be shown before 9 pm. It may be noted that broadcasters, who operate across the many time zones in Canada, are accountable for ensuring compliance in each separate time zone.

In 2006, the Canadian Association of Broadcasters formed the *pre-clearance committee*, which monitors every broadcast advertisement directed to children before it goes on air Statham et al. (2011). The committee is a sub-committee of Advertising Standards Canada, a partnership of major advertising industry and media organisations. The panel members include advertisers, broadcasters, regulators, parents and educators, and review each commercial against the Children’s Code. If a broadcast contravenes the code, it is rejected, and even approved commercials must be submitted for re-evaluation after one year to accommodate changing social values.

The CRTC, as a regulator, has the power to warn and fine broadcasters and revoke or suspend licenses. For example, in July 2004, the CRTC revoked the license of Genex Communications for its Quebec City radio station *CHOI*. In 2002, CRTC put Genex Communications on notice following complaints received on issues including inappropriate language and sexually explicit broadcasts. The station’s failure to resolve the issue finally revoked the license. The courts rejected an appeal from this decision based on the right to freedom of expression as protected under the Canadian Constitution.

According to Hargrave and Livingstone (2013), the V-chip in Canada has been introduced in all television sets. The V-Chip is a computer chip in a television set that can filter out content in accordance with parents’ wishes. For the V-Chip to work, programs must be rated so parents can block out harmful content (Gentile, 2011). This sets a threshold level for sexual content as well as violent broadcasts. Efforts are being made to promote media literacy across Canada to ensure the V-Chip is fully effective. However, a survey

found that many parents believe that there is room for improvement in the rating system in Canada. They advocate for a combination of both age and content ratings to be used when targeting children under the age of 8 years old and age ratings without content ratings for protecting teenagers, as content ratings increase teenagers’ motivation to watch inappropriate programs.

In addition, to mandatory pre-clearance standards and the installation of V-Chip in television sets, numerous media literacy initiatives exist in Canada. For example, the popular *TV & ME* literacy and life skills program developed in Canada is a media literacy resource in schools across Canada (Media Literacy Research and Policy in Europe, 2014). In addition to this, there also exists the Canadian *Media Smarts* initiative, formerly known as *Media Awareness Network*. This independent non-profit organisation was started in Canada in 1996 to promote media literacy in the country. It produces tools and resources in both French and English, which are available free of charge through a website with sections for parents, teachers and children.

In conclusion, it is evident from analysing Canada’s broadcast framework that numerous factors are important for the successful regulation of the media for the protection of children. Despite the existence of two regulatory bodies, the CRTC and the CBSC, the duties of these bodies are clearly defined. Studies show that these bodies have also been rated as independent, transparent and effective in their duties. In addition, the revocation of licenses, the use of technology such as the V-Chip, pre-clearance of broadcast content and media literacy have also contributed to the effective regulation of Canada’s broadcast framework. As a result, the child protection regulations in Canada in regard to broadcast regulation are relatively effective. They could potentially be used as a model by any other society that cares about the protection of their children against harmful media content.

## South Africa

In South Africa, the Independent Communications Authority of South Africa (hereafter ICASA) is responsible for regulating broadcast media. As its name suggests, ICASA is an independent authority. Its

governing legislation lays a clear procedure for the appointment of its governing board as follows:

The Council comprises seven councillors who the President appoints on the recommendation of the National Assembly according to the following principles;

- a) Public participation in the process of nomination
- b) Openness and transparency; and
- c) The publication of candidates shortlisted for appointment

Subsection 3 of ICASA requires members to be committed to freedom of expression and other positive social values as well as to have relevant expertise. Section 6 prohibits individuals with strong political connections and those with stakes in telecommunications or broadcasting from becoming members. The National Association of Broadcasters established the Broadcasting Complaints Commission of South Africa (hereafter BCCSA), and despite the fact that NAB funds it, it is functionally independent of it. An independent person, a retired Supreme Court of Appeal judge, appoints BCCSA members (Centre for Law and Democracy, 2012). At the regulator's insistence, BCCSA's constitution was amended so as to ensure members of the public nominate the candidates for membership. This ensures transparency and further independence of BCCSA.

On 6<sup>th</sup> July 2009, ICASA issued regulations regarding the code of conduct for broadcasting service licensees, pursuant to the Electronic Communications Act of section 54. This Section calls on ICASA to give a prescription on the code of conduct that shall be binding on broadcasters. It creates a watershed time period which runs from 21:00 to 05:00, during which all children below 18 years are supposedly asleep. Section 54 also provides that material containing sexually explicit conduct must not be broadcast before the watershed timeframe.

The BCCSA and ICASA codes are very similar. They include a focus on the protection of children and provide viewers with sufficient information prior to and during a program. This alerts audiences to age restrictions and to content that may be offensive to

some. As mentioned above, although broadcasters may not transmit material that is inappropriate for children at times when most of them may be expected to be in the audience, the onus is on parents to make decisions on what their children may or may not watch, as long as the broadcaster's obligation to air appropriate advisories is met.

A new code, the Broadcasting Complaints Commission of South Africa, Free-To-Air Code of Conduct for Broadcasting Service Licensees 2009, was effective on 1 January 2011. The general principles in the Code relating to children and advertisements are that advertisements aimed at or likely to influence children should not contain anything which may cause them to harm mentally, morally, physically or emotionally; that advertisements should not exploit children's natural trust, lack of experience or their sense of loyalty. The Code contains identical rules relating to children to those found in the ICASA Code. In addition, the Code gives the Commission the power to fine members who breach its regulations up to R. 60,000. An example of the application of the above rules and regulations was a case in 2011 in which Multi-choice was fined R 20,000 for broadcasting a television program rated 18 at 21:30.

Child participation in media monitoring is fast growing in South Africa. This is thanks to *Media Monitoring Africa* – a South African not-for-profit organisation that carries out media literacy workshops for children. This organisation aims to fulfil children's right to participation in matters that affect them, like having their voices and opinions heard by the media. The organisation teaches children how journalists work and the ethics they are expected to follow. Children are taught how to critically consume the media and rate various programs and articles as either bad or good depending on whether or not they are protecting the child's rights (Jamieson, 2015).

*Media Monitoring Africa* works with children in an ethical way that respect protects and promotes children's rights. For example, children voluntarily participate in all stages of the project – from helping in designing the media monitoring materials in order to presenting the results of their media monitoring and posing questions to journalists and editors. The organisation also includes children from various

backgrounds, and an equal number of girls and boys participate. In addition, measures are taken to reduce harm against the children; for instance, those who do not wish to be identified or named are protected.

In conclusion, it is evident that the media regulatory body has installed rules that have worked in South Africa. The law protects children from content that can potentially harm them mentally, morally, physically and emotionally, and it has worked out well. Furthermore, the regulatory bodies have a history of independence, enabling the successful prosecution of media houses that breach the laws. Other than that, as was discussed above, children in South Africa are participating in media monitoring thanks to *Media Monitoring Africa*. All the above shows that the South African media regulatory framework can be used as a model for the protection of children against harmful media content.

## Australia

In a study by Mendel (2011), the approach to media regulation in Australia is one of co-regulation involving both self-regulation and statutory requirements. Section 123(2) of the Broadcasting Services Act 1992 of Australia contemplates that groups representing radio and television broadcasting licensees should develop codes that apply to their broadcasting operations. Codes are created in consultation with the Australian Communications and Media Authority (hereafter ACMA), taking into account any relevant research carried out by the ACMA. The ACMA can only register a code if it is satisfied, among other things, that the relevant code provides appropriate community safeguards like that of child protection. In Australia, the watershed period is called the 'time zone' and is provided for under section 123(3c) (c) (d) of the Broadcasting Services Act of 1992. While radio is not subject to a comparable classification system, the current commercial radio code prohibits the broadcast of content with an explicit sexual theme unless it is broadcast between 9:30 pm and 5:00 am. An appropriate warning is made before the commencement of the broadcast and at hourly intervals during the broadcast of the program (Commercial Radio Australia Code of Practice, 2011).

ACMA is responsible for the regulation of children's television content. Ratings of content give viewers an idea of the suitability of the program for children or adults. The ACMA has also developed and oversees the Children's Television Standards. This is a set of mandatory regulations, which control the content of children's television programs and advertising. For example, all advertising screened during, immediately before and after children's programs must meet the requirements of the Standards, and no advertising is permitted during programs intended for pre-school children Children's Television Standards, 2009.

ACMA undertook a Contemporary Community Safeguards Inquiry in Australia between June and July 2013. This inquiry report was published in March 2014 and strongly endorsed the importance of protecting children from harmful media content. For example, the report showed that in Australia, there is no classification equivalent to television program ratings on the radio (Australian Communications and Media Authority, 2014). Nevertheless, as a general practice, radio content that is considered unsuitable for children, particularly because of explicit sexual references or coarse language, is restricted to post 9.00 pm time zones. Many submissions from children's rights advocates, parents and other stakeholders highlighted the importance of time zones as both appropriate and necessary because of the important role that broadcasting content plays in shaping children's views and behaviour.

During the above survey, some television networks proposed the removal of time zone restrictions noting that '...parents can now use parental locks, the information contained in electronic program guides and on-screen-plates to ensure their children do not see inappropriate content'. However, the Australian Council on Children and the Media (hereafter ACCM) strongly opposed the phasing out of time zones. It argued that, "...while it is true that many people time-shift their viewing, there is no evidence that families with young children would be willing, able, and empowered to do so in a way as to protect their children from inappropriate material in the event that time zones were dismantled". As a result, the time zones were maintained. This shows that an active

body like ACCM can make a big difference in protecting children from harmful broadcast content.

In addition to media literacy activities offered by organisations like ACCM, which are designed to protect children from harmful influences, Australia also has a long tradition of media education in schools that promotes a positive, informed approach to the use of media. The Australian Teachers of Media, for example, is a not-for-profit organisation of media educators and industry professionals who aim to develop 'an innovative and diverse screen and media culture in Australia' through debate, analysis, professional development and training (Australian Council on Children and the Media, 2010).

In conclusion, Australia applies a number of useful methods. Also, ACMA only issues broadcasting licenses to media stations whose codes strictly adhere to appropriate community safeguards such as the 2100hrs to 0500hrs time zone. ACMA's strict advertising rules, like that of screening advertisements prior to airing programs intended for school-going children and completely banning advertisements during programs meant for pre-school children. It is also noteworthy that the active not-for-profit children's rights organisations' presence can effectively protect children from harmful media content. For example, as was discussed above, ACCM strongly opposed the phasing out of time zones, thus causing the time zones to be maintained. It was also observed above that ACCM actively promotes media literacy in the country and the Australian Teachers for Media through their websites and free training workshops.

## The United Kingdom

Hargrave and Livingstone (2013) argues that in the United Kingdom (hereafter UK), as in Australia, a number of systems are in place to protect children from inappropriate broadcasting material. At this point, it is important to note that the United Kingdom of Great Britain and Northern Ireland contains three major legal systems. The three systems, each with their specific legal rules, are based geographically and comprise: England and Wales, Scotland and Northern Ireland. This part of the dissertation focuses on the media regulatory authority of the UK, the Office of

Communication (hereafter Ofcom), which, as will be seen below, is effective in regulating broadcast media for the protection of children.

Ofcom's main mandate is to license, monitor and deal with complaints regarding broadcast content. The Ofcom Code of Practice, which broadcasters sign up to, is a key element of the UK regulatory framework. The Code contains a number of regulations relevant to the protection of children from harmful broadcast content. Section 1 of the Code, which is similar to section 319(2)(a) of the Office Communications Act of 2002, is the most relevant. It prohibits the broadcast of material that may harm a child's morals or mental development and calls on all broadcasters to take 'all reasonable steps to protect children in this regard. This means that the Code prohibits abrupt transition to adult material even after the watershed daytime period. A majority (77%) of a sample of people that Ofcom Children's Media Literacy Survey (2008) states that Ofcom effectively regulates broadcast media for purposes of child protection. The research also showed that most respondents felt broadcasters and parents should share equal responsibility for protecting children from unsuitable material. This shows an awareness of parental responsibility in the general population due to a good level of media literacy.

Research done in the UK shows that after media literacy training has taken place, parents tend to adopt the following three methods of regulating broadcast media. They may try to influence their child's reactions through discussion (evaluative guidance), sharing media time with the child (unfocused guidance), or they may seek to control their children's access to media (restrictive guidance). The survey found that members of the public in the UK felt that 'the best protection for children from unsuitable influences was to be brought up by parents who spend time instilling the right values in their children, as well as effective regulation by Ofcom'. Ofcom is yet to establish what proportion of parents undertakes their role effectively. However, Hargrave and Livingstone (2013) argue that the way in which parents model their children has a greater impact than what they communicate.

In 2011, Ofcom published *Recent Ofcom decisions on the protection of children* on its website. The publication goes back four or five years to a situation where it held broadcasters in breach of rules protecting children from harmful content. More recently, in March 2015, Ofcom updated its rules (rules 1.28 and 1.29) relating to the protection of children from harmful broadcast content. The updated rules call on broadcasters to carry out risk assessments on how various programs may affect children before they are broadcast. They also call for applying expert advice where necessary to gauge children's best interests before certain broadcasts are made (Frost, 2011). Adherence to the Ofcom Code is a license condition for broadcasters, and those who breach the Code are often taken through the 'naming and shaming' system (Centre for Law and Democracy, 2012). The 'naming and shaming' system is proving to be quite effective in the UK. This is whereby Ofcom publishes broadcasters who breach the Code in their Broadcast Bulletin; newspapers then pick it up and give it more publicity. This system has proved effective as no broadcaster wants its audience or competitors to know that it has breached any rules meant for the good of society. Such measures to protect children from harmful broadcast content are impressive, and, as will be discussed in chapter five, Kenya has a lot to learn from Ofcom.

## The United States of America

On June 19, 1934, The 1934 Communications Act established the Federal Communications Commission (hereafter FCC): a body responsible for the regulation of broadcast media in the USA (Iannotta, 2011). The FCC was empowered to issue broadcast licenses, initiate legal action against parties, levying fines, and revoke broadcast station licenses. Five commissioners, including the chairperson of the FCC, are appointed by the United States President with the 'advice and consent of the Senate. However, up to three commissioners may be members of the same political party. This indicates that the FCC, although labelled an 'independent body', is far from independent as required by international standards. Despite this shortcoming, a variety of methods, such as lawsuits, the use of technology and media literacy, seem to be effective in protecting children from harmful

broadcast content in the United States, as will be discussed below.

In the United States of America (USA), the courts have supported a longstanding FCC ban on sexually explicit material on public airwaves. This includes non-cable television and radio broadcasts between 6:00 am and 10:00 pm. This restriction prevents adults from viewing or listening to material that could be obscene for minors during these hours. However, the restriction is not absolute because broadcasters are free to air adult content later at night when young children are expected to be asleep. In short, the FCC's time-bound ban over broadcast media makes it less convenient for adults to access sexual media content without denying them the material completely.

The US Supreme Court in *Red Lion Broadcasting Corporation Company v Federal Communications Commission*, 395 US 367 (1969), justified this restriction on the basis that, because broadcast frequencies are a public resource, the government was justified in exerting strong regulatory power over their content. In the subsequent case of *Federal Communications Pacific v Pacifica Foundation*, 438 US 726 (1978), the US Supreme Court upheld this ban and made a specific reference to the role of broadcast media in children's lives. The court noted the wide accessibility of broadcast media. One must simply have a radio receiver or television set and hit the power button to view or listen to a program. This eases the children's access to material that could be harmful to them.

In a subsequent case, *Reno v American Civil Liberties Union*, 521 US 844 (1997), the US supreme court supported regulation in cases where media is pervasive, easily accessed, and is carried over public airwaves. Under these circumstances, the US Supreme court has supported regulation that infringes somewhat on adult access to sexually explicit material, as long as the regulation does not completely reduce the media landscape to that appropriate for children.

The television rating system in America is as follows: a category referred to as TV-Y indicates classifications are suitable for all children, including those between 2 and 6 years; TV-Y7 indicates children age seven and above; TV-G indicates Suitable for all ages, TV-PG

includes material unsuitable for younger children and requiring parental guidance for older children. TV-14 includes material for children but is unsuitable for children under 14 years. TV-MA includes material that may be unsuitable for children under 17 years. Other symbols used in the US television rating system are; S for sexually explicit content and D for sexually suggestive dialogue. Iannotta (2011) argues that this detailed rating system in America is fairly consistent in its implementation. He also noted with approval that generally, prior to and during television programs, the rating indicator is portrayed often. The ratings are designed to function with the V-Chip, which must be installed in every television set manufactured after January 2000, as the law states. The V-Chip should be programmed by parents to automatically block off programs according to the specified ratings.

What makes America unique in terms of broadcast regulation is the extent to which healthcare professionals are actively involved in research and media literacy in a bid to protect children from harmful media content. The American Medical Association (hereafter AMA) and the American Association of Pediatrics (hereafter AAP) have been actively involved in researching and advising the public on the effects of media on children since 1976. In 1977, AMA passed a resolution expanding their concern to include sexually suggestive programming. Suggestive is different from explicit. I think a new concept is being introduced in your dissertation; therefore- Explain briefly here what is meant by such programming, e.g. define a little. They then authorised specific funding to research and monitored the negative effects these could have on children (Evans, 2011).

Over the ensuing decades since 1976, the American Psychological Association (hereafter APA), as well as the American Academy of Child and Adolescent Psychiatry (hereafter AACAP), have also joined the AMA and APP in making practice recommendations and policy statements with the intent to limit negative health effects of the media. The AMA and AAP particularly call on paediatricians, parents and the entertainment industry to limit children's exposure to unhealthy media messages about sex. In addition, these organisations constantly carry out research to determine how best to influence young people with

positive media while simultaneously advocating for the reduction of sexual content in all forms of media. Some of the policies that these organisations have successfully advocated for in America are discussed below.

Since 1996, the AAP has officially recommended that paediatricians encourage parents to watch television with their children and discuss the content. Co-viewing with discussion is known as *active mediation* in America, but Ofcom in Britain, as noted above, refers to it as *evaluative guidance*. The AAP and AACAP argue that active mediation helps children to distinguish fantasy from reality. In addition, they recommend that parents must comment specifically about content that is unacceptable. This is because if parents simply co-view without discussion, children may interpret parent's silence as an endorsement of the content.

The APA and *Media Matters* actively support the development of technology that empowers parents to block broadcasts of content that may be harmful to children. Together with the Kaiser Family Foundation, they educate and encourage parents to use the V-Chip technology to sieve broadcast content. Thus, they encourage parents to actively participate in order to protect their children from inappropriate content. As of 2007, AACAP joined forces with APA to implement more education and outreach initiatives to enable parents to gain full benefit from the V-Chip technology and thus promote a safer media environment for children.

Another recommendation that the APA and AACAP have proposed to parents is to have children's bedrooms remain electronic-media free. In addition, they call on parents to remove TV and radio sets from children's bedrooms. AAP, AMA and APA directly address their policies to the government and the entertainment industry. The three organisations were instrumental in passing the Children's Television Act of 1996, which contains provisions for protecting children from harmful broadcast content. The AAP, AMA and APA have also encouraged the US Senate to authorise funding for research on media effects on children. As a result of this initiative, the current Children and Media Research Advancement Act which various senators sponsored, was designed to provide direct funding for

research into how media can be regulated for children's protection from harmful content.

The three organisations also contend against 'ratings creep', which is the inclusion of adult content in less restrictive ratings. The organisations argue that objectionable content has significantly increased in certain programs over time because of ratings creep. For example, they point out that a television program rated PG-13 in 2003 included approximately as much nudity as an R-rated movie of 10 years ago. However, the regulators consistently advocate that the rating content should not gradually change over time because they were designed to help shield children from potentially harmful content.

As seen above, America has proved that public interest litigation can be instrumental in helping to ensure the protection of children from inappropriate broadcast content. In addition, the use of technology has also been seen to be an effective tool for regulating the media in the U.S. Of equal importance is how the healthcare professionals in America have come out in

large numbers to research, fund and advocate for the protection of children from adult content.

## CONCLUSION AND RECOMMENDATION

**Conclusion:** Consistency and persistence in monitoring and rating media content prevents 'ratings creep' whereby, as earlier explained, content meant for adults is gradually and increasingly included in programs meant for children. A clear and consistent rating system must therefore be developed for Kenya by an independent regulatory authority to avoid ratings creep.

**Recommendation:** Kenya should amend its Broadcasting Regulations to make its ratings clearer. For example, instead of having 'General Exhibition' (GE) also rated as '10', the regulations should provide for one of the two, not both, for consistency. Kenya can also learn from the advice of Canadian parents who called upon the government to tailor the information included in ratings according to specific age groups of children to avoid the 'forbidden fruit effect.'

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