



Little Viewers, Big Squabble

Policymakers' focus on children's TV leads to court battles

By Paige Albinak

They don't hold office, they can't vote, and most of them don't have much money, but kids have become a key constituency in media policy in Washington.

Advertising to kids is trickier than ever. Most urgently, the FCC's new kids-TV rules are coming online Jan. 1. Media companies say the new regulations threaten the fundamentals of an already challenging business. If the courts don't force the FCC to stay the rules, media companies will have to drastically change the way they market, advertise and promote during kids shows.

What's more, the pressure is on to protect children from any messages perceived as harmful. The Surgeon General warns that childhood obesity is the nation's top health problem, so now SpongeBob is pushing spinach, Cookie Monster is gobbling fruits and veggies, Kraft is stepping away from advertising in kids shows at all, and you can hardly blink without the announcement of a new nutrition-related public-service campaign.

Washington's involvement in all things kids is enough to make programmers want to back off completely. Developing and producing educational shows is expensive and time-consuming. Programmers have to keep ads during kids shows to 10% minutes on weekends and 12 minutes on weekdays, according to the Children's Television Act of 1990.

"AN ARTIFICIAL SITUATION"

That already limits programmers' revenue, but the new rules would force them to count network promotions toward those limits as well, giving them even less time to sell. That will drive up the cost of each commercial, while driving down total revenue, hurting both advertisers and producers, they say.

"Some of these consumer groups don't want any kids advertising at all, but then how do they expect these networks to be funded?" asks Dan Jaffe, executive VP, the Association of National Advertisers. "This is an artificial situation that drives up these costs a great deal

with no benefit of further audience, so advertising in these shows becomes even less attractive."

Adds Marva Smalls, executive VP of public affairs for Nickelodeon, "Minimally, we need clarity on these rules. We are moving forward in a responsible business way as of Jan. 1, but we hope the FCC or the courts will act before then. We are going to try to comply with the rules in the meantime."

Here are the major changes:

- Any promotions for other network programs during kids shows now will be counted toward advertising limits established by the Children's TV Act.

- Kids TV shows cannot direct viewers to related commercial Web sites, particularly if on-air characters populate that site.

- If a network preempts regularly scheduled kids programs in favor of sports more than 10% of the time over six months, the kids programs will not be counted toward the broadcast networks' three-hour weekly kids TV requirement.

- If broadcasters choose to use multiple digital channels, they will be obligated to provide three hours of educational and informational (E/I) kids programming per channel, although that programming can all be consolidated on one channel.

Some of those rules really hurt children's-TV providers in the pocketbook. "We get our revenue from advertising. If we have limits on the amount of commercials we can air, and we now have to count it against our commercial time if we tell kids to tune into *The Fairly OddParents* or *SpongeBob SquarePants*, that hurts us," says Smalls. "An episode of *Dora the Explorer* costs a half million dollars. We are spending a half million dollars per episode to provide educational programming when we have no requirement to do so, and now they are proposing limiting the amount of advertising we can sell to support that programming."

Others see tougher kids rules differently. Just last week, Sen. Tom Harkin (D-Iowa), an outspoken critic of TV marketing to both kids and adults, was celebrating the fact that he had secured passage of a bill directing the Federal Trade Commission to report by mid-year 2006 on the food industry's marketing practices to children. The report would include analyzing TV and radio ad time and expenditures. Harkin calls industry efforts to self-regulate "woefully inadequate."

And both Rep. Ed Markey (D-Mass.) and Sen. Hillary Clinton (D-N.Y.) have introduced bills that would require the Centers for Disease Control to issue a report on how TV, movies, DVDs, videogames, cellphones and the Internet impact kids.

The Internet is a new arena for activists. According to such groups as the Children's Media Policy Coalition (CMPC), directing kids from TV shows to branded Web sites is a version of "host-selling": when a popular character hawks certain products. For example, The Disney Channel would not be allowed to mention or display disney.go.com during a show if there were direct links anywhere on the site allowing kids to buy Disney-related merchandise.

"We're fighting here about the relationship between what's on television and what's on the Internet," says Andrew Jay Schwartzman, president/CEO of public-interest law firm Media Access Project, "and that's new and important for everyone."

ONE POSSIBLE OUTCOME: THROWING OUT CHILDREN'S RULES

NBC Universal is particularly concerned about another rule that would forbid a network from counting kids programs towards its weekly three-hour kids-TV requirement if a network preempts a show more than 10% of the time over six months. That means that audiences in western markets (two and three hours behind the East Coast) would miss the starts of many live sporting events while kids shows played out. That would hurt media companies' investment in sports and certainly alienate sports fans.

Viacom and The Walt Disney Co. each have filed petitions at the U.S. Court of Appeals for the D.C. Circuit that would force the FCC to stay the rules and review them, but the court will have to act quickly for media companies to get their way. One possible outcome would be for the court to throw out the children's rules altogether.

Kids groups not only want the future of kids' TV to change but also aim to remake what's on the air right now. The United Church of Christ (UCC), a particularly active member of the CMPC, is challenging TV-station

licenses over whether their kids shows are actually educational. Most recently, UCC asked the FCC to examine Raycom Media-owned WUAB Cleveland's license over its animated kids show *Sabrina*, provided by DIC Entertainment.

UCC also has asked the Sixth Circuit Court of Appeals in Cincinnati to force the FCC to reopen the kids-TV rules because it wants the commission to include a ban on all interactive advertising, a subject that the new rules don't address. But it could go the other way.

"By the time we get to that point, the genie already will be out of the bottle, and then it will take the FCC another five years to write rules," says Gloria Tristani, managing director of UCC's Office of Communication and a former FCC commissioner. "That's why we want this in the rules now." ■



UCC's Gloria Tristani wants tougher kids rules.