

# REGULATORY LITERACY: RETHINKING TELEVISION RATING IN THE NEW MEDIA AGE

Tali Te'eni-Harari\* & Sharon Yadin\*\*

## INTRODUCTION

Rating systems for the regulation of television programs currently address parents, advising them of the presence of content considered inappropriate content for children so that they can screen what their children watch.<sup>1</sup> However, today's children increasingly choose television content on their own, as parental supervision is consistently declining.<sup>2</sup> Thus, this essay argues that the existing regulatory regime for rating television content is unsuited to the present-day viewing styles of youngsters, and therefore has to be reshaped.<sup>3</sup>

Television rating systems were designed to respond to concerns from parents and governments about the access of children to sexually explicit and violent television content.<sup>4</sup> In the age of new media, rating television programs<sup>5</sup> remains a very common form of media regulation for the protection of children;<sup>6</sup> It has even been recently implemented for television streamed over the internet by large U.S. networks.<sup>7</sup> Television rating systems are based on disclosure regulation.<sup>8</sup> The process of disclosure entails the collection of program data by broadcasters, and conveying this information to parents at home via different means.<sup>9</sup> The regulatory system is dedicated to helping parents make informed decisions about limiting their children's viewing.<sup>10</sup> This approach assumes that parents decide which programs their children watch, and thus the information

---

\* Dr. Tali Te'eni-Harari is an Associate Professor and head of the MBA program, PAC Business School. tee.tal100@gmail.com.

\*\* Dr. Sharon Yadin is an Associate Professor at PAC Law School and an elected member of the Israel Press Council. sharon@yadin.com.

We would like to thank participants of the annual conference (2018) of the Israel Communication Association for helpful comments and Peres Academic Center for supporting this research. We also thank the editorial team at the UMKC law review.

<sup>1</sup> See *infra* Part I.

<sup>2</sup> See *id.*

<sup>3</sup> See *infra* Part III.

<sup>4</sup> See Brad J. Bushman & Joanne Cantor, *Media Ratings for Violence and Sex: Implications for Policymakers and Parents*, 58 AM. PSYCHOLOGIST 130, 130 (2003).

<sup>5</sup> In this article, we use the term "television program" to mean all audiovisual content, specifically shows, provided via old or new media, linear or non-linear (on-demand).

<sup>6</sup> See generally *The V-Chip: Options to Restrict What Your Children Watch on TV*, FED. COMM'N COMM'N (Sep. 8, 2017), <https://www.fcc.gov/consumers/guides/v-chip-putting-restrictions-what-your-children-watch>.

<sup>7</sup> See Brian Stelter, *TV Content Ratings System Set to Expand to Web*, N.Y. TIMES (June 10, 2012, 8:48 PM), <http://mediadecoder.blogs.nytimes.com/2012/06/10/tv-content-ratings-system-set-to-expand-to-web>.

<sup>8</sup> See *infra* Part II.

<sup>9</sup> See *infra* Part II.

<sup>10</sup> See Joel Timmer, *Television Violence and Industry Self-Regulation: The V-Chip, Television Program Ratings, and the TV Parental Guidelines Oversight Monitoring Board*, 18 COMM. L. & POL'Y 265, 268 (2013).

provided is mainly directed at parents and is designed accordingly.<sup>11</sup>

However, technological developments of recent years have enabled young viewers to watch television programs on diverse platforms such as smartphones, computers, and tablets, where parental monitoring is largely absent.<sup>12</sup> Moreover, in this new media environment, many programs are essentially free of any regulation or are governed by very few restrictions.<sup>13</sup> Accordingly, the main argument of this essay is that the existing regulatory regime for rating television content is unsuited to the present-day viewing styles of youngsters, and must therefore adapt.

The essay puts forward a new theory of media regulation, termed “regulatory literacy,” which uniquely draws on both media and regulation scholarship. This concept—presented in this essay for the first time—refers to regulators disseminating knowledge about both program content and the regulatory mechanisms themselves, with this information being addressed directly to children and not just to parents. The information provided should indicate the presence of inappropriate content, as well as explaining how, when, and where rating systems work. However, regulatory literacy does not divest parents of their significant role in mediating viewing, but rather adds to their educational toolkit.

The essay is divided into three sections: The first outlines the media environments available to children today and their viewing habits. It analyzes the changing role of parents in their children’s program viewing and highlights the characteristics of the new media environment. The second section focuses on current modes of regulation of television content regarding children’s viewing. This section critically assesses the current regulatory approach and its suitability for young audiences today. Building on the media literacy approach and on responsive regulation scholarship, the third section proposes a new theory for television content regulation that addresses the challenges presented in the essay, called “regulatory literacy.”

---

<sup>11</sup> See Michael J. Fucci, *Facing the Future: An Analysis of the Television Ratings System*, 6 UCLA ENT. L. REV. 1, 10 (1998).

<sup>12</sup> See Donald F. Roberts, Ulla G. Foehr & Victoria Rideout, *Generation M: Media in the Lives of 8-18 Year-olds*, KAISER FAMILY FOUNDATION 1, 16-21 (2005), <https://kaiserfamilyfoundation.files.wordpress.com/2013/01/generation-m-media-in-the-lives-of-8-18-year-olds-report.pdf>.

<sup>13</sup> See generally *International Approaches to Audiovisual Content Regulation—A Comparative Analysis of the Regulatory Frameworks*, AUSTRALIAN COMM. & MEDIA AUTHORITY (2011), [https://web.archive.org/web/20180414081430/http://archive.acma.gov.au/webwr/\\_assets/main/lib310665/international\\_approaches\\_to\\_av\\_content\\_reg.pdf](https://web.archive.org/web/20180414081430/http://archive.acma.gov.au/webwr/_assets/main/lib310665/international_approaches_to_av_content_reg.pdf); Amy B. Jordan, *Children’s Media Policy*, 18 FUTURE OF CHILDREN 235 (2008); Filipa Peleja et al., *A Recommender System for the TV on the Web: Integrating Unrated Reviews and Movie Ratings*, 19 MULTIMEDIA SYS. 543 (2013); *Protection of Children Online*, ORG. ECON. CO-OPERATION & DEV. (2012), <https://web.archive.org/web/20180810012433/http://www.oecd.org/sti/ieconomy/protecting-children-online.htm>.

## I. NEW MEDIA ENVIRONMENTS AND CHILDREN

Young people, nowadays, grow up in a crowded media environment that contains a wide range of media content and platforms.<sup>14</sup> These facilitate a high level of personal choice for children, as well as private access to media content.<sup>15</sup> Today, children are engaged in solitary viewing using portable devices, such as smartphones and tablets, alongside private television sets.<sup>16</sup> Using these platforms, children consume traditional television-like content through websites and apps, such as YouTube, in addition to television sets.<sup>17</sup> Independence and personal choice in program viewing is intensified by the use of video-on-demand and by recording digital programs (with TiVo, for example), as well as internet streaming.<sup>18</sup>

While multi-platformed media environments are gaining popularity with young audiences, traditional television viewing is still very relevant. Children in the United States aged 2–17 view an estimated three hours of television daily.<sup>19</sup> Most young viewers have a television set in their bedroom.<sup>20</sup> The television content to which youngsters are exposed today is varied and includes many more options for child-oriented content than in the past.<sup>21</sup> However, television nowadays also displays a much more violent and sexual world to young people.<sup>22</sup>

Parents can play a significant role as mediators of their children's viewing by influencing their children's choice of programs and developing their ability to cope with harmful content.<sup>23</sup> Parental mediation includes a range of behaviors that

---

<sup>14</sup> See Victoria Rideout, *Zero to Eight: Children's Media Use in America*, COMMON SENSE MEDIA 9-10, 17 (2013), <https://www.commonsensemedia.org/research/zero-to-eight-childrens-media-use-in-america>.

<sup>15</sup> See generally Amy Bleakley et al., *The Annenberg Media Environment Survey: Media Access and Use in U.S. Homes with Children and Adolescents*, in MEDIA AND THE WELLBEING OF CHILDREN AND ADOLESCENTS 1 (Amy B. Jordan & Daniel Romer eds., 2004); Amy B. Jordan et al., *The Role of Television Access in the Viewing Time of U.S. Adolescents*, 4 J. CHILDREN & MEDIA 355 (2010).

<sup>16</sup> See Rideout, *supra* note 14.

<sup>17</sup> See *id.* at 20.

<sup>18</sup> See *id.* at 20-21.

<sup>19</sup> See Sarah E. Vaala et al., *Parents' Use of the V-Chip and Perceptions of Television Ratings: The Role of Family Characteristics and the Home Media Environment*, 61 J. BROAD. & ELEC. MEDIA 518, 531 (2017).

<sup>20</sup> See Roberts, Foehr & Rideout, *supra* note 12, at 1.

<sup>21</sup> See Ranit Grossaug, *It's Not All About the Money: Media Responsibility and Commercial Preschool Television in Israel*, 11 J. CHILDREN & MEDIA 53, 54 (2017).

<sup>22</sup> See generally Dale Kunkel et al., *Sexual Socialization Messages on Entertainment Television: Comparing Content Trends 1997–2002*, 9 MEDIA PSYCHOL. 595, 606 (2007); Barbara J. Wilson et al., *Violence in Children's Television Programming: Assessing the Risks*, 52 J. COMM. 5 (2002).

<sup>23</sup> See generally Joanne Cantor, *Fright Reactions to Mass Media*, in MEDIA EFFECTS: ADVANCES IN THEORY AND RESEARCH 287 (Jennings Bryant & Dolf Zillmann eds., 2002); Madeline A. Dalton, *Parental Rules and Monitoring of Children's Movie Viewing Associated with Children's Risk for Smoking and Drinking*, 118 PEDIATRICS 1932 (2006); Amy I. Nathanson, *The Unintended Effects of Parental Mediation of Television on Adolescents*, 4 MEDIA PSYCHOL. 207 (2002); Ron Warren, *Parental Mediation of Preschool Children's Television Viewing*, 47 J. BROAD. & ELEC. MEDIA 394,

parents can adopt in response to the rating displayed, such as switching channels, joint parent-child viewing, and prohibiting viewing.<sup>24</sup> Joint parent-child viewing also allows discussion about the content, thereby helping the child deal with it better.<sup>25</sup>

However, the rise of digital media means that television viewing today is more individual, more private, and less of a family or public experience than in the past.<sup>26</sup> Joint parent-child viewing is becoming occasional; parents now spend less time at home and more time working than they did when television ratings were developed, some twenty years ago.<sup>27</sup> It seems that, while parents may be positively inclined toward being involved with their children's media use, they do not have complete control due to practical obstacles, such as time and energy.<sup>28</sup>

Furthermore, while most parents in the United States know about the rating system, only one-third of them report using it, most or all of the time, to decide which programs their children should watch.<sup>29</sup> Parents mainly use supplementary mechanisms that control the extent of media exposure, such as restricting the hours of media consumption and implementing parental rules.<sup>30</sup> Thus, the relevance of the current rating system, which is designed for parents to supervise their children's viewing, is waning. It is time to consider new alternatives.

## II. REGULATING TELEVISION PROGRAMS FOR YOUNG VIEWERS

Television is an important part of childhood, providing a constant series of interactions with social, cultural, and personal information that lead to the child becoming a functioning member of society.<sup>31</sup> However, not all content is appropriate for children. Since television confronts people in their own homes and is readily accessible to children, the standards of freedom of speech that are applied to television differ from those applied to regular discourse in the public domain.<sup>32</sup>

---

397 (2003).

<sup>24</sup> See Bradley S. Greenberg & Lynn Rampoldi-Hnilo, *Child and Parent Responses to Age-Based and Content-Based Television Rating*, in HANDBOOK OF CHILDREN AND THE MEDIA 621, 622-27 (Dorothy G. Singer & Jerome L. Singer eds., 2001).

<sup>25</sup> See Dafna Lemish, *The Mediated Playground: Media in Early Childhood*, in THE INTERNATIONAL HANDBOOK OF CHILDREN, MEDIA AND CULTURE 152, 162 (Kirsten Drotner & Sonia Livingstone eds., 2008).

<sup>26</sup> See DONALD F. ROBERTS & ULLA G. FOEHR, KIDS AND MEDIA IN AMERICA 4 (2004).

<sup>27</sup> See *id.* at 76.

<sup>28</sup> See *id.*

<sup>29</sup> See generally Douglas A. Gentile et al., *Parents' Evaluations of Media Ratings a Decade After the Ratings Were Introduced*, 128 PEDIATRICS 36, 36 (2011); Peter Nikken & Jeroen Jansz, *Developing Scales to Measure Parental Mediation of Young Children's Internet Use*, 39 LEARNING, MEDIA & TECH. 250 (2014).

<sup>30</sup> See Lemish, *supra* note 25, at 152-67; Vaala et al., *supra* note 19, at 518-37.

<sup>31</sup> See Bruce Watkins, *Television Viewing as a Dominant Activity of Childhood: A Developmental Theory of Television Effects*, 2 CRITICAL STUD. MASS COMM. 323 (1985).

<sup>32</sup> See Treasa Chidester, *What the #\$\$% Is Happening on Television? Indecency in Broadcasting*,

Therefore, regulation of television programs is designed and implemented to safeguard children's welfare and prevent undesirable effects that may result from exposure to inappropriate content, such as violence, profanity, and sex.<sup>33</sup> One of the most prominent regulatory tools in this regard is the television rating system.

Generally speaking, television program rating is based on a system of categorization of content into types, according to criteria such as level of violence, profanity, or sexual content, and associating each category with a viewer age group for which the content is deemed appropriate.<sup>34</sup> Based on the classification, television broadcasters assign specific shows with a rating, and label them on-screen via icons.<sup>35</sup> Labeling techniques vary among different countries. Sometimes a system combines visual labels with auditory signals, such as warning messages.<sup>36</sup> Other systems focus on visual icons.<sup>37</sup>

Rating systems that were developed in countries such as the United States, Canada, and the United Kingdom were based on the assumption that parents guide their children as to which programs to watch and which to avoid.<sup>38</sup> In the United States, television ratings are even referred to as "parental guidelines."<sup>39</sup> A similar parental orientation is evident in the typical design of labels and symbols. Usually, small icons appear in the top corner of the screen, for a short time after a commercial break.<sup>40</sup> These icons are coded in a way that is often difficult to decipher without accompanying information. For example, Figure 1 below shows that the American label system uses a combination of letters and numbers to signify appropriate age for viewing. The label TV-Y marks programs that are considered appropriate for all children, and TV-Y7 is for programs that are suited for children ages seven and above.<sup>41</sup> Other advisories include TV-G, which means appropriate for general audiences, and TV-PG, to indicate programming that contains material potentially unsuitable for younger children.<sup>42</sup> TV-MA marks programming for mature audiences (individuals 17 years and above) only.<sup>43</sup>

---

13 COMM.LAW CONSPECTUS 135, 150 (2004).

<sup>33</sup> See generally Jordan, *supra* note 13; David A. Walsh & Douglas A. Gentile, *A Validity Test of Movie, Television, and Video-Game Ratings*, 107 PEDIATRICS 1302, 1302 (2001).

<sup>34</sup> See Thomas E. Coffin & Sam Tuchman, *Rating Television Programs for Violence: A Comparison of Five Surveys*, 17 J. BROAD. 3 (1972); Timmer, *supra* note 10, at 271-72.

<sup>35</sup> See Timmer, *supra* note 10, at 271.

<sup>36</sup> See David Oswell, *Media and Communications Regulation and Child Protection: An Overview of the Field*, in THE INTERNATIONAL HANDBOOK OF CHILDREN, MEDIA AND CULTURE 469, 480 (Kirsten Drotner & Sonia Livingstone, eds. 2008).

<sup>37</sup> See *id.*

<sup>38</sup> See generally *The TV Parental Guidelines*, TV PARENTAL GUIDELINES MONITORING BOARD, <http://www.tvguidelines.org/resources/TheRatings.pdf> (last visited Nov. 10, 2018).

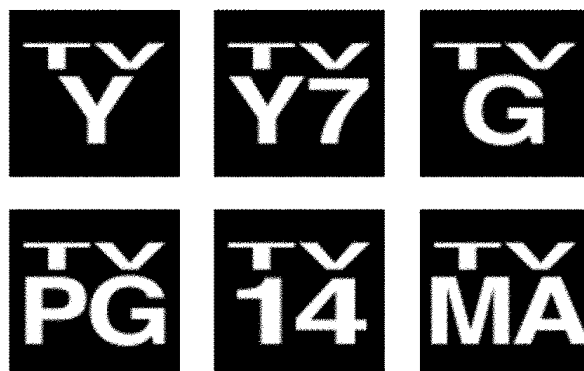
<sup>39</sup> See *id.*

<sup>40</sup> See *id.*

<sup>41</sup> See *id.*

<sup>42</sup> See *id.*

<sup>43</sup> See *id.*

**Figure 1. U.S. Basic Television Rating Symbols**

These basic icons may have one or more letters added to indicate harmful content. D indicates suggestive dialogue; L is for coarse or crude language; S is for sexual themes in the program; V is for violence; and FV is for fantasy violence—but the icons are far from being self-explanatory.<sup>44</sup> For example, Figure 2 below shows the labeling of a show that is rated TV14-LV, for language and violence that are not suitable for children under the age of 14. It is evident from these examples that this system is not easy to understand and definitely not intuitive.

**Figure 2. U.S. Television Rating Symbol TV14-LV**

Technological blocking is also a key component in the rating system, used to give parents direct control over their children's viewing.<sup>45</sup> Technologies such as V-chip are highly pervasive,<sup>46</sup> and are based on information provided via the rating systems.<sup>47</sup> V-chip technology has been mandated by U.S. law to be installed in all television sets sold since 2000.<sup>48</sup> Parents use this technology to predefine which types of programs are unsuitable for their children and block them.<sup>49</sup> However, the FCC has stated that the V-chip has "limited effectiveness in protecting children

<sup>44</sup> *See id.*

<sup>45</sup> *See* Timmer, *supra* note 10, at 268-70.

<sup>46</sup> *See id.*

<sup>47</sup> *See id.*; Chidester, *supra* note 32, at 158-59.

<sup>48</sup> *See* Jordan, *supra* note 13, at 244.

<sup>49</sup> *See* Vaala et al., *supra* note 19, at 519-20.

from violent television content.”<sup>50</sup> Alternative technologies include an external box, such as “TV Guardian,” to block profane language.<sup>51</sup> This can check phrases that are embedded into programs as text for those with hearing disabilities, and scans for offensive words or phrases.<sup>52</sup> If such material is detected, the device mutes the television temporarily while it is being shown.<sup>53</sup>

Both program labeling and technological blocking are intended to support the decision-making of parents about their children’s television viewing. Other methods of regulation are less dependent on the active choices of parents and are more institutional in nature. An approach called “safe harbor” allows broadcasting of indecent material only at specific hours at night.<sup>54</sup> Some types of content, such as pornography, are usually completely prohibited for broadcast television.<sup>55</sup> Such institutional methods are usually mandated by regulations that are issued by the FCC.<sup>56</sup>

The Telecommunications Act of 1996 required broadcasters, along with other interest groups, to develop a form of regulation to classify and label programs according to their degree of harmfulness to children.<sup>57</sup> Participants in this process included parents’ representatives, such as the TV Parental Guidelines Monitoring Board; representatives of the entertainment industry, such as the National Implementation Group; and representatives of television broadcasters, such as the National Association of Broadcasters.<sup>58</sup> The process was largely designed by industry stakeholders and was not dictated by Congress, though it was initiated by it.<sup>59</sup> As a result, the industry’s TV Parental Guidelines body established a rating system for programs, which defined a range of categories for programs.<sup>60</sup> Under this system, broadcasters and cable channels attach a rating icon to each program.<sup>61</sup> These icons are a summary indicator meant to convey the presence of different types of content, such as violence, sexual content, or strong language.<sup>62</sup>

The U.S. television rating system is therefore a mix of self-regulation, negotiated regulation, and co-regulation,<sup>63</sup> based on disclosure regulation.

---

<sup>50</sup> FED. COMM. COMMISSION, FCC 07-50, VIOLENT TELEVISION PROGRAMMING AND ITS IMPACT ON CHILDREN 14 (2007), [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-07-50A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-50A1.pdf).

<sup>51</sup> See Chidester, *supra* note 32, at 159.

<sup>52</sup> See *id.*

<sup>53</sup> See *id.*

<sup>54</sup> See *id.* at 154.

<sup>55</sup> See *The Public and Broadcasting: How to Get the Most Service from Your Local Station*, FED. COMM. COMMISSION 13-14 (2018), <https://www.fcc.gov/sites/default/files/public-and-broadcasting.pdf>.

<sup>56</sup> See *id.*

<sup>57</sup> See Fucci, *supra* note 11, at 3-4; 47 U.S.C. § 303 (1996).

<sup>58</sup> See Fucci, *supra* note 11, at 4; Timmer, *supra* note 10, at 271.

<sup>59</sup> See Fucci, *supra* note 11, at 9-10.

<sup>60</sup> See James T. Hamilton, *Media Violence and Public Policy*, in *TELEVISION VIOLENCE AND PUBLIC POLICY* 3 (James T. Hamilton ed., 2000).

<sup>61</sup> See *id.*

<sup>62</sup> See *id.* at 3-4.

<sup>63</sup> Self-regulation allows the industry to regulate itself to varying degrees, and negotiated (or

Disclosure regulation usually focuses on imposing obligations on manufacturers and service providers to actively disclose information pertaining to the product or service to consumers.<sup>64</sup> A similar disclosure obligation applies, for example, to public companies on the stock exchange, which are obligated to disclose information to the public that may be significant to investors.<sup>65</sup> Disclosure regulation also applies to manufacturers in food and drug industries, which are obligated to provide certain information on their packaging.<sup>66</sup>

Disclosure regulation can be imposed directly or indirectly by the state or by non-state actors, including voluntarily, as self-imposed regulation.<sup>67</sup> The objective of disclosure regulation is to provide consumers with appropriate tools for making an informed decision regarding the consumption of a product or service.<sup>68</sup> This approach is based on the idea of advancing individuals' personal autonomy, and reducing the paternalism that is inherent to traditional command and control regulation.<sup>69</sup> It is sometimes argued that mandatory information disclosure represents "libertarian paternalism," in which, by conveying certain information to the consumer or controlling the way such information is presented, the consumer can be guided with a "nudge."<sup>70</sup> "Nudging" refers to positive reinforcement and indirect suggestions that influence motives, incentives, and decision-making.<sup>71</sup> This regulatory strategy enables the consumer to choose, within the bounds of a certain "choice architecture," the design of how choices are presented to consumers, in order to influence their decision-making.<sup>72</sup>

Choosing and applying a specific regulatory tool, such as disclosure regulation, requires regulators to be responsive to different elements in the regulatory space. Many regulatory systems around the world have failed to address the changing circumstances of children's viewing habits and do not employ "responsive regulation." Responsive regulation is a highly influential approach developed by Ayres and Braithwaite, which involves making a deliberative and

---

consensus-based) regulation is based upon agreement, usually between the government and the industry; co-regulation involves a combination of both state and industry regulation. *See* Chidester, *supra* note 32, at 158-59; Jordan, *supra* note 13; Timmer, *supra* note 10, at 269.

<sup>64</sup> *See* ROBERT BALDWIN ET AL., UNDERSTANDING REGULATION: THEORY, STRATEGY, AND PRACTICE 119 (2d ed. 2012).

<sup>65</sup> *See generally* *The Laws That Govern the Securities Industry*, U.S. SEC. & EXCH. COMM'N, <https://www.sec.gov/answers/about-lawsshtml.html> (last visited June 30, 2018).

<sup>66</sup> *See, e.g.*, BALDWIN ET AL., *supra* note 64; Jack Gainey, *An Examination of Trans Fat Labeling: Splitting the Third & Ninth Circuit*, 23 WASH. & LEE J. CIV. RTS. & SOC. JUST. 461, 462 (2017).

<sup>67</sup> *See generally* BRONWEN MORGAN & KAREN YEUNG, AN INTRODUCTION TO LAW AND REGULATION 96 (2007).

<sup>68</sup> *See* BALDWIN ET AL., *supra* note 64; OMRI BEN-SHAHAR & CARL E. SCHNEIDER, MORE THAN YOU WANTED TO KNOW: THE FAILURE OF MANDATED DISCLOSURE 3 (2014).

<sup>69</sup> *See* BEN-SHAHAR & SCHNEIDER, *supra* note 68, at 146-47.

<sup>70</sup> *See id.*

<sup>71</sup> *See* CASS R. SUNSTEIN & RICHARD H. THALER, NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS 4 (2008).

<sup>72</sup> *See* Daniel E. Ho, *Fudging the Nudge: Information Disclosure and Restaurant Grading*, 122 YALE L. J. 574 (2012).



flexible (responsive) choice from available regulatory strategies.<sup>73</sup> The essence of responsive regulation is adaptation in response to the problem that needs fixing, and to the people who can fix it.<sup>74</sup>

Subsequent research in this vein suggests “really responsive regulation,” which calls for a regulatory response to the institutional environment and performance of the regulatory regime and to changes in these elements.<sup>75</sup> The really responsive regulation approach also advises regulators to be responsive to the different logics of regulatory tools and strategies, and to changes in any of them.<sup>76</sup> Though responsive regulation literature has mainly focused on enforcement, it may also apply to tools and strategies for other aspects of regulation, such as developing, amending, and rescinding rules and regulations.

According to the responsive regulation premise, regulation has to adapt when key actors in the regulatory arena change their behavior.<sup>77</sup> Thus, in our case, if media regulators choose to pursue a disclosure strategy, they must expand or revise the circle of subjects to whom the information is addressed in response to changes in television viewing platforms and habits. Revising the target audience of the disclosure information must be accompanied by fundamental changes in the nature and form of the information conveyed, the goals of the regulatory strategy, and the tactics used to implement it.

### III. REGULATORY LITERACY: A NEW NORMATIVE FRAMEWORK FOR MEDIA REGULATION

Based on the above, we propose a new normative framework for reconceptualizing media regulation for the benefit of children, called “regulatory literacy.” The underlying premise of this framework is that regulation of television content should address children directly, and should clearly explain to children how best to utilize it. The regulatory literacy approach, which is designed for use by media regulators, is based on concepts and attitudes drawn from regulation literature as well as media and communication scholarship—specifically, responsive regulation, disclosure regulation, and media literacy. As far as we know, it is the first time that these disciplines and specific approaches have been combined to propose a normative framework for media regulation.

As described above, responsive regulation theory indicates that basic regulatory perceptions regarding children’s television viewing need to change, due to changes in the regulated environment. The new media environment in which today’s youngsters find themselves has transformed their television consumption

---

<sup>73</sup> See generally IAN AYRES & JOHN BRAITHWAITE, *RESPONSIVE REGULATION: TRANSCENDING THE DEREGULATION DEBATE* 4 (1992).

<sup>74</sup> See *id.*

<sup>75</sup> See Robert Baldwin & Julia Black, *Really Responsive Regulation*, 71 MOD. L. REV. 59, 59 (2008).

<sup>76</sup> See *id.*

<sup>77</sup> See *id.* at 66.

patterns: family viewing time is consistently declining, while individual viewing is becoming more and more common among children, across multiple platforms, with not all of the platforms regulated.<sup>78</sup> If state or industry regulators (or a combination thereof) want to effectively regulate what children are watching today, they need to respond to these changes and reconsider their strategy.

The response advocated here—regulatory literacy—is based on media literacy. Media literacy is the ability to access media, analyze and evaluate media messages, and communicate via media in different ways. Media literacy aims to develop analytical and evaluative viewing skills that support sophisticated, critical judgments about what is being watched.<sup>79</sup> Hobbs and Frost also discuss the ability to identify the source and intent of the message, as well as persuasion techniques and presentation of stereotypes, as part of media literacy.<sup>80</sup>

As Potter explains, in the context of media literacy no-one is entirely illiterate or fully literate; people are positioned on a literacy continuum, according to the knowledge and skills they possess.<sup>81</sup> He suggests that the ability to acquire media literacy skills is based on cognitive, emotional, and moral development during childhood and adulthood.<sup>82</sup> Media literacy is especially important for media consumers to be able to actively and freely participate in the process of media consumption.<sup>83</sup> High media literacy empowers individuals, helping them gain control of content consumption and enabling them to enjoy varied content.<sup>84</sup>

Studies show that media literacy helps youngsters cope effectively with the messages to which they are exposed.<sup>85</sup> It can also reduce the negative effects and increase the positive effects of media exposure.<sup>86</sup> However, in the context of television rating systems, research has shown that children are not usually aware of content ratings and rarely use them.<sup>87</sup>

The objective of regulatory literacy is to allow children to become active

---

<sup>78</sup> See *supra* Part I.

<sup>79</sup> See Patricia Aufderheide, *Media Literacy: A Report of the National Leadership Conference on Media Literacy*, in *MEDIA LITERACY IN THE INFORMATION AGE: CURRENT PERSPECTIVES* 79-80 (Robert Kubey ed., 1997); PAUL MESSARIS, *VISUAL LITERACY: IMAGE, MIND, AND REALITY* 2-5 (1994).

<sup>80</sup> See Renee Hobbs & Richard Frost, *Measuring the Acquisition of Media-Literacy Skills*, 38 *READING RESEARCH Q.* 330, 334 (2003).

<sup>81</sup> See W. JAMES POTTER, *MEDIA LITERACY* 21 (2008).

<sup>82</sup> See *id.* at 20.

<sup>83</sup> See *id.* at 352.

<sup>84</sup> See *id.* at 24.

<sup>85</sup> See James A. Brown, *Television Literacy and the Critical Viewer*, in *CHILDREN'S UNDERSTANDING OF TELEVISION: RESEARCH ON ATTENTION AND COMPREHENSION* (Jennings Bryant & Daniel R. Anderson eds., 1991); Douglas Kellner & Jeff Share, *Critical Media Literacy, Democracy, and the Reconstruction of Education*, in *MEDIA LITERACY: A READER* 9 (Donaldo Pereira Macedo & Shirley R. Steinberg eds., 2007).

<sup>86</sup> See POTTER, *supra* note 81, at 74.

<sup>87</sup> See Greenberg & Rampoldi-Hnilo, *supra* note 24, at 627-30; Bradley S. Greenberg et al., *Young People's Responses to the Age-Based Ratings*, in *THE ALPHABET SOUP OF TELEVISION PROGRAM RATING* 83 (Lynn Rampoldi-Hnilo & Dana Mastro eds., 2001).

media players and make appropriate independent or semi-independent decisions regarding content viewing. It therefore suggests that children be given tools in order to empower them, help them gain control of content consumption, and help them cope effectively with messages to which they are exposed. Implementing regulatory literacy theory involves a change in the regulatory perception of relevant actors in the regulatory space of television in the new media age. Regulators should consider the young viewers themselves as members of their target audience, and act accordingly.

At this point, we should pause to consider whether it is wise to assign regulatory responsibilities directly to children, especially in light of a possible “boomerang effect.”<sup>88</sup> This refers to children’s unavoidable attraction to the “forbidden fruit,” i.e., media content that is prohibited or considered inappropriate for children.<sup>89</sup> According to Bushman, different types of rating labels generate different effects on children.<sup>90</sup> While warning labels, such as “TV-14: Parents Strongly Cautioned” attract young viewers by attaching a sense of jeopardy to violent programs, informative labels, such as “This Program Contains Some Violence,” do not.<sup>91</sup> In addition, a recent study shows that younger viewers do not report increased attraction to content paired with graphic advisories relative to text advisories bearing an explicit age restriction, although they find graphic advisories to be clearer.<sup>92</sup> These findings suggest that concerns about the boomerang effect within the regulatory literacy framework can be mitigated. Of course, more research is needed regarding this effect under a possible rating reform.

Generally, we suggest reforming the U.S. rating system by simplifying labels so that they can be deciphered by children and can better communicate with children in a healthy and effective manner. The information passed on by broadcasters should avoid creating confusion, fear, or attraction among children regarding rated content. Based on research in this field,<sup>93</sup> policy-makers should consider, for example, replacing warning labels that use negative language with informative labels that use positive language (“This content is recommended for ages 5–8”), and replacing text labels with graphic ones (or graphic-text combinations). A recent study showed that graphic advisory labels better articulated their intended meaning to viewers than did text advisories with content codes (such as “S” or “L”).<sup>94</sup> According to the study, while graphic labels offer no advantage for parents, they grant children superior understanding of the advisory compared to regular text advisories.<sup>95</sup> Of course, graphic and positive advisories

---

<sup>88</sup> See R. Glenn Cummins et al., *Visual Attention to and Understanding of Graphic Program Advisories: An Eye-Tracking Study*, 61 J. BROAD. & ELEC. MEDIA 703, 717 (2017); see also Brad J. Bushman, *Effects of Warning and Information Labels on Attraction to Television Violence in Viewers of Different Ages*, 36 J. APPLIED SOC. PSYCHOL. 2073 (2006).

<sup>89</sup> See *id.* at 2073, 2077.

<sup>90</sup> See *id.* at 2076–77.

<sup>91</sup> See *id.* at 2073.

<sup>92</sup> See Cummins et al., *supra* note 88, at 717.

<sup>93</sup> See Bushman, *supra* note 88; Cummins et al., *supra* note 88.

<sup>94</sup> See Cummins et al., *supra* note 88.

<sup>95</sup> See *id.*

are only one possible method of implementing the proposed theory of regulatory literacy. Many other possibilities can also be considered and tested in the future.

A second strand of regulatory literacy theory aims at education, skill-building, proficiency, and knowledge-building in children regarding regulatory mechanisms. According to regulatory literacy approach, which this essay originally develops, regulators should concentrate their efforts on informing young viewers about the meaning of newly-designed rating labels and about their availability (or lack thereof) across different platforms, including new media. This new role of media regulators as promoters of regulatory literacy can be assumed by the state, by non-state players, or both. Thus, regulatory literacy may serve as a useful tool for administrative agencies, executive departments, business or social organizations, unions, movements, or other entities that have the ability to design, monitor, and enforce media regulation.

An example of regulatory literacy techniques that media regulators can apply is found in the regulatory activity of the U.S. Food and Drug Administration (“FDA”). The FDA’s Center for Food Safety and Applied Nutrition has developed a set of online resources with a wealth of information regarding new nutrition labels on packaged foods.<sup>96</sup> The educational material provided includes multimedia resources “that make it easy to understand and use the Nutrition Facts label.”<sup>97</sup> The FDA website also provides an interactive tool allowing users to explore the various sections of the label and download printable nutrition fact sheets to keep and share.<sup>98</sup> A virtual world designed for children allows them to practice label reading in an online community, and to develop skills for making healthy snack choices in the real world.<sup>99</sup> Additionally, the FDA developed a youth outreach campaign that challenges kids (aged 9–13) to look for and use the Nutrition Facts label on food and beverage packages.<sup>100</sup> The website states: “The materials include fun, easy tips and targeted education to help make label reading a key component through which today’s young people are equipped to achieve a healthy diet.”<sup>101</sup> Similar regulatory literacy activities, regarding television content, could be implemented by government regulators, such as the FCC, or non-state regulators, such as parental or television industry interest groups.

Regulatory literacy can also bring incremental value to children who watch television programs via unrated platforms. Above, we discussed the ways in which new media environments have changed traditional viewing habits, and noted the increase in independent viewing among children.<sup>102</sup> When children view content online, without parental supervision or a rating system, they are virtually

---

<sup>96</sup> See *Nutrition Education Resources and Materials*, FDA, <https://www.fda.gov/Food/LabelingNutrition/ucm20026097.htm> (last visited Nov. 10, 2018).

<sup>97</sup> See *id.*

<sup>98</sup> See *id.*

<sup>99</sup> See *id.*

<sup>100</sup> See *Nutrition Facts Label: Read the Label Youth Outreach Materials*, FDA, <https://www.fda.gov/Food/LabelingNutrition/ucm281746.htm> (last visited Apr. 22, 2019).

<sup>101</sup> See *id.*

<sup>102</sup> See *supra* Part I.

unprotected, and are liable to be exposed to inappropriate content in a manner and to an extent that may undermine the regulatory goal of the rating system. These problems can be addressed via the regulatory literacy approach to media.

Education, mostly at home, by parents, is a highly discussed tool in the protection of children against lurking dangers in media. However, the role of regulators as knowledge providers and proficiency enhancers with regards to regulation is extremely under-developed in the literature and in practice. In cases where no rating system is in place or where it is very loose, we believe regulatory education is crucial. Regulatory educational endeavors should focus on advocating viewing only rated programs, on rated platforms. Of course, these efforts need to go hand in hand with attempts to regulate the main media outlets used by children and to introduce rating systems into previously unregulated spheres. But, our main point here is that regulators should inform and instruct both parents and children with regards to which media channels are regulated and which are not, especially outside the old media sphere. Regulators need to emphasize the dangers that unregulated viewing may pose for young people and encourage them, as well as parents, to stay on the “regulated path,” and avoid viewing programs that are not covered by any kind of rating system.

The regulatory literacy approach does not divest parents of their role in children’s media uses. Parents and other authoritative figures still need to remain central in this arena, especially when very young children are concerned. Parents should continue to play a significant role in guiding children, helping them form healthy viewing habits, and encouraging them to become discerning viewers and to acquire tools for dealing with various media content. Under the new labeling approach, parents can help young viewers acquire media literacy tools via family discussions and joint family viewing, and can even set agreed-upon viewing rules.

## V. CONCLUSION

The media environment in which young people live has changed. Unlike traditional viewing, in which parents and children typically watched television together in the living room, today, children access media content via multiple digital platforms and often alone. Television rating systems developed in the 1990s relied on disclosure of information, which was directed at the parents so that they could reach a decision that served the child’s best interest. Against this backdrop, we argue that the current regulatory approach is unresponsive to changes in children’s viewing habits. We therefore propose a new conceptual approach—regulatory literacy—to serve as the basis for a revised regulatory strategy, in which the information provided is targeted at children themselves, as well as at parents. For this to be done successfully, regulators need to modify the design of labels and symbols so they speak directly and effectively to children. Regulatory informational campaigns are also required in order to acquaint the public, especially young viewers, with the new system. Lastly, information about regulatory space should also be provided: parents and children should be informed

as to which media channels are regulated and which are not. This aspect is especially important for the new media platforms in which rating systems are often absent.

The concept of regulatory literacy—the conveyance of knowledge by regulators regarding both regulated content and regulatory mechanisms—is presented in this essay for the first time. As a new idea, it may have applications in various regulatory fields outside this essay’s scope, such as retail, medicine, transportation, or finance. It is applicable to both adults and children. Though some regulators around the world and in the United States—in various fields—have already adopted methods that conform to the regulatory literacy approach, it has never been properly constructed as an organized theory. We strongly believe that the concept of regulatory literacy holds great promise for future research in diverse fields of regulation including the regulation of television content for children.