



U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 25 1994

Mr. James B. Hedlund
President
Association of Independent Television Stations, Inc.
Suite 300
1320 Nineteenth St. N.W.
Washington, D.C. 20036

Dear Mr. Hedlund:

This letter responds to your November 18, 1993 request, on behalf of the Association of Independent Television Stations, Inc. ("INTV") and its members, for issuance of a business review letter under the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department's current enforcement intention with respect to proposed activities by INTV and local independent television stations in connection with efforts to reduce the negative impact of television violence.

We understand that INTV is a trade association whose members are independent television stations located throughout the country. As a trade association, INTV has no direct control over the program selection or program content of its members. You represent that each independent television station makes its own program selection and editorial decisions. Local independent broadcasters have not developed a centralized source for the creation, development, acquisition, or editing of programming.

You have indicated that INTV has been engaged in activities to assist its members in addressing the issue of violence in telecast materials. This activity was undertaken in light of the "Television Program Improvement Act of 1990," which granted a three year antitrust exemption for persons in the television industry to engage in "joint discussion, consideration, review, action, or agreement ... for the purpose of, and limited to, developing and disseminating voluntary guidelines designed to alleviate the negative impact of violence in telecast materials." That exemption expired on December 1, 1993.

In June of 1993, INTV adopted program policy guidelines with respect to violence in telecast materials and a set of viewer advisory messages (attached) that can be aired with programs containing violent material the station believes might be objectionable to some viewers. These guidelines and advisories were distributed to all of the independent television stations in the country. It is INTV's understanding that, on a strictly voluntary basis, all INTV members and 53 nonmember stations have either adopted the INTV guidelines or have individual station policies consistent with those guidelines.

INTV has determined that, since adopting these policies, stations have been rescheduling programs and broadcasting advisory messages. You also indicate the belief that INTV's guidelines are likely to influence some independent stations in their future program acquisition and scheduling decisions.

INTV proposes to continue its efforts to address television violence and to educate its members on this issue. Further discussions of the issue among independent stations and with program suppliers are viewed as an important part of the process. INTV expressly states that no such discussion is intended to result in a boycott of any entity, or program.

INTV would also like to expand the program by coordinating the production of a series of antiviolence messages to be made available for broadcast by independent stations. Any such broadcast would be strictly voluntary.

The proposed activities also include the collection and dissemination of data to analyze the effect of the program. Information on the acquisition, scheduling, and editing of various television programs would be collected and made available in the aggregate to members of Congress. The information in aggregated form would also appear in INTV's newsletter.

In light of the December 1, 1993, expiration of the antitrust exemption for collective efforts to address violence on television, you have requested a statement of Department of Justice enforcement intentions with respect to these proposed activities. After considering the information provided by you, the Department has concluded that it has no present intention of challenging the proposed efforts to address television violence.

We understand that the program INTV has put in place, and the proposed continuing activities, are strictly voluntary. No station is required to adopt any policy, engage in any discussion or provide any information. Membership in INTV is

not in any way conditioned on participation in the program. You also state that none of the current or proposed activities is intended to result in a boycott of any person.

INTV's activities may be likened to traditional industry standard-setting efforts that do not necessarily restrain competition and may have significant procompetitive benefits. Absent unequivocal anticompetitive purpose or effect, product standard setting is evaluated under an antitrust rule of reason that balances any potential anticompetitive effects against procompetitive benefits.

The measures you describe INTV and the independent television stations having taken since the passage of the Television Program Improvement Act and further comparable cooperative activities are in the Department's view unlikely to be anticompetitive. They are not intended to, nor can we predict that they would have the effect of, significantly decreasing competition among broadcasters, cable operators or other television media, among program producers, or among advertisers. 1/ We are aware of no indication that the measures already taken or those that you propose for the future would be biased by any participants' economic interests in stifling product competition. The Television Program Improvement Act's protection did not extend to boycotts of any

1/ In this respect, INTV's proposed activities seem clearly distinguishable from those challenged by the Department of Justice in United States v. National Association of Broadcasters, 536 F. Supp. 149 (D.D.C., 1982) ("NAB"). In the NAB case, the Department challenged under Section 1 of the Sherman Act certain television advertising standards in the NAB's Television Code. In ruling on cross motions for summary judgment, the court held that the "multiple product standard," which prohibited the advertising of two or more products in a commercial shorter than sixty seconds, constituted a per se violation of the antitrust laws. The conduct that was at issue in the NAB case differs significantly from that covered by the expired antitrust exemption in the Television Program Improvement Act. The government's basic contention in NAB was that the challenged commercial advertising restrictions had as their actual purpose and effect the artificial manipulation of the supply of commercial television time, with the end that the price of time was raised, to the detriment of both advertisers and the ultimate consumers of the products promoted on the air. The Department does not view the NAB case as prohibiting the kind of activities that the Television Program Improvement Act was enacted to encourage.

person, and you state that further efforts by INTV and the independent stations that you propose to alleviate the negative impact of violence in telecast materials also would not entail such conduct. All program decisions would continue to be made by independent television stations on an individual basis. Adherence to INTV's guidelines will not be a precondition to membership in INTV, but would remain voluntary on the part of members and nonmembers alike.

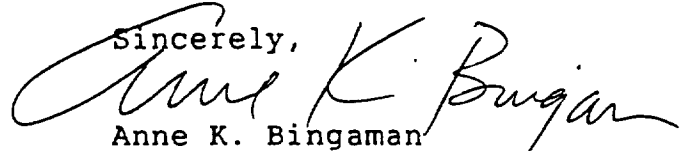
It is possible that INTV's efforts to promote voluntary television violence guidelines will have substantial procompetitive effects. Such guidelines could disseminate valuable information on program content to both advertisers and television viewers. Accurate information can enhance the demand for, and increase the output of, the industry's products. For example, viewers, including particularly parents, may react to uncertainty about the nature of violence in television programming by reducing television viewing in their homes. Violent television programming is seen by many as distasteful or harmful, and reasonable voluntary industry efforts to alleviate such concerns can be likened to reasonable safety standards that are procompetitive in that they reduce consumer risk and thereby increase the demand for an industry's products.

For the foregoing reasons, the Department does not believe that continuance of the activities by INTV and the independent television stations that have been exempted from the antitrust laws by the Television Program Improvement Act--including measures already taken or the proposed comparable cooperative measures that may be taken in the future--warrant antitrust concern. Thus, the Department has no present intention to challenge INTV's proposed program to address television violence. In accordance with our normal practice, however, the Department remains free to bring whatever action or proceeding it subsequently comes to believe is required by the public interest if the actual operation of this proposal proves to be anticompetitive in purpose or effect.

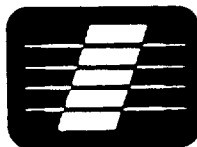
This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6, a copy of which is enclosed. Pursuant to its terms, your business review request and this letter will be made publicly available immediately.

In addition, any supporting data will be publicly available within 30 days of the date of this letter, unless you request that any part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely,



Anne K. Bingaman
Assistant Attorney General



INTV ACTIONS TO CURB VIOLENCE ON TELEVISION

The Board of Directors of the Association of Independent Television Stations, Inc., has urged all independent television stations to make sound, informed editorial judgments in the selection, scheduling, editing, and broadcast of programming depicting violent behavior on their stations, and has adopted and provided to each independent television station the following policies concerning depiction of violence in programming:

GENERAL POLICY OUTLINE

1. These policies apply to programs and to promotional material, are directed solely at entertainment programming, and in no way are designed to inhibit journalistic or editorial discretion in the coverage and reporting of news or sports events.
2. Violence should be depicted only when necessary, and to no greater extent than necessary, to the development of the story line, plot, context, or theme of, or character in, a television program.
3. Depiction of violence in such way as to glamorize violent behavior or to ignore or trivialize its consequences to either the victim, the perpetrator, or society should be avoided.
4. Depiction of violence in such way as might be instructive or as might suggest imitative behavior should be avoided.
5. Presentation of programs depicting violence and the depiction of violence should not be undertaken solely as a means of exploiting or shocking the audience.
6. The depiction of violence in a sexual context requires special sensitivity with respect to its potential to exploit, debase, demean, shock, or stimulate. Violence never should be depicted so as to appeal to the prurient interests of the audience.
7. Graphic or detailed depictions of violence or dwelling on gore, pain, or physical suffering should be avoided.
8. The special needs of children should be considered, and special care should be taken, in the scheduling and editing of programs and promotional materials which include the depiction or description of violent behavior.
9. Depiction of violent acts in a manner which might distress or frighten children should be avoided in programming intended primarily for children.

PARENTAL ADVISORIES

In appropriate circumstances, the station may determine to inform viewers through appropriate on-air advisories that specific programs contain depictions of violent behavior so that individual viewers may make informed viewing decisions and avoid unexpected depictions of violence which are unsuited to their particular tastes. Such advisories might state:

"The following program depicts violent acts or behavior."

"The following program depicts violent acts or behavior. Viewer discretion is advised."

"The following program depicts violent acts or behavior which may be unsuitable for children. Parental discretion is advised."

"The following program involves realistic portrayals of human behavior, including acts of violence, which may be disturbing to some viewers."

"The following program involves realistic portrayals of human behavior, including acts of violence, which may be disturbing to children. Parental discretion is advised."