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Radio-Active Fallout and an Uneasy Truce - The Aftermath of the Porn Rock Wars

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RADIO-ACTIVE FALLOUT AND AN UNEASY TRUCE—THE AFTERMATH OF THE PORN ROCK WARS

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"Temperatures rise inside my sugar walls." - Sheena Easton from the song "Sugar Walls."[1]
"Tight action, rear traction so hot you blow me away . . . I want a piece of your action." - Mötley Crüe from the album *Shout at the Devil.*[2]
"I'm a fairly with-it person, but this stuff is curling my hair." - Tipper Gore, parent.[3]
"Fundamentalist frogwash." - Frank Zappa, musician.[4]

I. OVERTURE TO CONFLICT

It began as an innocent listening of Prince's award-winning album, "Purple Rain,"[5] and climaxed with heated testimony before the Senate Committee on Commerce in September 1985.[6] In the interim the phrase "cleaning up the air" took on new dimensions as one group of parents

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1. A. Nevermind, "Sugar Walls," Sheena Easton, 1984 Tionna Music (EMI America 1984).

2. "Piece of Your Action," *Shout at the Devil*, Mötley Crüe (Electra/Asylum Records 1983).

3. Wolmuth, *Parents vs. Rock*, PEOPLE MAG., Sept. 16, 1985, at 46.

4. *Id.*

5. Prince, *Purple Rain*, Prince and the Revolution (Warner Records 1983).

6. *Record Labeling: Hearing Before the Comm. on Commerce, Science, and Transp. on Contents of Music and the Lyrics of Records*, S. HRG. NO. 529, 99th Cong., 1st Sess. (1985) [hereinafter *Record Labeling Hearing*]. *See generally* Goldstein, *Parents Warn: Take the Sex & Shock Out of Rock*, L.A. TIMES MAG., Aug. 25, 1985, at 67, *reprinted in Record Labeling Hearing*, at 17; Wolmuth, *supra* note 3; Stroud, *Stop Pornographic Rock*, NEWSWEEK, May 6, 1985, at 14; McBee, *Now It's Labels On 'Porn Rock' to Protect Kids*, U.S. NEWS & WORLD REP., Aug. 25, 1985, at 52; Love, *Furor Over Rock Lyrics Intensifies*, ROLLING STONE MAG., Sept. 12, 1985, at 13, *reprinted in Record Labeling Hearing*, at 85; McDougal, *Zapping the Threat of Censorship*, L.A. Times, Sept. 20, 1985, Pt. VI (Calendar), at 1, col. 6; Cocks, *Rock is a Four-Letter Word*, TIME, Sept. 20, 1985, at 70; Zucchino, *Big Brother Meets Twisted Sister*, ROLLING STONE MAG., Nov. 7, 1985, at 8; Marsh, *What'd I Say?*, PLAYBOY MAG., Mar. 1986, at 46.

attempted to deal with a different sort of toxicity. The fallout from that effort continues to leave ominous and lethal clouds swirling around the pillars of the First Amendment.

It is no secret that art has always been a dynamic and changing creature. Whether art imitates life or vice versa, social, technological, and political forces have all undoubtedly interacted and contributed to the emergence and acceptance of new art forms. Nowhere is this more aptly demonstrated than in the 20th century where new methods of artistic expression rise and fade with increasing regularity. As society has become increasingly more diverse and as technology has increased our capacity to communicate, this cyclical scenario has been limited only by human imagination and the need for change. The old becomes passé. A new form emerges and disturbs. It crescendos into a wave of acceptability until it also becomes too old and too safe. A new phoenix rises from the ashes. Music is one such art form, especially the music of the young, and each generation seeking identity has embraced its own type of sound.

The children of the 80's are no different and from the carcass of disco music, heavy metal emerged to a waiting audience. Characterized by distorted electric guitars, thunderous drumming and high-decibel amplification, heavy metal music has been around since the earliest days of rock in one form or another. However, the 1980's model is a different animal. It is louder, faster, flashier, grittier, "more aggressive," and certainly as far removed from Elvis, Chuck Berry and Bill Haley as could be imagined.[7]

Groups with names like "Judas Priest," "AC/DC," "Mötley Crüe," "KISS," "Twisted Sister," and "W.A.S.P." sell out concert halls and stadiums as hundreds of thousands of rock fans hustle through the turnstiles.[8] Clad in leather, chains, spikes, heels, and makeup, these rock

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7. *See* Frost, *White Noise—How Heavy Metal Rules*, VOICE MAG., June 18, 1985, at __, *reprinted in Record Labeling Hearing*, *supra* note 6, at 31-36; Stone, *W.A.S.P. Rock 'N' Roll Outlaws*, HIT PARADER MAG., Jan. 1985, at 56; Davis, *Pop Lyrics: A Mirror And A Molder of Society*, ET CETERA, Summer 1985, at 167; King, *Heavy Metal: A New Religion*, 78 J. OF THE TENN. MED. A. 754 (1985).

According to *Time*, the heavy metal audience was generally described as: "A crowd of tuned-out, working class white adolescent males who drink too much beer and whoop it up for the thunderous guitar licks and outrageous stage antics." Cocks, *supra* note 6, at 71. "The music makes the listener feel strong, powerful, untouchable and . . . above all horny." Paterno, *Theater of Justice*, BAM MAG., Nov. 29, 1985, at 31.

8. As an example of rock's drawing power, in 1982 some 200,000 rock fans gathered in San Bernardino, California, for each day of the three-day US Festival to listen to groups like the Kinks, Pat Benatar, The Police, and 16 other bands. Moraine, *Few Problems Arise as US Festival Rocks On*, L.A. Times, Sept. 5, 1982, Pt. I, at 1, col. 3; *see also* The Orange County Register, Sept 5., 1982, § A, at 1; L.A. Herald Examiner, Sept. 5, 1982, § B, at 1. Less than one year later, in May 1983, more than 500,000 rock fans converged in San Bernardino for the

groups fill the record bins and radio airwaves with songs like "Lick It Up," "We're Not Gonna Take It," "Eat Me Alive," and "Let Me Put My Love Into You."[9] Their videos have been heavily rotated on MTV and other video playlists.[10] Accordingly, the lucrativeness of the business has transformed many of these rock performers into a new elite class of pampered and worshipped "superstars."

I want a mansion in the hills
I want to burn thousand dollar bills
I want to be a rock 'n' roll star

sang ex-New York cop Eddie Money (a.k.a. Ed Mahoney) to sum up the feeling of many rock 'n' rollers.[11]

As corporate sponsors lined up to bankroll the very musicians that had heretofore operated only on the edge of mainstream acceptability, it became a millionaires' assembly line turning out more millionaires than any other segment of the American marketplace. Heavy metal was the new gravy train of the 80's.[12] Notwithstanding occasional and futile at-

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second US Festival. For a ticket price of $25 a day, for each of three days, the concert featured heavy metal acts such as Van Halen, Mötley Crüe, Quiet Riot, Judas Priest, the Scorpions, and Ozzy Osbourne. Interestingly, both the 1982 and 1983 shows were bankrolled by Apple Computer wizard Steve Wozniak. Headliners Van Halen and David Bowie received $1.5 million each for their appearances ($17,000 per minute). San Bernardino County Sheriff, Floyd Tidwell, described the crowd as generally being interested in the "four s's: 'smoking, snorting, shooting, and screwing.' " O'Neill and Bashe, *US Festival '83 in Words and Photos: Music, Mayhem and Megabucks,* CIRCUS MAG., Aug. 31, 1983, at 33.

While the US Festivals were larger than most, huge outdoor concerts are not unusual. As a sample of "common smaller concerts," Prince and his band grossed almost $900,000 playing two nights in Tacoma, Washington, before almost 50,000 fans on February 14 and 15, 1985. Tina Turner grossed more than $250,000 for one show in front of 15,000 fans in New Jersey on July 28, 1985. For more concert statistics, see ROLLING STONE MAG., Sept. 12, 1985, at 14; Apr. 11, 1985, at 20.

9. "Lick It Up," *Lick It Up,* KISS (Polygram 1983); "We're Not Gonna Take It," *Stay Hungry,* Twisted Sister (Atlantic Records 1984); "Eat Me Alive," *Defenders of the Faith,* Judas Priest (CBS Records 1984); "Let Me Put My Love Into You," *Back in Black,* AC/DC, (Atlantic Records 1980).

10. According to *Record Magazine,* there were approximately 125 local/regional music video programs playing around the country including the 24-hour-a-day MTV, *Night Flight* on the USA Cable Network, *N.Y. Hot Tracks* from WABC-TV in New York, and NBC TV's *Friday Night Videos.* Shore, *The Tube Goes Clip Crazy,* RECORD MAG., Oct. 1983, at 39. An estimated 20 million viewers are exposed daily to these rock clips. *Record Labeling Hearing, supra* note 6, at 160 (Sept. 19, 1985) (statement of Martha Winter Gross). Nearly one-third of all clips on MTV were heavy metal. Graham, *Heavy Metal On The Outs At MTV,* ROLLING STONE MAG., Apr. 11, 1985, at 15.

11. E. Money & C. Solberg, "Wanna Be A Rock 'N' Roll Star," *Eddie Money,* Eddie Money (CBS Records 1977).

12. Elkind, *The Hurried Child—Growing Up Too Fast Too Soon,* 88-89 (198__). Elkind is a professor of Child Study at Tufts University. This information is from an excerpt from the Elkind article included in an information packet distributed by the Parents Music Resource

tempts at derailment, it rolled virtually unchecked on a headlong E-ticket ride to riches.[13]

Despite such pretenses toward respectability, rock 'n' roll has continued to dance on the edge. It is still kid's music. It is still street music. It is still rebellious music such that mom and dad shake their heads in bewilderment and close junior's bedroom door. But mom and dad weren't the only ones shaking their heads about rock music in the 80's . . . and perhaps for good reason.

1985 was a good case in point. During that year, disturbing news stories about rock music, especially heavy metal, reached the headlines with increasing frequency. Among them were stories about graveyard vandalisms, church desecrations, animal sacrifices and other satanic rituals. Normally, this would be average fare on the evening news. However, officials began pointing fingers indicating that heavy metal listeners were prime suspects in these incidents. Additionally, stories about heavy metal white youth gangs became prevalent as evidence that gang activity was no longer the province of the Black, Hispanic or Asian communities. Coincidentally, "heavy metal rehabilitation centers" became available to parents with rebellious teenagers who wanted to "de-metal" their offspring "headbangers."[14]

Center. (Available from the Parents Music Resource Center [hereinafter PMRC] in Arlington, Va.)

13. Since 1974, KISS has been targeted as one of the earliest "heavy metal bands." Songs about wild women, wild times, and extravagantly staged concerts did not endear them to the Moral Majority who often criticized the band throughout its career in much the same way that the Rolling Stones, Led Zeppelin and the Beatles have all been criticized at one time or another.

In an interview, Gene Simmons of KISS stated:

> The more these idiots rant and rave about how evil rock & roll is, it just gives us fans, the rock & roll crazies, the opportunity to say 'Yeah. Let's get together on this.' It's just another unifying force . . . . If rock 'n' roll is the wheat field, then the Moral Majority is the fertilizer. We've got the limousines, the big trucks, and the power structure. The fans are the ones who'll lose out."

Hedges, *KISS Percolates with Big Rock on "Asylum" Tour,* CIRCUS MAG., Nov. 17, 1986, at 77.

14. Cummings, *White California Youths Form Gangs,* N.Y. Times, Jan. 12, 1986, § 1, at 14, col. 1. According to Cummings, the Los Angeles Police Department had attributed drug use, shootings and robberies to white gangs. At least one gang in the San Fernando Valley area of Los Angeles was suspected of committing several murders. Cummings also notes that many of the gangs described themselves as "heavy metal, punk-rock, and stoner gangs" depending upon their inclinations in music. Officials were especially troubled by the white supremacist philosophies adopted by some of the gangs and devil worship by some groups. In order to cope with problems such as these, former Orange County, California, probation officer Gregory Bodenhamer operates an anti-gang program for the Los Angeles County Probation Department and also operates "Back In Control," a family training center which uses discipline techniques to "de-program" troubled youngsters. Bodenhamer claims to have worked with more than 10,000 families in the past decade at a price of $325 for the five-week program.

1985 was also the year Vince Neil, self-proclaimed badboy lead vocalist for the highly successful group "Mötley Crüe" got some unwanted publicity. Neil could usually be found in front of packed concert crowds wearing makeup and grabbing his crotch. This time he stood in his gray suit and tried to convince a judge that he was really just a "classic middle American guy." Neil had been charged with manslaughter when his Pantera slammed into an oncoming vehicle. Two people were seriously injured. Neil's passenger was killed. A drunken Vince Neil walked away. He had once bragged that he regularly drank a case of beer and half a bottle of gin a day.[15]

Eyebrows went higher that same year when Ozzy Osbourne, formerly of the group "Black Sabbath," was sued by the parents of a teenager who committed suicide. The parents alleged that Osbourne's song "Suicide Solution" had influenced the teen to put a pistol to his head.[16]

He says that the answer requires listening to kids and giving them love and attention. He says that letting kids build Satan altars or keeping upside-down crosses in their rooms is asking for trouble and says that 80% of the kids who assault their parents are devotees of heavy metal rock. Goldstein, *Want Your Kid De-Metaled? Call Greg,* L.A. Times, June 16, 1985, Pt. VI (Calendar), at 86, col. 1. *See also* Benet, *Hard Times With Heavy Metal,* Daily News, Mar. 4, 1986 (L.A. Life section), at 4. "Headbanger" is a term for a heavy metal fan.

15. Neil's plea-bargained guilty verdict required 30 days in jail, $2.4 million in compensation to the disabled victims, 200 hours of community service, and $200,000 to the estate of Razzle Dingle, Neil's friend and passenger who was killed in the accident. Dingle was the drummer in another metal band called "Hanoi Rocks." Neil, whose real name is Vincent Neil Wharton, was also urged to preach the anti-drug and drinking message to his fans. He has since been spending time visiting drug and alcohol clinics. Paterno, *Theater of Justice: Mötley Crüe After the Trial,* BAM MAG., Nov. 29, 1985, at 31; Goldstein, *The Mötley Crüe Story Part 2,* CIRCUS MAG., Dec. 31, 1986, at 56.

16. The suit was filed in October 1985, but was not served on Osbourne until January 1986. The suit filed in Los Angeles Superior Court claimed that 19-year-old John McCollum of Indio, California, had shot himself with a .22-caliber pistol after listening to Osbourne albums for several hours. He was still wearing headphones when the body was discovered. The song "Suicide Solution" was part of what McCollum's parents claim spurred the 1984 shooting. It contains lyrics such as: "Made your bed, rest your head, but you lie there and moan. Where to hide, suicide is the only way out." "Suicide Solution," *Blizzard of Oz,* Ozzy Osbourne (CBS Records 1981). The suit also named CBS records as a defendant. The attorney for the youth's parents claimed he was going to "teach the record companies a lesson." Osbourne defended himself by explaining that the song was actually an anti-suicide song about Bon Scott, the vocalist for another metal band called AC/DC, who had drunk himself to death several years ago. *See generally Suit Charges Lyrics Pushed Teen to Suicide,* L.A. Times, Jan. 14, 1986, Pt. VI (Calendar), at 3, col. 1; Goldstein, *Is Heavy Metal a Loaded Gun Aimed at Its Fans?,* L.A. Times, Jan. 26, 1986, Calendar, at 68, col. 1. According to Don Arden, Osbourne's former manager, "[t]o be perfectly honest, I would be doubtful as to whether Mr. Osbourne knew the meaning of the lyrics—if there was a meaning—because his command of the English language is minimal anyway, so I wouldn't think there was any evil intent there." *Pop Eye,* L.A. Times, Feb. 16, 1985, Pt. VI (Calendar), at 80, col. 1.

According to an interview with one of Osbourne's attorneys, Michael O'Connor, the case was dismissed on demurrer on December 19, 1986 when the court could find no indication that

Moreover, heavy metal received its biggest blast of bad press during the summer of 1985 when Los Angeles, California, was terrorized by the "Night Stalker." During his reign, the mass murderer entered the homes of his victims and sprayed pentagrams and the logo of the metal group "AC/DC" on walls after torturing and killing the occupants. The man arrested in connection with those killings was alleged to be a satanist and fan of AC/DC. The group had penned the song "Night Prowler"[17] which gave the alleged murderer his moniker and his inspiration.[18]

1985 was also the year Mary Elizabeth Gore found out all she needed to know about "porn rock." The words "porn rock" didn't mean much to Gore at first—at least, not until she heard the lyrics to the song "Darling Nikki" on Prince's best-selling album, "Purple Rain."

I knew a girl name Nikki
I guess you could say she was a sex fiend
I met her in a hotel lobby
Masturbating with a Magazine
She said "How'd you like to waste some time?"
And I couldn't resist
When I saw little Nikki grind.[19]

Gore had purchased the album for her 12-year-old daughter. "I was shocked when I heard the words," said the 37-year-old mother of four.[20]

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the lyrics or the music of Osbourne were intended to elicit a suicidal response. An appeal is expected. This was not the first time that Osbourne found himself in controversy. The singer has also drawn criticism for once biting into a dove at a meeting of record company executives; needing rabies shots after accidentally biting into a real bat that was thrown on stage at a concert; and infuriating Texans by urinating on the Alamo. Telephone interview with Michael O'Connor, Esq., Los Angeles (Dec. 23, 1986).

17. "Night Prowler," *Highway to Hell*, AC/DC, (Atlantic Records 1979). *See also* Cipriano, *To Fans and Critics "Night Prowler" Is Supposed To Be Fun*, L.A. Times, Sept. 2, 1985, Pt. I, at 3, col. 1.

18. *See generally* Pond, *AC/DC Fans Don't See A Stalker Tie*, L.A. Times, Sept. 6, 1985, Pt. VI (Calendar), at 1, col. 2; Hilburn, *The Devil You Say? No Way*, L.A. Times, Sept. 8, 1985, Pt. VI (Calendar), at 2, col. 1. This is not the first time that a heavy metal group has been linked to murder. The Son of Sam who killed eight people in New York was allegedly into Black Sabbath's music, which interestingly is Ozzy Osbourne's old band. Also Ricky Kasso, a New York teenager, stabbed his friend, took out his eyes and then hanged himself. He was allegedly a follower of Black Sabbath and Judas Priest. King, *supra* note 7, at 755. AC/DC itself has often come under attack by anti-rock and religious crusaders. Singer Brian Johnson once complained that, "[T]hose God-botherers mention the Devil more than we do. They're just trying to scare people. The big idea with us isn't satanic messages. It's trying to get one line to rhyme with the next." *The Devils From Down Under*, L.A. Times, May 30, 1982, Pt. VI (Calendar), at 67, col. 1.

19. Prince, *supra* note 5.

20. McBee, *Now It's Labels on "Porn Rock" to Protect Kids*, U.S. NEWS & WORLD REP., Aug. 25, 1985, at 52.

Susan Baker was another parent. She heard her 7-year-old daughter singing along to Madonna's song, "Like a Virgin,"[21] which she had picked up on her clock radio. "While those songs are basically more suggestive than explicit, it awakened me to what's going on in pop music today," said Baker. "Cole Porter used suggestive music, sure. But those were double-entendres aimed at mature audiences."[22]

Still another parent, 44-year-old Pam Howar, recalled a similar rock awakening. "I started picking up a word here and a word there [of the rock songs played] during aerobics classes. . . . I'd heard Prince over the radio. One day at the breakfast table my daughter was listening to the music, and I noticed this punk look about her. I started thinking, 'We'd better get a peer group together.' "[23]

Howar's "peer group" included Gore, Baker and another friend and parent, Sally Nevius. In April of 1985, they compiled a heady mailing list of some 2,000 names from their Christmas card rosters. It was quite a list. Mary Elizabeth Gore, also known as "Tipper," was the wife of Senator Albert Gore, Jr. (D-Tenn.). Susan Baker was the wife of Treasury Secretary James A. Baker, the former White House Chief of Staff. Sally Nevius was married to former Washington, D.C. council chairman, John Nevius. Pam Howar, herself was no stranger to Washington society. She used to own an advertising agency and was married to Raymond Howar, a prominent Washington, D.C. real estate developer.[24] Not surprisingly, the list resembled a Washington D.C. social register.[25]

Ethelynn Stuckey, the wife of former Georgia Congressman Williamson Stuckey, Jr., and fifteen other "Washington Wives" soon joined, and the Parents Music Resource Center ("PMRC") was born.[26] Allied

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21. *Like a Virgin*, Madonna (Warner Bros. Records 1984).

22. Goldstein, *Parents Warn: Take The Sex & Shock Out of Rock*, L.A. Times, Aug. 25, 1985, Calendar, at 67, col. 1, *reprinted in Record Labeling Hearing*, *supra* note 6, at 19.

23. Wolmuth, *supra* note 3, at 49.

24. *Id.* at 47. *See also* Zucchino, *Big Brother Meets Twisted Sister*, ROLLING STONE MAG., Nov. 7, 1985, at 16-17.

25. Zucchino, *supra* note 24, at 16.

26. The first PMRC press release was dated May 13, 1985 to announce the official commencement of operations the following day. According to that release, "The office space and telephones have been donated by Courtesy Associates. Founders of the Center are Mrs. Pamela Howar, Mrs. Susan Baker, Mrs. Sally Nevius, Mrs. Tipper Gore and Mrs. Ethelynn Stuckey. Our purpose is to promote ethical boundaries in rock music, provide and disseminate information on rock culture and refer parents to sources of help." PMRC Press Release (May 13, 1985) (available from the PMRC in Arlington, Va.). The roster of the PMRC listed the wives of the following Congressmen as affiliates of the PMRC: Sen. Lloyd Bentsen (D-Tex.), Sen. John Danforth (R-Mo.), Sen. David Durenberger (R-Minn.), Sen. Albert Gore (D-Tenn.), Sen. John Heinz (R-Pa.), Sen. Ernest Hollings (D-S.C.), Sen. Bob Packwood (R-Or.), Sen. Paul Simon (D-Ill.), Sen. Strom Thurmond (R-S.C.), Sen. Paul S. Trible, Jr. (R-Va.); and the

by the 5.6 million member National PTA, the PMRC launched a high profile media campaign directed at "raunch and roll" music.[27] As such, they compiled lists of offending performers, record companies, album covers and lyric sheets and magazines depicting the graphic nature of the current music scene and went public in a big way.[28] Virtually over-

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wives of the following Representatives: Bill Archer (R.-Tex.), Thomas Downey (D-N.Y.), Bill Frenzel (R-Minn.), James Jones (D-Okla.), Richard T. Schulze (R-Penn.), and Guy Vander Jagt (R-Mich.). Marsh, *What'd I Say?*, PLAYBOY MAG., March 1986, at 47.

As rock musician and PMRC opponent Frank Zappa was to point out later, this is an interesting organization and perhaps a lesson in power. In a conversation with the PMRC secretary, he was told the organization had no members . . . only founders.

> "I asked how many other District of Columbia wives are nonmembers of an organization that raises money by mail, has a tax-exempt status, and seems intent on running the Constitution of the United States through the family paper-shredder. I asked her if it was a cult. Finally, she said she could not give me an answer and that she had to call their lawyer."

Record Labeling Hearing, *supra* note 6, at 53 (statement of Frank Zappa). Although the PMRC may not have any official "members" per se, it currently has a mailing list of more than 100,000 names. Interview with PMRC Executive Director Jennifer Norwood in Arlington, Va. (July, 1986).

27. PMRC Press Release (Sept. 11, 1985) (available from the PMRC in Arlington, Va.). *See generally supra* note 6 and accompanying text.

28. A list of the "Filthy Fifteen" included the following: Judas Priest, "Eat Me Alive"; Mötley Crüe, "Bastard"; Prince, "Darling Nikki"; Sheena Easton, "Sugar Walls"; W.A.S.P., "Animal (F**K Like a Beast)"; Mercyful [sic] Fate, "Into the Coven"; Vanity, "Strap on Robby Baby"; Def Leppard, "High 'N' Dry"; Twisted Sister, "We're Not Gonna Take It"; Madonna, "Dress You Up"; Cyndi Lauper, "She Bop"; AC/DC, "Let Me Put My Love Into You"; Black Sabbath, "Thrashed"; Mary Jane Girls, "My House"; Venom, "Possessed". Love, *Furor Over Rock Lyrics Intensifies*, ROLLING STONE MAG., Sept. 12, 1985, at 12.

Generally, the PMRC found five objectionable "themes" which recurred in rock music:

1. Rebellion
2. Substance Abuse
3. Sexual Promiscuity and Perversion
4. Violence-Nihilism
5. The Occult

J. Ling, Remarks from the audio cassette *1985 Rock Music Report* (available from the PMRC in Arlington, Va.).

According to the PMRC's Jennifer Norwood, Ling had been presenting an anti-rock program for six years in the Washington, D.C. area prior to 1985. At this time he became a paid consultant for the PMRC and collected much of the evidentiary materials used by the PMRC in its presentations. He has been described as a self-styled inter-denominational "youth minister" for the New Covenant Church in Woodbridge, Va. He has since left the country on a religious mission. Norwood interview, *supra* note 26.

Ling has come under heavy criticism by the recording industry for digging up some of the most obscure and insignificant lyrics and records for shock value. Reference is specifically made to such relatively nameless performers (next to the likes of Prince or Madonna) as Wrathchild, Bitch, Venom, Bathory, and the Mentors. For example, according to Jeff Silberman of *BAM Magazine*, only 7,500 of the Mentor's album, *You Axed For It*, with the song "Golden Showers" were ever pressed—not sold. Interestingly, Enigma Records, a small independent label, already had "explicit warning stickers" on the album. Additionally, W.A.S.P.'s album, *F**K Like a Beast*, was never released in the United States and only sold

night, the PMRC became rock's most potent critics as their media blitz thrust the group into national prominence with appearances and stories on *Donahue, The Today Show, Time Magazine, The Washington Post, The N.Y. Times,* and dozens of other national periodicals and programs. They also appeared in more than 100 radio interviews and talk shows including appearances before civic groups and the RADIO'85 convention in Dallas, Texas.[29]

PMRC goals were clear. First, they sought to educate and raise the consciousness of the American public, especially parents, about the types of music their children were hearing on radio, records and in concerts. Second, the PMRC requested that the record and broadcasting industry exercise "voluntary restraint" to police and prohibit explicit and obscene music. As such, the organization proposed the development of a rating system, similar to movie ratings[30] whereby warning labels could be placed on album covers.

To do this, the PMRC suggested the formation of a panel of consumers, retailers and music industry representatives to compose guidelines by which to rate explicit lyrics. Similarly, the PMRC also proposed that song lyrics either be placed on the album jackets or printed and affixed separately to the outside of the albums. Records with obscene covers were to be placed under record counters. On an even broader scale, the PMRC sought prohibitions on videos and magazines depicting

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60,000 albums before being banned in England. Not surprisingly, one record executive has called Ling a "right wing nut who's to the right of Adolph Hitler." In his defense, Ling claims to like rock 'n' roll, but was motivated to speak out by "his relationship with Jesus Christ." Interestingly, one of Ling's favorites, Bruce Springsteen, has also been targeted for his song, "I'm On Fire." Silberman, *Porn Rock Truce: Saving Face For a Few Dollars More*, BAM MAG., Nov. 29, 1985, at 24; Zucchino, *supra* note 24, at 10-16; Cocks, *Rock Is A Four-Letter Word*, TIME, Sept. 30, 1985, at 71.

29. *See supra* notes 6-7 and accompanying text. *See also* Zucchino, *supra* note 24, at 17; *Tipper Testifies at RADIO' 85*, The Record—A Newsletter from the PMRC, Jan. 1986, at 2 (available from the PMRC in Arlington, Va.).

30. According to the original plan, records with explicitly sexual or profane lyrics would receive an "X"; those advocating drugs or alcohol would receive a "D/A"; occult records would receive an "O"; and those glorifying violence would receive a "V." Love, *supra* note 28, at 13. McBee, *Now It's Labels On "Porn Rock" To Protect Kids*, U.S. NEWS & WORLD REP., Aug. 26, 1985, at 52. W.A.S.P. lead singer Blackie Lawless, who has at times tossed raw meat to the crowd and guzzled blood from a skull, said, "Kids know what they're getting when they buy our records." He cheerfully added that an "X" rating would "simply sell three times as many records for us." Indeed, it appears that all the controversy has helped. W.A.S.P. received a $1.5 million contract from Capitol Records. Wolmuth, *supra* note 3, at 51; interview with PMRC Executive Director Jennifer Norwood in July 1986. Nikki Sixx of Mötley Crüe had this to say about the ratings, "Why don't we just title the next album with all their ratings? We'll just call it D/A/O/X or whatever they want—that should make 'em happy." Kordosh, *Psychic Gruel And Mötley Crüe*, CREEM MAG., Apr., 1986, at 45.

this type of music. Further, the PMRC asked record companies to reassess the contracts of performers who displayed violence or sex on stage.[31]

Amid screams of "censorship," battle lines formed quickly as the PMRC publicity machine was met by an equally vociferous and well-publicized counterattack by the recording industry.[32] The gist of the argument hinged upon whether sensitive First Amendment guarantees of free speech were preempted by the rights of parents to protect their children. According to the PMRC,

> The average teenager listens to rock music from four to six hours a day. The messages the children receive often encourage and glorify the use of drugs and alcohol. These messages reach young people at a crucial age when they are searching for answers to life, and their minds are often not yet discerning enough to discard the self-destructive influences engendered by what they hear.[33]

Tipper Gore, who became PMRC vice-president, steadfastly asserted that the PMRC was not interested in censorship. Instead, she maintained that this was a consumer issue, much like food products, involving truthful packaging and labeling. She said,

> The children really don't have a choice. They flip through the record bin and they see a cover with a nude woman gagged and chained to a motorcycle, or another one simulating masturbation with a lightbulb. There's one song—platinum yet—a song called "Eat Me Alive"[34] that is about oral sex at gunpoint. It's simply gone too far, and it has to be stopped; at least we have a right to know what's on an album cover so we can exercise some control.[35]

Rebuttal was fierce. Gene Simmons of the multi-platinum group "KISS" has always seen the rock arena as "larger-than-life" entertainment where he stresses that it is important to give the audience their money's worth. Even before the advent of the PMRC, KISS had often been the target of fundamentalist religious groups, especially for their concerts which involved walls of amplifiers, exploding bombs and even a song where Simmons breathes fire.[36]

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31. *See supra* note 6 and accompanying text.

32. *Id.*

33. PMRC Press Release (May 13, 1985) (available from the PMRC Arlington, Va.).

34. "Eat Me Alive," *Defenders of the Faith*, Judas Priest (CBS Records 1984).

35. Raspberry, *Filth on the Air*, Washington Post, June 19, 1985, *reprinted in Record Labeling Hearing*, *supra* note 6, at 24.

36. *See* "KISS Percolates With 'Big Rock' On 'Asylum' Tour," CIRCUS MAG., Nov. 17, 1986, at 80-81.

"Rock 'n' roll is beside the point. They're saying a small group can dictate to the masses a moral tone. Records first, then books, television and the Bible," said Simmons.[37]

One spokesman for CBS records said, "We feel that there is already in place an informal system of checks and balances, which involves producers, record-company executives, broadcasters and the artists themselves—and it functions pretty well. These women have been documenting a miniscule number of offensive lyrics . . . ."[38]

"Record-lyric rating, by its very nature, would have to be highly interpretative. And that brings up the question of whose standards rule the ratings," added Robbin Ahrold, an RCA vice-president. "We feel that this is a basically irresolvable issue."[39]

Despite such dismissals, the efforts of the PMRC could not be ignored, especially in light of their political connections. Nevertheless, PMRC leaders have been sensitive to criticism that they utilized their husbands' political muscle to draw so much media attention.

"To disenfranchise us because we are married to men in responsible positions is unfair," said Susan Baker in one interview.[40] However, in another she stated,

> You bet it's helped. . . . There's no doubt that it's played a part in helping us get some attention. However there's no quid pro quo here. But let me tell you this—there's an awful lot of parents in Washington, D.C., in politics and other areas, that are very upset by the blatant sexuality and raunchy explicit language in rock today.[41]

The record industry has had a divergent view. "They haven't made any direct threats," said Patricia Heimers of the Recording Industry Association of America ("RIAA") whose forty-five member corporations market eighty-five percent of the recordings sold in America. "Let's put it this way," she continued. "The PMRC leaders haven't been at all reluctant to make known their political connections."[42]

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37. Wolmuth, *supra* note 3, at 48.

38. Love, *supra* note 28, at 83.

39. *Id.*

40. Zucchino, *supra* note 24, at 64.

41. Goldstein, *supra* note 22, at 67, col. 2, *reprinted* at 18.

42. *Id.* Perhaps as testimony to the PMRC's considerable political clout, it should be noted that this was not the first time that the recording industry had been approached with these issues. Two years prior to its alliance with the PMRC, the National PTA had taken up the cause—going so far as to pass a national resolution calling for warnings and lyric sheets at its 1984 convention—and had gotten no response from the record business. McDougal, *"Porn Rock": The Sound Draws Fury*, L.A. Times, Nov. 1, 1985, Pt. I, at 1, col. 1; PMRC Press

As such, the recording industry reacted swiftly when more than sixty music company executives were blasted by an extensive PMRC letter writing campaign on the PMRC's first official day in operation in May, 1985. Sensing the danger, Eddie Fritts, President of the National Association of Broadcasters (NAB), fired off letters to 4,500 radio and 806 TV members warning them of the increasing controversy over "porn rock."[43]

Three weeks later on May 31, 1985, Fritts was compelled to send an urgent letter to 145 heads of leading record companies asking that lyric sheets be enclosed with new album releases sent to radio stations.[44] The letter also contained the lyrics to Prince's song, "Darling Nikki" and Sheena Easton's song, "Sugar Walls." According to *Billboard Magazine*, this marked the first time that a leader in the broadcast industry had gone on record voicing concern over the lyrics in contemporary music.[45]

"What we've got is a group of well-connected Washington parents who are raising the issue to the level of national public debate," said Fritts in *Rolling Stone Magazine* at the time the letter was sent. "If the industry does not voluntarily respond, the PMRC would be prepared and in the position to propose legislation which would restrain the industry, which we are against."[46]

The defensive posture of the music industry was further illustrated by the commentary of George David Weiss, president of the Songwriters Guild, in the June 29, 1985 issue of *Billboard*. According to the commentary, Weiss warned the industry about the "brewing storm of censorship" and the need to seed the clouds with common sense in order to

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Release (Sept. 11, 1985) (available from the PMRC in Arlington, Va.). Likewise, in 1983 William Steding also approached Stanley Gortikov of the Recording Industry Assoc. of America (RIAA) to seek help in cleaning up rock lyrics. As the executive vice-president of two of Dallas, Texas' most popular radio stations, KAAM and KAFM, Steding had spoken to Gortikov himself. "I spoke with Stan Gortikov himself, who basically turned his back on what I had to say," said Steding. "He essentially told me, in a nice fashion, to take a hike." Goldstein, *Rock's New Sticker War*, L.A. Times, Sept. 8, 1985, Pt. VI (Calendar), at 82, col. 1. Also, this is not the first instance of political activism for PMRC founders. In their defense, it should be noted that both Gore and Baker have pointed out that no one criticized them in the late '70's when they campaigned for the homeless and elderly. Zucchino, *supra* note 24, at 64. In all fairness, however, the rights of the elderly and homeless are not as titillating or as sensational as "porn rock," nor was the First Amendment at issue.

43. Letter from Ed. O. Fritts to Broadcast Station Groups (May 13, 1985), *reprinted in Record Labeling Hearing*, *supra* note 6, at 135.

44. Letter from Ed. O. Fritts to Record Companies (May 31, 1985), *reprinted in Record Labeling Hearing*, *supra* note 6, at 135.

45. Holland, *NAB's Fritts Urges Labels: Supply Radio With Lyrics*, BILLBOARD MAG., June 7, 1985, at 1.

46. Love, *supra* note 28, at 15.

render them harmless. He called for "industry-wide self-restraint."[47]

RIAA president, Stanley Gortikov, was similarly forced to take a stand for the beseiged industry. Despite contacting approximately sixty of the largest record producers, the PMRC was unable to elicit any response. Consequently, that duty fell upon Gortikov whose RIAA represented the bulk of record producers.[48]

On August 5, 1985, following a series of letters and face-to-face meetings with the PMRC, Gortikov announced by letter to the parents' group that the RIAA would not be able to comply with the PMRC's demands. However, he told the PMRC that senior executives at twenty-four record companies had agreed to affix a "printed inscription on all future albums to identify explicit lyrical content." The warning label would read: "PARENTAL GUIDANCE—EXPLICIT LYRICS." Additionally, Gortikov promised to try to get all RIAA members, as well as non-members, to comply. As an option, record companies could enclose printed lyric sheets or print such lyrics on the back covers of albums.[49]

Such a concessionary letter left no doubt that the PMRC's media barrage had gotten Gortikov's attention. "It is genuinely and respectfully hoped that the PMRC recognizes the foregoing steps as a manifestation of the 'cooperative effort' originally requested by your organization," wrote Gortikov in his announcement to the PMRC. The letter continued:

> It would seem logical, if you find these recommendations reasonable and achievable, for the PMRC to cease its campaign through the press and government for targeted attacks on recording companies. The industry is being totally maligned under the mass of the PMRC's extensive, almost daily, media protests. Because of the eagerness for 'juicy' features, confrontation and controversy, your story gains attention and strews our entire industry in its wake for the practices of a relative few.[50]

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47. Weiss, *Porn-Rock: A Script For Censorship*, BILLBOARD MAG., June 29, 1985, at 10.

48. *See supra* notes 6-7. There are more than 40 record company members in the RIAA. These companies release approximately 80% of all albums and records. Telephone interview with Tanya Blackwood, RIAA spokeswoman in Washington, D.C. (Dec. 18, 1986).

49. McDougal, *supra* note 6, at 24, col. 1.

50. S. Gortikov, Letter to Mrs. Pam Howar of the PMRC (Aug. 5, 1985) (available from the U.S. Gov't Printing Office, Washington, D.C.). Gortikov might also have been motivated by the fact that *Good Housekeeping* and Rev. Jerry Falwell had joined the fray with a resulting 4% drop in record sales and Christmas was just around the corner. McDougal, *Porn Rock: The Sound Draws Fury*, L.A. Times, Nov. 1, 1985, Pt. I, at 32, cols. 3-5.

Gortikov's proposals met resistance on all fronts. The PMRC rejected the concessions on the ground that "PG" type ratings had been too watered down by the movies. The PMRC demanded at least an "R" type rating. Further, the PMRC refused to back down from the idea of a "rating board," including consumers, retailers, and industry representatives, to compose industry-wide standards by which to determine the "explicitness" of a record.[51]

Industry representatives were also disappointed with Gortikov. "We know what the lyrics are to the songs we play, and I know what my community can take. There is always gonna be an element that doesn't like rock 'n' roll. But as long as I keep it clean and within FCC guidelines, I say f*** 'em," said Charlie Kendall, program director of New York's WNEW-FM.[52]

"I have no intention of carrying a warning label on my records. It's moronic. It's censorship. They'd have to pass a law before I would do it," said David Geffen, chief of Geffen Records.[53]

Rock star and satirist Frank Zappa was equally critical. "The whole thing is preposterous. It seems like the type of campaign a bored Washington housewife would dream up when she's at a summer barbecue," he said. "The record industry is acting like a bunch of cowards. They're scared to death of the fundamentalist right and want to throw them a bone in hopes that they'll go away. But this stickering program will just start a precedent—they'll always want more."[54]

Zappa and others, including Dee Snider of the group Twisted Sister, and Danny Goldberg, a prominent record chief, music business manager and chairman of the anti-rating group, The Musical Majority,[55] de-

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51. *See generally* Zucchino, *supra* note 24, at 9; Love, *supra* note 28, at 13.

52. Love, *supra* note 28, at 15.

53. Cocks, *Rock Is a Four-Letter Word*, TIME, Sept. 30, 1985, at 71.

54. Goldstein, *Parents Warn: Take the Sex & Shock Out Of Rock*, *supra* note 22, at 73, col. 1, *reprinted* at 20.

55. Danny Goldberg is a rock business manager and president of Gold Mountain Records. Together with the American Civil Liberties Union, he formed the Musical Majority to combat groups such as the PMRC. The Musical Majority has been supported by a variety of radio executives, managers, publicists, agents and artists including Tina Turner, Lionel Richie, Cyndi Lauper, Prince, John Denver, members of KISS, and John Cougar-Mellencamp, among others. He has been highly critical of the RIAA and Stanley Gortikov for being poor representatives of the recording industry. "With all respect to the RIAA, I've been in the business for 15 years and I've never met anyone from there, and I've talked to a cross section of some of the leading figures in our business and we're sick and tired of every extremist nut that wants to get their name in the paper using rock and roll as a whipping boy." McDougal, *Music Group, ACLU Join Forces In Lyric Battle*, L.A. Times, Sept. 16, 1985, Pt. VI (Calendar), at 2, col. 5, 3, cols. 1-2; *see also* Silberman, *Porn Rock Truce: Saving Face For A Few Dollars More*, BAM MAG., Nov. 29, 1985, at 24.

manded that Gortikov rescind his offer. They suspected that Gortikov had more than the First Amendment in mind in that Gortikov had bowed to PMRC political pressure in order to save H.R. 2911, known as the Home Audio Recording Act. The legislative proposal, if passed, would levy a tax on the home taping industry and give royalties to the recording industry for sales of blank tapes and tape recorders.[56] "The RIAA didn't agree to this stickering of albums on moral grounds, but business ones," said the oft-outspoken Zappa:

> The industry has a huge financial interest in anti-home taping and piracy legislation. And guess who runs the committee that oversees the legislation? Senator Strom Thurmond, whose wife is a member of the PMRC. I think the connection is pretty clear. The record companies are willing to chop up artist's civil rights so that they won't have to lose any potential profits from their anti-home taping and piracy campaign.[57]

II. OPEN CONFLICT

The sensitive issues came to a head on September 19, 1985, at a hearing before the Senate Committee on Commerce, Science, and Transportation. According to *Rolling Stone Magazine*, it should not have been surprising that a senate committee, which usually deals with such issues as trade reciprocity, should be mulling over the lyrical content of such albums as Bitch's song, "Be My Slave" in that Tipper Gore's husband, Sen. Albert Gore, Jr., was a member of the Committee. Similarly, the wives of Committee chairmen John C. Danforth (R-Mo.) and Ernest F.

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56. The House bill, sponsored by the RIAA, would impose a premium of 5% to 25% on the price of all tape recorders and 1 cent per minute on all blank audio cassettes. The premiums would be pooled and returned to record manufacturers and music publishers. The gist of the Bill is that the music industry loses millions of dollars a year to "pirates" who copy music without paying the retail price. McDougal, *Porn Rock: The Sound Draws Fury*, L.A. Times, Nov. 1, 1985, Pt. I, at 33, col 4. The few record executives willing to address the political and legislative connections, such as MCA Records executive Irving Azoff, have tried to downplay the significance. "I can't imagine any linkage—separate issues are separate issues," he said. Goldstein, *supra* note 22, at 67, col. 2, *reprinted* at 18. *See generally* Cocks, *supra* note 53, at 71.

57. Goldstein, *supra* note 22, at 67, col. 3, *reprinted* at 18. According to *Rolling Stone Mag.*, "The RIAA could not help noticing that one of the signatures on a May 31st PMRC letter was that of Mrs. Strom Thurmond." Mrs. Thurmond is "affiliated" with the PMRC. Zappa, *supra* note 26, at 53. In order for the legislation to pass, it had to make it through the Senate Judiciary Committee where Senator Thurmond is the chairman. Zucchino, *Big Brother Meets Twisted Sister*, ROLLING STONE MAG., Nov. 7, 1985, at 64. The measure eventually passed through the subcommittee level, but has not yet been voted on by Congress. Telephone interview with RIAA spokesperson Tanya Blackwood (Dec. 18, 1986).

Hollings (D-S.C.), were also "affiliates" of the PMRC.[58]

To no one's surprise, months of publicity produced quite a media event enhanced by the attendance of all the star players. In addition to the ten senators on the Committee, the PMRC "first string" included Baker, Gore, Howar, Sally Nevius and a minister named Jeff Ling. Additionally, the PMRC was backed by Dr. Paul King, a psychiatrist specializing in adolescents and Dr. Joe Steussy, a music professor from the University of Texas. Another PMRC witness included Sen. Paula Hawkins (R-Fla.), chairperson of the Subcommittee on Children, Families, Drugs and Alcohol. The record industry lineup included Frank Zappa, Dee Snider of Twisted Sister, and John Denver, as well as the RIAA's Gortikov and Eddie Fritts from the NAB.[59]

Understandably, the Senate chambers were filled to capacity with members of the press as well as hundreds of curious rock fans and concerned parents vying for seats. "This is the largest media event I've ever seen," commented Sen. James Exon (D-Neb.) at one point as he looked out over the standing-room-only crowd. "[I]f we are not talking about federal regulation [or] . . . legislation, [Mr. Chairman], what is the reason for these hearings? Sometimes I wonder why these media events are scheduled," he said.[60]

According to one report, Sen. Danforth visibly reddened at Exon's comments, but reiterated that the purpose of the hearing was not legislation, but simply to "provide a forum for airing what a lot of people consider a problem" and to "ventilate the issue."[61]

Despite such assurances from the panel, it was evident from the beginning that the Committee harbored a certain predisposition toward rock music. Senator Hollings in his opening statement said:

> In the test of pornography, one of the things to look at is whether or not it has any redeeming social value. There could be an exception here . . . the redeeming social value that I find is inaudible. I have a hard time understanding it. . . . I would tell you that it is outrageous filth, and we have got to do something about it. . . . I would make the statement that if I could find some way constitutionally to do away with it, I would certainly, the writers and framers of our [F]irst [A]mendment never perhaps heard this music in their time, never considered

58. Zucchino, *supra* note 24, at 9. *See also* Cocks, *supra* note 53, at 70; McDougal, *Zapping the Threat of Censorship*, L.A. Times, Sept. 20, 1985, Pt. VI (Calendar), at 1, col. 4.

59. *Record Labeling Hearing*, *supra* note 6, at iii (list of witnesses and reprints).

60. *Record Labeling Hearing*, *supra* note 6, at 49 (statement of Sen. James Exon).

61. Zucchino, *supra* note 24, at 65.

> the broadcast airwaves and certainly that being piped into people's homes willy-nilly over the air.[62]

"Censorship, according to the classic legal definition, is the review of publications for the purpose of prohibiting publication, distribution, or production of material deemed objectionable as obscene, indecent, or immoral," said Sen. Paul Trible, Jr. (R-Va.). He added:

> The key word in that definition is prohibition. The issue before us is not prohibition, but rather the exercise of moral suasion, the labeling of offensive lyrics, and other efforts aimed at encouraging restraint regarding the time, place and manner of certain speech in question. That does not constitute censorship. The [F]irst [A]mendment is not under attack here. The Constitution is many things to many people, but they do not serve it well, those who thoughtlessly invoke its words to defend their every word and action.[63]

Under such a tone, Sen. Paula Hawkins was the first to testify for the parents as chairperson of the Children, Family, Drugs and Alcoholism Subcommittee. According to the Senator, parents needed some assistance. Things had changed since the innocence of Elvis.

"Innuendo ha[s] given way to overt expressions and descriptions of often violent sexual acts, drug taking, and flirtations with the occult," she said. The Senator then proceeded to hold up a sampling of album covers including: *Pyromania* by the group Def Leppard showing a building with a gunsight focused on it as flames erupted from an upper story; *W.O.W.* by Wendy O. Williams showing the blonde singer in a halter-type tee-shirt wrapped with leather studded harnesses; and *Animal (F**K Like a Beast)* from the group W.A.S.P. The album depicted bloody fingers holding a codpiece to a crotch with a buzzsaw emerging from the codpiece. Additionally, Sen. Hawkins showed the Committee two videos from the groups Van Halen and Twisted Sister depicting sex in the classroom and teenage rebellion.[64]

The PMRC's Susan Baker testified next. She stated that the purpose of the PMRC was to educate and inform parents about the alarming trends in rock music. Recognizing that music had always been an important and pervasive part of adolescent life, she testified that the recording

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62. *Record Labeling Hearing*, *supra* note 6, at 2-3 (statement of Sen. Ernest Hollings).

63. *Id.* at 4 (statement of Sen. Paul Trible, Jr.).

64. *Id.* at 6 (statement of Sen. Paula Hawkins). The video clips shown to the committee were "Hot For Teacher" from Van Halen and "We're Not Gonna Take It" by Twisted Sister. *Id.*

industry had a very special responsibility. Quoting Ellen Goodman's article in the *Washington Post*, Baker read:

> The outrageous edge of rock and roll has shifted its focus from Elvis' pelvis to the saw protruding from Blackie Lawless' codpiece on a W.A.S.P. album. Rock lyrics have turned from "I can't get no satisfaction" to "I am going to force you at gunpoint to eat me alive."[65]

Baker rebutted arguments that the records in question constituted only a fractional element in pop music. She pointed out that Prince had sold ten million copies of "Darling Nikki." Judas Priest's "Eat Me Alive" had sold more than two million copies as had Quiet Riot's *Metal Health*. Likewise, Mötley Crüe's album *Shout At The Devil* had also passed the two million mark.[66]

Baker further cited statistics regarding teenage suicides and pregnancies. Although she was careful not to place the blame entirely upon the music industry, Baker testified that the pervasive messages in rock music about rape, sadomasochism, the occult and suicide "have to be numbered among the contributing factors."[67]

The PMRC leader went on to reassert that the PMRC was not interested in censorship or legislation. She said the issue revolved around corporate and artistic responsibility, sensitivity and self-restraint, "since young minds are at stake." "[I]t involves no government action," she testified. "Voluntary labeling in no way infringes upon First Amendment rights. Labeling is little more than truth in packaging, by now, a time honored principle in our free enterprise system, and without labeling, parental guidance is virtually impossible."[68]

Jeff Ling, a self-styled minister and PMRC consultant, took his cue and sped through a machine-gun litany of rock 'n' roll perpetrators via slide presentation. It brought gasps from the crowd and caused uneasy

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65. *Record Labeling Hearing*, *supra* note 6, at 11 (statement of Susan Baker, quoting Goodman, *Rock Ratings*, Washington Post, Sept. 14, 1985, *reprinted in Record Labeling Hearing* at 25).

66. *Id.* The record companies have pointed out that these are the exceptions in that most of the abusive performers described by the PMRC are obscure and innocuous groups on insignificant record labels which are generally not carried in most record stores. In fact, the RIAA's Gortikov has pointed out that the whole rock music industry is only 26% of the entire $4.4 billion music business . . . and the abusers are only a fraction of that 26%. Additionally, "Only nine percent of rock purchases were made by kids under 14. People over 20 buy 69%," said Gortikov. McBee, *Now It's Labels On "Porn Rock" To Protect Kids*, U.S. NEWS & WORLD REP., Aug. 26, 1985, at 52.

67. *Record Labeling Hearing*, *supra* note 6, at 11-12.

68. *Id.* at 13.

chair shifting among committee members.[69] Ling talked, at first, about teen suicides and violence and showed photos of Ozzy Osbourne with a gun in his mouth. He read lyrics from the band, Mettalica:

> Bang your head against the stage like you never have before. Make it rain, make it bleed, make it really sore. In a frenzied madness, now is the time to let it rip, to let it f***ing loose. We are gathered here to maim and kill, for this is what we choose.[70]

Ling cited AC/DC and especially Twisted Sister's songs such as, "We're Not Going To Take It," "Under the Blade," and "Shoot Them Down" where lead singer Dee Snider sings:

> They think we are fools who want to make their own rules. It only gets us madder. They think they are hot. Well, I say they're not. They shoot us down for fun. If they don't want to play, then let's make them pay. Shoot them down with a f***ing gun.[71]

Ling also read this from the song, "On Your Knees" by the band, Great White:

> Knocking down your door. Going to pull you to the floor, taking what I choose. Never going to lose. Going to drive my love inside you. Going to nail your ass to the floor.[72]

Ling went on to call the Committee's attention to album covers from the group Abattoir showing a man's arms wrapped around a woman. In one hand, the man holds a knife. In the other, there is a hook pressed against the woman's breast. From the album *Rise of the Mutants* by the band Impaler, Ling showed the picture of a man with bloody meat in his mouth and hand as the figure kneeled over the bloody arm of a woman.[73]

The PMRC consultant carefully pointed out many of the explicit

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69. *Id.* at 13-17.

70. *Id.* at 14 (statement of J. Ling, quoting "Whiplash" by the band Metalica (Electra/Asylum Records)).

71. *Id.* (quoting "Shoot Them Down" from the album *Under The Blade*, Twisted Sister (Atlantic Records 1983)).

72. *Id.* at 15 (quoting from the song "On Your Knees" by the band Great White).

73. *Id.* Complete citation for many of these allegedly offensive albums was impossible. A personal search through a number of retail stores in Los Angeles, New York, and Washington, D.C., turned up few, if any, of the releases mentioned by the PMRC, especially those on independent labels. Other citations were only discovered while looking through smaller independent specialty record stores where no more than one or two copies of certain titles were found. Often, they were discovered in "bargain racks" for albums that weren't selling.

sexual lyrics in many heavy metal songs, including "Sister" from an early Prince album called *Dirty Mind*:

> I was only sixteen, but I guess that is no excuse. My sister was 32 and kind of alone. My sister never made love to anyone but me. Incest is everything it's said to be.[74]

Song titles from the band Wrathchild's album *Cock Rock Shock* were named as well as lyrics from the multi-platinum band KISS:

> Well, goodness sakes, my snake's alive, and it is ready to bite. Baby let me in. It fits like a glove. I think I am going to burst. When I go through her it is like a hot knife through butter.[75]

And Mötley Crüe: "Touch my gun, but don't pull my trigger. Shine my pistol some more. Here I come. Reach down real low. Slide it in real slow. You feel so good. Do you want some more. I have got one more shot. My gun is still warm."[76]

Even the Rolling Stones and Michael Jackson, long accepted by the mainstream, did not escape Ling's criticisms:[77] "As one who has worked with teenagers and college students on a professional level for the last ten years, I have watched the things that they have watched, and listened to what they have listened to. I have seen their behavior influenced and encouraged by this music," said Ling summarily.

> [T]he problem is that the music might reflect the behavior, attitudes, values of those in the 18 or older bracket. However, when that music is listened to by 12-year-olds, 11-year-olds and 10-year-olds, it moves from the area of being a reinforcer and encourager into the role of educator, and many of these young children are being educated in these things before they have any kind of frame of reference to properly put it in.[78]

Certainly, the most outspoken and candid of the PMRC opponents, Frank Zappa, looked more like a stockbroker in his three-piece suit as he testified next to the Committee. "The PMRC proposal is an ill-conceived

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74. *Id.* at 16 (quoting from the song "Sister," from the album *Dirty Mind*, Prince (Warner Records 1981)).

75. *Id.* (quoting from the song "Fits Like A Glove," *Lick It Up*, KISS (Polygram Records 1985)).

76. *Id.* (quoting from the song "Ten Seconds To Love," *Shout At The Devil*, Mötley Crüe (Electra/Asylum Records 1985)).

77. *Id.* at 17. Ling cited the Rolling Stones for the song, "Tie You Up" from their album *Under Cover*. The Jacksons were criticized for their video to the song "Torture" which depicted handcuffed women in bondage gear.

78. *Id.* at 46.

piece of nonsense which fails to deliver any real benefits to children," replied a short-haired Zappa.

> [I]t infringes the civil liberties of people who are not children, and promises to keep the courts busy for years dealing with the interpretational and enforcemental problems inherent in the proposal's design. It is my understanding that in law, First Amendment issues are decided with a preference for the least restrictive alternative. In this context, the PMRC demands are the equivalent of treating dandruff by decapitation.

Zappa argued that no one had forced Baker or Gore to bring Prince or Sheena Easton into their homes. "Thanks to the [C]onstitution, they are free to buy other forms of music for their children. Ladies, please be advised: The $8.98 purchase price does not entitle you to a kiss on the foot from the composer or performer in exchange for a spin on the family Victrola," said Zappa. "Taken as a whole, the complete list of PMRC demands reads like an instruction manual for some sinister kind of toilet training program to house-break all composers and performers because of the lyrics of a few. Ladies, how dare you?" he challenged.[79]

Zappa continued his testimony by questioning the bias and credibility of the PMRC in light of its political connections. He called the PMRC the "Wives of Big Brother" and objected to the committee wasting its time on what Zappa termed, "somebody's hobby project."[80] Even the recording industry, especially the RIAA, was criticized by Zappa because of the Blank Tape Tax and the fact that Sen. Strom Thurmond's wife was "coincidentally affiliated" with the PMRC. "Are we expected to give up article one so that the big guys can collect an extra dollar on every blank tape and one to 25 percent on tape recorders?" questioned Zappa. "There are too many things that look like hidden agendas involved with this," he added later.[81]

Zappa's outspokenness triggered a lively response from the Commit-

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79. *Id.* at 52-53 (statement by Frank Zappa). *See also* McDougal, *Zapping The Threat of Censorship*, *supra* note 58, at 1, col. 6.

80. *Record Labeling Hearing*, *supra* note 6, at 53.

81. *Id.* at 54. Incidentally, the blank tape tax has been passed through the subcommittee level, but has not yet been addressed by Congress. Telephone interview with RIAA spokesperson Tanya Blackwood (Dec. 18, 1986). According to Zappa, the only way around the Constitutional prohibitions surrounding the issue would be the consideration of placing lyric sheets on albums . . . perhaps at government expense "if the Government is interested that people have consumer information in this regard." *Record Labeling Hearing*, *supra* note 6, at 55. He also advocated that time and money were perhaps better spent on the children's need for consumer information such as music appreciation in the schools. "Your children have a right to know that something besides pop music exists." He suggested that the entire PMRC movement was either a manifestation of the PMRC's personal taste or another example of the low

tee members. "I can only say that I found your statement to be boorish, incredibly and insensitively insulting to the people that were here previously. That you could manage to give the First Amendment to the Constitution of the United States a bad name, if I felt that you had the slightest understanding of it, which I do not . . . you have certainly destroyed any case you might otherwise have had with this Senator," said Sen. Gorton.[82]

"Do you make a profit from the sales of rock records?" asked Sen. Hawkins.

"Yes," said Zappa.

"Thank you. I think that statement tells the story to this committee," replied the senator.[83]

Understandably, John Denver's reception was a bit warmer. Denver testified that he was also against rating rock records since it was clearly a form of censorship. He claimed to have first-hand experience since his song "Rocky Mountain High" had once been accused of being laced with drug references. "Obviously, a clear case of misrepresentation," said Denver.

> [W]hat assurance have I that any national panel to review my music would make any better judgment? The suppression of the people of a society begins in my mind with the censorship of the written or spoken word. It was so in Nazi Germany. It is so in many places today where those in power are afraid of the consequences of an informed and educated people. In a mature, incredibly diverse society such as ours, the access to all perspectives of an issue become more and more important.[84]

Despite reassurances to Denver from Sen. Exon that there was "zero chance of legislation," the senator later issued a contradictory warning: "I would simply say one more time, which I have said every time I have had this microphone this morning," said Exon. "I think it is wrong to

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priority the Reagan administration had placed on education and the arts. *Record Labeling Hearing*, at 53-54.

82. *Id.* at 58 (statement of Sen. Slade Gorton).

83. *Id.* at 61 (statements of Sen. Paula Hawkins and Frank Zappa).

84. *Id.* at 65 (statement of John Denver). Denver said that the problem rested on parents to assume the responsibility for raising their children and paying attention to children's interests and needs. Denver added:

> I suggest that explicit lyrics and graphic videos are not so far removed from what is seen on television every day and night, whether it be in the soap operas or on the news, and that we should point our finger at the recording industry while watching the general public at a nationally televised baseball game chant in unison, "The Blue Jays suck" is ludicrous.

Id. at 66.

imply that, although no bills have been introduced, that bills might not be introduced. And I want to hold that threat, for what it is worth, over the head of trying to accomplish some free enterprise volunteerism that most people have agreed to."[85]

Dee Snider followed Denver's testimony. As lead singer for Twisted Sister, Snider had been the only witness specifically targeted by the PMRC for his lyrics and videos. Snider entered the chambers in sunglasses, denim jacket, sleevelees muscle T-shirt and long black and yellow curls flowing down his back.[86]

"I am 30 years old. I am married. I have a 3-year-old son," he said. "I was born and raised a Christian and I still adhere to those principles. Believe it or not, I do not smoke, I do not drink and I do not do drugs. I do play and write songs for a rock and roll band named 'Twisted Sister' that is classified as heavy metal, and I pride myself on writing songs that are consistent with my above-mentioned beliefs," continued Snider.[87]

Snider complained that he had been misquoted and misinterpreted as a result of the PMRC campaign. He pointed out that his video in fact had been tabbed for use by the United Way because of its "light-hearted way of dealing with teenagers."[88]

Snider agreed with the PMRC that the responsibility for children rested upon the shoulders of parents and that no one else was capable of making such judgments. He added that parents could thank the PMRC for reminding them of their duties. "But that is where the PMRC's job ends," said Snider. "The beauty of literature, poetry and music is that they leave room for the audience to put its own imagination, experiences, and dreams into the words," he reminded.[89]

Sen. Gore then made reference to Twisted Sister's song, "Under the Blade" which Snider had said was written for a band member who was in the hospital and feared surgery. Snider admitted that there was no reference to a hospital in the song, which talks about hands and feet being strapped down while someone goes "under the blade."[90]

Snider admitted that it did not take a wild leap of the imagination to

85. *Id.* at 72 (statement of Sen. James Exon).

86. Zucchino, *supra* note 24, at 65-66; McDougal, *supra* note 58, at 21, cols. 1-2.

87. *Record Labeling Hearing*, *supra* note 6, at 73 (statement of Dee Snider).

88. *Id.* at 74. Snider explained that the video which depicted "violence" directed at a parent by rebelling teens was intended as nothing more than a take-off on the Roadrunner/Wile E. Coyote cartoons of which Snider professed to be a fan. He pointed out to the Committee that in each instance, the "villain" in the video emerged unharmed from the "catastrophe" just like in the cartoons.

89. *Id.* at 75.

90. *Id.* at 77-78 (statement of Sen. Albert Gore).

conclude that the song was not about surgery. However, he repeated that songs allowed a person to put their own imagination into the lyrics. "Ms. Gore was looking for sadomasochism and bondage and found it. Someone looking for surgical references would have found that as well," said Snider.[91]

When asked by Senator Gore if it was really reasonable to expect that parents should listen to all of their children's records, Snider replied, "Being a parent is not a reasonable thing. It is a very hard thing. I am a parent and I know."[92]

Others testified during the hearings, including Stan Gortikov of the RIAA, Eddie Fritts of the NAB, Millie Waterman of the National PTA, and Dr. Paul King, who specialized in child and adolescent psychology.

Written testimony was also submitted to the Senate Committee from Los Angeles Mayor Tom Bradley, Dr. Thomas Radecki from the National Coalition on Television Violence, Barry W. Lynn from the ACLU, and a statement from Music Television Networks, Inc.

Notwithstanding warnings to "clean up their act," the hearings were adjourned after only five hours. No action was taken, nor was legislation proposed.[93]

III. THE TRUCE AND CEASE FIRE

Subsequent to the Senate Hearing, in November of 1985, the PMRC announced that it had reached a compromise agreement with the National PTA and the Recording Industry Association of America. According to the PMRC press release of Nov. 1, 1985, future releases of participating companies of the RIAA would carry a four-word inscription when lyrics reflected "explicit sex, explicit violence, or explicit substance abuse." The instruction would read, "EXPLICIT LYRICS—PARENTAL ADVISORY." As an option, recording companies could print lyrics on the back covers of albums or display printed lyric sheets under the plastic wrap of the album. Further, because of space limitations, cassettes were exempted except that they would bear an imprint, "See LP for lyrics" whenever the album counterpart displayed such lyrics.

For their part, the PMRC agreed to balance their presentations by

91. *Id.* at 78. (statement of Dee Snider).

92. *Id.* at 79. According to Snider, much of rock music was no different than "monster movies." He mentioned words such as "entertainment" and "fantasy" and that detractors had a tendency to "take it overly serious." *Id.* at 80.

93. *See generally id.* at 151-70 (additional statements and documentation made to the Committee).

applauding the positive factors within the recording industry and focusing on expanding consumer knowledge of the product identification aids. Also, future criticism would concentrate on those recordings not in compliance with the agreed guidelines. All three organizations would then monitor the impact of such a policy for one year.[94]

National PTA president Ann Kahn stated:

> This action by the recording industry is a major step forward in giving parents more information on which they and their families can make reasonable decisions. To the 5.6 million members of the PTA who have been involved in this issue for over a year, it proves that parents working together can effect change in their children's lives.[95]

On the other hand, many industry insiders viewed the agreement as a major blow to the PMRC. Not only was this basically the same innocuous concession proposed by Stan Gortikov of the RIAA prior to the Senate Hearings, but neither legislation nor rating boards had emerged from the controversy. "What's explicit is explicit," said Gortikov.[96]

Additionally, the record companies would be allowed to make individual decisions, and cassette tapes, comprising sixty percent of record sales, had been virtually exempted. Furthermore, those artists with contracts precluding them from adhering to guidelines were not affected.[97]

Geffen Records president Eddie Rosenblatt said:

> Frankly, I think a lot of the industry feels like someone who was going to the movies and stepped in something on the curb and now is just trying to get rid of it. Our label certainly won't be using any warning stickers. If there's a potential problem, we'd rather print the lyrics and let the public decide for themselves.[98]

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94. Pagano, *Warnings or Lyrics Will Be Printed On Record Albums* L.A. Times, Nov. 2, 1985, Pt. I, at 1, col. 5. According to the PMRC's official press release, 20 RIAA record companies had agreed to comply with the compromise. These included A&M, Arista, Atlantic, Capitol/EMI, Chrysalis, Columbia, Compleat, Crescendo, Electra/Asylum, Epic, Manhattan, MCA, Mike Curb Productions, Motown, Polygram, RCA, Solar, Scotti Bros., Tabu, and Warner Bros. PMRC Press Release, PMRC, PTA and RIAA Agree on Recorded Lyrics Identification (Nov. 1, 1985) (available from the PMRC in Arlington, Va.). Portrait Records was a late addition to the list.

95. PMRC Press Release, *supra* note 94, at 5.

96. Associated Press, *Recording Industry Agrees To Warn of "Explicit Lyrics,"* L.A. Times, Nov. 1, 1985, Pt. I, at 2, col. 4.

97. The Record—A Newsletter From the PMRC, Jan. 1986, at 1; Pagano, *supra* note 94, at 12, col. 1.

98. Goldstein, *Rating The PMRC Accord*, L.A. Times, Nov. 10, 1985, Pt. VI (Calendar), at 59, col. 1.

Musical Majority leader and Gold Mountain Records chief Danny Goldberg, had been instrumental in leading the anti-rating campaign against the PMRC. He was much more ambivalent about the situation:

> On the one hand, you have to feel that the PMRC backed down considerably from their original position. On the other hand, I think it's a terrible mistake to have compromised with these people at all. It's like compromising with terrorists. It never solves the real problem. These people are cultural terrorists and I'm worried that the industry will live to regret any agreement which lends credence to the right-wing pressure elements operating in the guise of a parents' organization.[99]

IV. ASSESSING THE AFTERMATH AND MAINTAINING PEACE

According to the PMRC's Jennifer Norwood, the organization readily admits that the compromise agreement with the recording industry is not a panacea. "There's nothing that is going to cure everything for everyone," she said. However, she explained that short of legislation, this was the only way for artistic freedom of expression and consumer freedom of choice to co-exist. "We've really been misunderstood," she claimed. "The PMRC is a resource center for information. We are not about legislation. We don't have the time or the resources to be Big Brother as everyone thinks. All we've done is ask the recording industry to have some voluntary social responsibility," she added.[100]

It is still too early to determine the long range effects of the PMRC.[101] Record sales seemed generally unaffected and, as many had

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99. *Id.*

100. Personal interview with PMRC Executive Director Jennifer Norwood in Arlington, Va. (July 1986).

101. This is open to argument since there are few hard statistics. One of the few figures available indicated that in the Fall of 1985, record sales took a 4% drop when the PMRC media campaign was in full swing and groups like Good Housekeeping and Falwell's Moral Majority were also joining the controversy and writing letters to broadcasters and record companies. McDougal, *"Porn Rock": The Sound Draws Fury*, L.A. Times, Nov. 1, 1985, Pt. I, at 32, col. 5. Generally, however, there has been no significant decrease in record sales overall. This has been confirmed by the PMRC in its recent press release on Dec. 10, 1986 and by Tanya Blackwood in a telephone interview on Dec. 18, 1986. Nevertheless, it should be noted that Susanna McBee stated that "Hundreds of radio and TV stations have pulled off the air or refused to introduce songs that detail such acts as incest, sadomasochism, thrill killing and oral sex at gunpoint." McBee, *supra* note 66. Additionally, in Oct. 1985, James Bonk, executive vice-president of Ohio-based Camelot Music, told other retailers in a speech before the National Assoc. of Recording Merchandisers that some shopping mall owners had begun including clauses in their leases allowing them to request that record stores pull any records that were "morally objectionable." McDougal, *Porn Rock*, at 32, cols. 2-3. Some broadcasters, such as Dallas' top-rated KAAM and KAFM have refused to play or edited songs which were

warned, some of the most noxious groups thrived on the free publicity. Some groups even tried harder to specifically get noticed by the PMRC. Further, some of the biggest performers who never received extensive airplay to begin with, continued to prosper on the basis of their recordings and concerts. Others such as Prince and Madonna continued on the radio and in the record racks as well as ever. It would seem that a future confrontation with this influential group of women would be inevitable.[102]

That confrontation occurred a little more than one year later.[103]

On December 10, 1986, the PMRC held a Washington press conference denouncing the recording industry for failing to comply with the compromise agreement. Accordingly, the PMRC released a label-by-label "report card" indicating how each company had performed under the terms of the agreement.[104] Letters of complaint had been sent to many of the major recording companies who were criticized for failing to comply

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thought to be objectionable. (In all fairness, the Federal Communications Commission requires broadcasters to determine the lyrics of whatever is broadcast and holds the broadcaster responsible for the content of each broadcast.) Goldstein, *Rock's New Sticker War*, L.A. Times, Sept. 8, 1985, Pt. VI (Calendar), at 82, col. 1; *Record Labeling Hearing*, *supra* note 6, at 134 (statement of Edward Fritts, President of the National Ass'n of Broadcasters).

102. Some performers undoubtedly got mileage out of the controversy. According to Musical Majority chairman Danny Goldberg, the infamous Mentors, who received notoriety at the Senate hearings because of their song, "Golden Showers" about "anal vapors and excrement," increased record sales after the hearings. *Record Labeling Hearing*, *supra* note 6, at 17 (statement of J. Ling); Silberman, *Porn Rock Truce: Saving Grace For A Few Dollars More*, BAM MAG., Nov. 29, 1985, at 224. W.A.S.P.'s Blackie Lawless was quoted extensively in the press. "It's the new McCarthyism. Joe's back, only he's in drag this time. Rock and roll was meant to be sweaty and smelly. And when it stops being sweaty and smelly, well it ain't rock and roll anymore." *And Now For The Defense*, L.A. Times, Sept. 29, 1985, Pt. VI (Calendar), at 86, col. 1. Another rocker, Ron Keel, found the controversy ripe to re-release his song, "The Right to Rock" as an anti-rating anthem. "It's not for the government to decide how much chocolate you can eat, or how much white bread your colon can dissolve, or how much rock lyrics your brain can assimilate." Forman, *Speak No Evil*, BAM MAG., Sept. 19, 1986, at 14. Even Donny Osmond got in on it during a talk show with Tom Snyder of KABC-TV in Los Angeles. He said that "G" ratings could be as bad as "X" ratings as a kiss of death. "Do you think a teenager is going to walk into a record store and buy a "G"-rated Donny Osmond album?" he asked. He also said that a lot depended on how far interpretation is taken. "Look at 'Puppy Love,' my biggest record. It can be a very filthy song," he said. *Pop Eye*, L.A. Times, Feb. 16, 1986, Pt. VI (Calendar), at 80, col. 1. The interpretative problem alluded to by Osmond was raised by Madonna's management as well. "What we might view as oblique is something the PMRC obviously may see as explicit. They've put Madonna's current hit, 'Dress You Up,' on their 'Top Offender's List.' Now we have no idea what evil thoughts they see there—we just can't figure out what's wrong with that song. I guess all you can say is that filth is in the ear of the beholder," said Bob Merlis of Warner Records. Goldstein, *Rating the PMRC Accord*, L.A. Times, Nov. 10, 1985, Pt. VI (Calendar), at 58, col. 1.

103. PMRC Press Release, *supra* note 94.

104. Telephone interview in Arlington, Va. with Jennifer Norwood, PMRC Executive Director (Dec. 5, 1986).

with the agreement by using "labels that were too small, to obscure or otherwise failed to conform to the agreed wording of 'EXPLICIT LYRICS—PARENTAL ADVISORY.' "[105] The PMRC's biggest concern, however, seemed to be that the recording companies were deliberately finding ways to ignore and mock the agreement. This elicited some harsh complaints and perhaps a veiled threat from the new PMRC president, Sally Nevius: "Not only have many in the industry broken the agreement, but some companies have taken elaborate means to sidestep it. We continue to believe that labeling should be voluntary, but we won't stand by while the industry tries to stonewall us."[106]

Industry insiders, on the other hand, felt that they had acted in good faith. "The important thing to note is that they had no problems with ninety-nine percent of our records," said Mike Bone of Electra records. "As for the three records singled out, they felt there was a lyric problem and we didn't. We feel we've faithfully complied with the agreement."[107]

In light of the PMRC's fervor and track record for drumming up political support, this does not bode well for the music industry. The PMRC leaders have vowed to continue their efforts and, in the interim since the compromise in 1985, have broadened their attacks to such areas as Music Television. The PMRC now claims to have a mailing list of over 100,000 names[108] and has tentative plans to set up "branch PMRC offices" across the country, much to the distaste of many who have long

105. PMRC Press Release, *supra* note 94, at 2. The PMRC "report card" pointed out such albums as Combat Records' *Peace Sells . . . But Who's Buying* by Megadeth which had a warning only 1/16 of one inch high. The same was true of Columbia's *In Your Face* by Fishbone. Upon a personal tour of several record stores in Los Angeles, the only warning found was on a W.A.S.P. album, *The Last Command* on Capitol Records. It clearly stated: "Lyrics May Be Considered Offensive by Some Audiences." Unfortunately, this did not comply with PMRC guidelines. Another warning was posted for Mötley Crüe's album *Theater of Pain*. It read: "Contains sonic fury. Keep hands and face clear of speakers when playing." Clearly another miss.

106. Goldstein, *The PMRC Is Back On The Attack*, L.A. Times, Dec. 7, 1986, Pt. VI (Calendar), at 88, col. 3. *See also* PMRC Press Release, *supra* note 94. According to the release, Manhattan Records, which is distributed by Capitol, had used the following "warning" on the album *Flaunt It* by Sigue Sigue Sputnik: "[W]arning—Do Not Play If Accompanied By An Adult." W.A.S.P.'s latest album, *Inside The Electric Circus* stated, "[T]his Album Is For Animals Only." The album from Poison, *Look What the Cat Dragged In*, was publicized by Capitol Records as: "Uncensored And Unanimously Disapproved Of By Parents Everywhere."

107. Goldstein, *supra* note 106.

108. The PMRC joined the efforts of other organizations such as the feminist group, Women Against Pornography ("WAP"), and the National Coalition on Television Violence ("NCTV"), who were already campaigning against music videos. The "chilling factor" is evident as the music video industry has readily admitted that there is a feeling of uncertainty which has caused the editing or prohibition of certain videos. "I've said to the record companies, 'Let's be careful; they're going to come after us,' " said David Benjamin who produces

analogized the PMRC to Big Brother.[109]

Obviously, the music industry must pursue new alternatives in order to stem such plans and placate the parental organizations. The plan, as written, is not working and there are too many reasons why ratings and stickers have little chance for success. Moreover, there are no industry-wide guidelines or standards. The record companies are thus allowed to individually interpret the explicitness of an album. The current agreement relies too much on the good faith of the recording industry to place financial interests aside. It places the burden on the industry to make moral choices. If corporate decision making was dictated by moral conscience, there would be no porn rock problem in the first place.[110] Businesses will generally act in their own self interest. Moreover, the PMRC agreement actually encourages bad faith compliance from the recording industry by specifically exempting companies and artists who have contracted to allow the artist full creative control of the album cover. Thus, a strong motivation is created to "end-run" the agreement by entering into such contracts with the artists.[111]

The alternative to individual in-house review, however, is equally impractical, ineffective and distasteful. The creation of a single governing board to formulate rating standards and enforcements procedures smacks of George Orwell. It assumes that there is enough collective wisdom and insight to determine the composition of such a board; the necessary qualifications of panelists; and which guidelines would be followed.[112]

There are other problems inherent in attempting to use a rating system. Logistically, it is virtually impossible to account for every piece of released music. According to one count, some 600 record companies produce more than 25,000 new songs every year. Not only is it statistically impossible, but cost prohibitive in terms of the resources, manpower and man hours to examine such a body of music. By comparison, movie ratings are much simpler since only 300 to 400 films are released annually.[113]

Friday Night Videos for NBC. Love, *"Washington Wives" Set Their Sights On Video*, ROLLING STONE MAG., Oct. 10, 1985, at 18.

109. Personal interview with Jennifer Norwood, PMRC Executive Director, in Arlington, Va. (July 1986).

110. Wildmon, *Industry Won't Act; Outlaw The Sick Lyrics*, USA Today, Oct. 11, 1985, § A, at 10 (quoting film director Sydney Pollack).

111. *See generally* Silberman, *Analyzing the Compromise*, BAM MAG., Nov. 29, 1985, at 28. "Madonna's lawyers must be hard at work now." *Id.*

112. *See generally* McDougal, *supra* note 6, at 1-2.

113. *Record Labeling Hearing*, at 101 (statements of Frank Zappa and Stanley M. Gortikov). The figures for song releases are approximations based on the calculation that there are

Furthermore, unlike movies which have central themes, many songs are released in compilation form, i.e., albums and cassettes. Complex rating problems arise when only some songs on the album or cassette are explicit. According to the PMRC's original plan, each song would have to be individually rated. In a worst-case scenario, elimination of offending songs raises other issues pertaining to selective discrimination and censorship.[114]

Of course, limiting the ratings strictly to rock records would certainly reduce the number of titles that would have to be scrutinized. This, however, creates a new set of problems. Many albums are "crossover" albums containing combinations of various types of musical styles such as country & western, jazz and rock.[115] This inflames anti-rating proponents who have long argued that the PMRC is being unfairly selective in singling out rock music. They have pointed out that country music, with frequent references to alcohol, infidelity, gambling, violence and sex has not been targeted by the PMRC.[116]

Even assuming that a way could be found to rate every song on every album, the most glaring problem remains the formulation of standards. Unlike movies, music does not have a visual element. Consequently, it requires much more imagination on the part of the receiver and is subject to much more interpretation. Thus, what one listener determines as obscene will not be true for all listeners. This is clearly evident in the way record companies have complied with the agreement. The PMRC thought some albums were unequivocally explicit. Record companies, applying their own standards, reached opposite

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some 2,500 album releases annually with 10 songs of approximately 4 minutes a piece on each album. *Id.*

114. *Id.* "You also have a problem that an album is a compilation of different types of cuts. If one song on the album is sexually explicit and all the rest of it sounds like Pat Boone, [what rating] do you get on the album? How are you going to rate it?" *Id.* at 60 (statement of Frank Zappa).

115. *Id.* at 60.

116. "You have to wonder if it's just a coincidence why the PMRC, which has a key leader (Tipper Gore) whose husband is a Senator from Tennessee, hasn't touched any Nashville country records," said one record executive. Goldstein, *The PMRC Is Back On The Attack*, L.A. Times, Dec. 7, 1986, Pt. VI (Calendar) at 88, col. 6. In fairness to the rating proponents, they point out that the effect of country music is negligible and that most young people spend more time listing to rock music than they spend in school. According to PMRC statistics, the average teenager listens to approximately four to six hours of rock music daily. Between the 7th and 12th grades, this totals 10,560 hours of music. Comparatively, the same youngsters only receive 11,000 hours of classroom instruction throughout the 12 years of elementary and high school. Ling, *supra* note 28 (1985); Goldstein, *Rock's New Sticker Wars*, L.A. Times, Sept. 8, 1985, Pt. VI (Calendar) at 82, col. 1 (quoting William Steding of the National Music Review Council). Darling, *PMRC vs. Civil Libertarian: The Battle Rages*, BAM MAG., Sept. 19, 1986, at 18.

conclusions.[117]

Aside from that, there are other obvious flaws which prevent the compromise agreement from succeeding and leaves the recording industry wide open to further critcism. To wit, only participating members of the RIAA are party to this agreement and not all of those members have agreed to label their albums. Even among those that have consented, the RIAA has no power to enforce the activities of its members in the event a company changes its mind and fails to comply. Additionally, the RIAA has no power beyond its own membership. Despite the fact that RIAA companies release a majority of the music, thousands of titles are still released by non-RIAA companies. In fact, many of the most egregious offenders cited by the PMRC were produced and marketed by small, independent labels or by the artists themselves without record company backing.[118]

In like manner, the recording industry, in general, has no authority over the publishing, retail and broadcasting industries. Accordingly, the RIAA has no control over retail practices in displaying or marketing certain music. The RIAA cannot dictate the broadcast policies of radio, television or cable stations. Likewise, it exercises no authority over publishers, composers, concert performances or concert promoters. The agreement ignores these limitations by apparently holding the recording industry accountable for treating and curing the perceived afflictions of all parties in the chain of the music industry.[119]

Even more so, there are constitutional problems stacked against the compromise agreement, record ratings, and the high profile efforts of the PMRC. Despite assertions to the contrary, the anti-rock movement is either directly or indirectly running afoul of the First Amendment. De facto censorship in the form of self-imposed prior restraint is already occurring. Clearly prohibited by the Constitution, it follows logically in a marketplace of supply and demand when outlets for distribution, performance and airplay are removed.[120] In the wake of the present contro-

117. According to the PMRC, the investigations turned up a number of albums which should have received warnings, but didn't. Offending companies included A & M, Atlantic, Capitol, CBS, AC/DC, Lizzy Borden, Quiet Riot, Vanity, The Rolling Stones, Cinderella, and others. PMRC Press Release, Record Labeling Progress (Dec. 10, 1986).

118. Silberman, *supra* note 111, at 12. According to Doug Marks, lead guitarist for the band HAWK, who has been a guitar instructor for many years, it is possible for a band in Los Angeles to put together their own record for about $1,700, which includes 1,000 copies, a full color cover, and even shrink wrap. Marks, *Newsletter 1986*, Metal Method Productions (available from Metal Method, Inc., Woodland Hills, Cal.).

119. *Record Labeling Hearing*, *supra* note 6, at 100-02 (statement of Stanley Gortikov).

120. Although the Constitution clearly guarantees the right to freedom of speech and the press, by its own words it only restricts the "government" from curtailing such liberties in that

versy, certain retail stores are no longer carrying various artists. Certain locations now prohibit various types of concerts. Certain radio and television stations have reduced or eliminated various artists from their playlists. Some stations are editing songs that they find objectionable.[121] It follows that a performer may have to think twice about what he says or how he says it. Worried about airplay, lawsuits, and harrassment, artists subconsciously or consciously "play it safe" by writing and performing for the lowest common denominator so as not to offend overly delicate sensibilities and in order to maintain peace with their record companies and broadcasters who are essential to the artistic livelihood of most entertainers. Clearly, there has been a chilling effect.[122] Sadly, it is the newer or less successful artist and the smaller independent record labels that are most vulnerable to this type of mental editing and censorship. Lacking the name, recognition and financial resources of the superstars, many of them provide a healthy alternative and a welcome injection of fresh creativity to sometimes stagnant musical formulas.[123]

As a result, it is tragic that whole classes of people who have a legiti-

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it says, "Congress shall make no law . . . ." While this "state action" requirement would be more easily satisfied if indeed the government had actually proposed anti-rock legislation, the allegations that the PMRC is "government supported" are weak and probably non-existent if the PMRC is "not governmentally connected" as the PMRC contends. *See generally* L.H. TRIBE, AMERICAN CONSTITUTIONAL LAW 1147 *et seq.* (1978). Nevertheless, the First Amendment clearly prohibits prior restraint, i.e., pre-publication censorship, on the concept that open robust debate is essential to the free marketplace of ideas. Consequently, this sort of "advance editing" is dangerous because in attempting to excise allegedly objectionable creativity, there is the threat that legitimate creative work is also eliminated by the artists. Considering the volume of musical material produced annually and the fact that music industry guidelines are ambiguous, the free marketplace of ideas suffers tremendously as artists attempt to "conform." *See, e.g.*, Near v. Minnesota, 282 U.S. 697 (1931); New York Times Co. v. Sullivan, 376 U.S. 254 (1964); Dailey v. Superior Ct., 112 Cal. 94, 44 P. 458 (1896).

121. *See supra* note 101.

122. *Id.*

123. It certainly helps to have a gold or platinum track record. This obviously places an artist in a more esteemed position with a record company. For example, the often criticized Quiet Riot has had no problems. "We'd have to come up with something that was really outrageous for them to want to pull it," said Quiet Riot's Kevin Dubrow. "Basically, I know that the record companies are taking a lot of shit so we [artists] don't have to." This has not been the case for Quiet Riot's stable mates on CBS. The Beastie Boys, who have been critically acclaimed despite low record sales, were forced by CBS to scrap their album title *Don't Be A Faggot* and one song, "The Scenario". The song was reportedly a true song about an acquaintance of the band who got shot. The album has been re-titled *License to Ill.* Additionally, CBS refused to release the new album by Slayer because of the lyrics. The album is entitled *Reign in Blood.* "CBS, the same label that preaches the First Amendment rights of 'Ozzy' and 'Judas Priest,' have turned around and said, after agreeing to it, at the last minute, the last day, that they have decided they will definitely not put out this Slayer album," complained producer Rick Rubin. Even Rubin, however, admits that the lyrics are "heavy." Forman, *Speak No Evil*, BAM MAG., Sept. 19, 1986, at 14.

mate right to such access are deprived of a very unique art form. This includes children as well as adults who are injured by the diminution of diversity from the body of musical works. Music is a form of information. As such, it has long been recognized that the curtailment of information is anathema to our free market society where informed choices are the product of access to ideas and information.[124]

Consequently, because of the offended sensibilities of a few in power, a deprivation is suffered by all. It amounts to minority dictation. This is not only ironic, but dangerous since pornography and obscenity in music, theater, and other contexts appear to be two issues which constantly elude precise definition.[125] To erode constitutional protections to a genre of speech when precise standards are incapable of precision, imperils all freedom of expression. Such an important liberty should not be permitted to collapse on such a thin reed.[126]

The foregoing arguments do not attempt to ignore the problems raised by the PMRC and the PTA. If any solution is to be reached, it is important to recognize that the PMRC has made some valid points. Inasmuch as the PMRC has raised the heart rate of more than a few record executives, it can also take credit for raising the consciousness of the American public.

In a nutshell, the PMRC points out that it is erroneous to think that music has no effect on behavior. Fight songs, marches and spiritual music have stirred people's emotions for centuries. Likewise, millions of

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124. *See supra* note 120. "A chilling effect would encourage record companies to sign artists that do not cause controversy . . . less music would be available." *Record Labeling Hearing, supra* note 6, at 144 (statement of Robert Sabatini, Jr. of WRKC-FM).

125. The current definition of obscenity reads:

> That which the average person, applying contemporary community standards, would find that, taken as a whole, appeals to the prurient interest; that which depicts and describes in a patently offensive way sexual conduct as defined by the applicable state law; and that which, taken as a whole, lacks serious literary, artistic, political or scientific value.

Miller v. California, 413 U.S. 15, 24 (1973). Despite such articulations, the courts have been vexed for years as to the proper interpretation and application of such a standard.

> To some, pornography depicts man reduced to the sorry sum of his basest appetites; to others, it eases psychosexual tensions or soap operas, from the confines of the dreary present. To some, it represents shameless exploitation of the frustrated and the compulsive; to others, it symbolizes liberation from the compulsions of a leaden, regimented, and ultimately oppressive social order. The pride that Comstock felt at having destroyed 'something over fifty tons of vile books [and] 3,984,063 obscene pictures,' most of which today would be likely to shock no one, should suggest a sober skepticism about any claim that the latest threat to decency has finally crossed the line of the tolerable: what was once beyond the pale rests comfortably on today's living-room end table.

L.H. TRIBE, AMERICAN CONSTITUTIONAL LAW 668 (1978). *See generally MacKinnon, Pornography, Civil Rights, and Speech*, 20 HARV. C.R.-C.L. L. REV. 1 (1985-86).

126. Dershowitz, *What Is Porn?*, 72 A.B.A. J. 36 (1986).

dollars are spent on soundtracks and jingles because it is well recognized that music creates ambience, tells a story or makes consumers susceptible to market strategies.[127]

Second, music unquestionably plays a major role in the lives of children and teenagers. It has been estimated that young people spend approximately six hours of their day listening to music. This is aside from the amount of time spent watching television.[128]

Likewise, it is a long way from Cole Porter's song, "Let's Do It" or even the Rolling Stones' song, "Let's Spend the Night Together" to "Lick It Up" by KISS or ZZ Top's "Under Pressure."

She don't like other women
She likes whips and chains
She likes cocaine
And flippin' out with Great Danes.[129]

Perhaps Dwight Silverman summed it up best in the *San Antonio Light:*

> Heavy metal rock 'n' roll is a different beast from the music that ruled the late 60's and 70's, the music that was supposed to bring a generation together. Heavy metal is mean-spirited music. In it, women are abused, parents are objects of derision and scorn and violence, education is a foolish waste of time. Rock 'n' roll has always been a music of rebellion and frustration, but never of hatred.[130]

Fourth, the performers have changed. Nikki Sixx of Mötley Crüe and groups like Frankie Goes To Hollywood will never be mistaken for Frankie Avalon or the Beach Boys. Many of today's performers exhibit eye-raising attitudes.

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127. *Record Labeling Hearing, supra* note 6, at 117-20 (statement of Dr. Joe Stuessy, a music professor at the Univ. of Texas, San Antonio). Dr. Steussy pointed out that music in offices can have a positive or negative effect on worker efficiency. In doctor's offices it aids in relieving tension or pain reduction. It is used to sedate shoppers in stores to make them receptive to marketing stratagems, and changes the mere act of jumping around from being "silly" motions to being "dance." He further points out the extensive use of jingles to affect advertising and how an entire industry of fitness has grown around the concept that people will drive miles from home to exercise and sweat with other people and pay for the privilege. Without music, this aerobic dancing would be called hard work. *Id.* Jennifer Norwood of the PMRC further argues that it is contradictory for the music industry to state that music has no influential effect, then applaud and pat themselves on the back when Stevie Wonder puts out a public service message against smoking or drinking. Personal interview with Jennifer Norwood in Arlington, Va., (July 1986).

128. *See* Ling, *1985 Rock Music Report, supra* note 28.

129. "Under Pressure," *Eliminator*, ZZ Top (Warner Records 1983).

130. Silverman, *Drugs, Violence Steal The Show*, San Antonio Light, Mar. 10, 1985, at A16. *See also Record Labeling Hearing, supra* note 6, at 121-23.

Nikki Sixx said in an interview: "The one thing I got from Hitler was the idea of the Nazi youth. I believe in the Motley youth. The youth of today are the leaders of tomorrow. They are young; they can be brainwashed and programmed."[131]

And from Frankie Goes To Hollywood: "Manipulation of children's minds in the field of religion or politics would touch off a parental storm and a rash of Congressional investigations. But in the world of commerce, children are fair game and legitimate prey."[132]

On top of this, television and television viewing habits have changed. Children are watching twenty to twenty-five hours of television every week. A conservative estimate indicates that they view an average of 12,000 violent acts on television per year. If a child can learn to spell R-O-L-A-I-D-S, he or she can also learn about violence. It is not surprising that direct correlations have been found between television violence and harmful effects on children and adults.[133] Moreover, one survey found that there are roughly 125 regional and local music video programs reaching an estimated twenty million viewers. Leading the way is Music Television with its twenty-four hour-a-day programming. Upon monitoring those videos, it was discovered that almost half the clips exhibited explicit or threatened physical violence.[134]

The PMRC has also pointed out that children and society have changed. This is easily the most sophisticated generation in history and highly affected by our intense material, technological and dynamic society. Unfortunately, not all of the effects are good. Suicides among the young exceed 600,000 annually. Drug and alcohol use among high school students has escalated. Pregnancies among teens and sexual abuse continue to skyrocket while rape has climbed 700% in the past five

131. The Record—A Newsletter From the PMRC, Jan. 1986, at 3, col. 2 (quoting from an interview in FACES, 1984) (available from the PMRC in Arlington, Va.).

132. *"Relax, Welcome to the Pleasuredome,"* Frankie Goes To Hollywood (Island Records 1983).

133. *See generally Record Labeling Hearing, supra* note 6, at 154-55 (statement of Dr. Thomas Radecki, chairperson of the National Coalition On Television Violence). According to Dr. Radecki, the U.S. Surgeon General, the National Institute of Mental Health, the U.S. Dept. of Justice, and the U.S. Attorney General's Task Force on Family Violence had all concluded that violence on TV was harmful. According to Dr. William Dietz of the Academy of Pediatrics Task Force on Children and Television, children are affected by TV violence in four ways: (1) They imitate it; (2) they identify with the characters since violence by "good guys" is implicitly endorsed; (3) TV violence is "clean" in that it offers rapid solutions without negative consequences; and (4) repeated exposure creates indifference to violence. *Television Violence: Hearings Before the Senate Judiciary Committee*, 99th Cong., 1st Sess. 1 (1986) (statement of Dr. William Dietz).

134. Shore, *The Tube Goes Clip Crazy*, RECORD MAG., October 1983, at 39-40.

decades.[135]

Finally, the PMRC has produced some evidence that parents and children are truly concerned with the issue of explicit lyrics. One survey conducted in November 1985 by the Simmons Market Research Bureau indicated that sixty-six percent of adults polled expressed worry about the explicitness of rock music. Seventy-five percent of those polled indicated their favor for a rating system. Another poll published in the *Washington Post* in January 1986 found that fifty-six percent of the 1,400 people polled favored warning labels. Further, fifty-one percent thought that lyrics had a bad effect on children. Only one percent felt there was a good effect. Of those who felt there was a bad effect, more than seventy-seven percent thought that lyrics stimulated such things as drug use, disobedience, sexual activity, violent behavior, laziness, and disregard for authority.[136]

Many more points of argument could easily be made on both sides of the issue.[137] Nevertheless, whether one considers the present plan a

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135. According to the PMRC:

> The U.S. Surgeon General had declared that societal violence has reached 'epidemic proportions.' Studies show that one in four women will be sexually abused before reaching the age of 18. A September 18, [1985] National Council of Churches study says the United States is the world's most violent nation, and it cites a 'direct causal relationship between violence in the media and aggressive behavior in society,' including rape which has increased 700 percent in the last five decades. The National Council on Drug Abuse report issued in 1985 shows drinking among teenagers to be the highest among all developed countries. One out of 20 high school seniors smokes pot or drinks alcohol daily; 62% of all high school students use illegal drugs by the time they graduate. Meanwhile, teen suicide (600,000 reported attempts annually) and homicides are increasing dramatically.

Howar, *School Days to School Daze*, Jan. 1986 (available from the PMRC in Arlington, Va.). *See also Record Labeling Hearing*, *supra* note 6, at 10-12 (statement of Susan Baker).

136. Simmons Market Research Bureau, Inc., *Record Lyric Survey*, Nov. 1985 (available from SMRB, New York, New York); Harrington, *A Porn Lyric Survey*, Washington Post, Jan. 22, 1986, § C, at 7.

137. All of this argument and controversy may be for naught. A recent study performed by two Cal. State Univ. professors discovered that a majority of twelve to eighteen-year-olds didn't even listen to lyrics. Of 662 songs listed, only 7% were perceived by the teenagers as being about such things as sex, drugs, violence or satanism. Sixty-three percent of the songs were perceived as being about love (as opposed to sex) or had themes that were undeterminable. Fewer than 3% said they actually listened to the lyrics. Harrington, *What'd I Say?*, Washington Post, June 25, 1986, § D, at 7; Lewis, *Rock 'N' Roll Teens Get The Beat, Miss Message*, L.A. Times, June 10, 1986, pt. VI, at 1, col. 1. Misinterpretation of songs is nothing new; William Safire of the New York Times noted the way in which children routinely mangled the Star Spangled Banner: "José can you see by the Donzerly Light," "O'er the ramrods we washed," and "grapefruit throught the night that our flag was still there." During the Second World War, American soldiers translated the popular Japanese song "Shi-i-na-na Yaru" into "She ain't got no yo-yo." The words to the classic "Guantanamera" have been understood as "One ton of metal, why he loads one ton of metal." Even the Beatles' song, "Lucy in the Sky with Diamonds," with the phrase "look for the girl with kaleidoscope eyes

success or not, the rock industry has tossed more fuel into the PMRC fire during the past year. This has only succeeded in producing greater animosity toward rock music and perhaps increasing the chances that one day, people will say, "Enough!" For example,

* In January of 1986, a study released by California's Governor George Deukmejian confirmed that gang violence was escalating at an alarming rate and that "heavy metal, punk and Satanic groups had emerged as new gang phenomena."[138]

* Later in the year, a Los Angeles teen purchased the record *Frankenchrist* for her eleven-year-old brother. As a result of a letter written by the children's mother to the state attorney general, criminal charges were filed in June against Eric Boucher, a.k.a. "Jello Biafra," lead singer for the group The Dead Kennedys. Apparently, the album in question contained a poster by Swiss artist H. R. Giger which depicted ten explicit sex acts.[139]

* Also, in June of 1986, one man died and three others were seriously injured when they jumped or were pushed from the balcony at an Ozzy Osbourne concert in Long Beach, California. Two others were stabbed—one fatally—in other incidents related to the concert. According to witnesses, drug and alcohol use were extremely high among the concert crowd.[140]

* Once again, a massive riot erupted in Long Beach, California in August when the group Run-D.M.C. played a concert. Forty fans were injured as gangs apparently rampaged through the concert audience.

* More injuries and arrests occurred one month later in

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and she's gone," was thought to say "look for the girl with the colitis go by and she's gone." Smith, L.A. Times, July 29, 1986, Pt. V, at 1, cols. 1-2.

138. According to the California Council on Criminal Justice's 1986 report on gang violence, this new "gang phenomenon" differed greatly from more traditional street gangs since most of these new gangs were "secretive." The gangs consisted primarily of white and middle-class youths who listen to heavy metal rock music; hold nothing sacred; have violent behavior; enjoy shock value; have little parental authority; and believe in anarchy. According to the report, "[T]hese groups' activities included drawing graffiti, using illegal drugs, abusing children and assaulting parents. Grave robbing and desecration of animal and human remains are some of the more bizarre activities associated with these groups." Moerer, *The Duke's Ambush On Punk And Heavy Metal*, BAM MAG., Sept. 10, 1986, at 16. The report has been heavily criticized for lacking any substantive statistical evidence in its findings.

139. This appears to be a "first" for the entertainment industry. *Punk Singer Charged With Obscene Album Art*, L.A. Daily Journal, June 4, 1986, at 24, col. 1.

140. Schwartz, *1 Dead, 3 Hurt in Violence at Rock Concerts*, L.A. Times, June 16, 1986, Pt. I, at 3, col. 5.

September at the Los Angeles "Street Scene" Music Festival during the performances by local heavy metal bands. Ironically, Run-D.M.C. had been tentatively scheduled to play but was denied permission, in the wake of the Long Beach riot, because Los Angeles city officials and festival promoters feared more gang violence.[141] These patterns have been repeated as performances by various other music groups have been marred by violence and extensive vandalism to concert halls nationwide.[142]

* Finally, in December of 1986, one of the biggest heavy metal groups, "Judas Priest," was ordered to stand civil trial in Reno, Nevada, following charges that two youths shot themselves after listening to a "Judas Priest" album. One of the young men died. The other was severely disfigured by the shotgun blast to the head.[143]

Unfortunately, stories such as these and the adverse publicity generated by groups such as the PMRC obscure and disserve much of the good that has been provided by rock music in the past few years. In fact, contrary to what many may think, a good argument can be made that rock performers may be among our most socially conscious citizens. Politicians have recognized the power in music lyrics in their attempts to solicit endorsements from many of the biggest rock stars. Certainly, performers have shown a strong propensity to effect change through their talents, time and energy. Many lives have been saved, people fed, and money raised through such efforts as "U.S.A. for Africa," "Band Aid," "Live Aid," "Amnesty International," and other music events, where some of the PMRC's most targeted performers cooperated for worthy causes. In "Hear 'n' Aid," forty of the biggest names in metal rock, including members of "W.A.S.P.," "Mötley Crüe" and "Quiet Riot," put

141. Ramos, *'Rap' Musicians' Concert Is Cancelled at Polladium after Long Beach Fights*, L.A. Times, Aug. 19, 1986, Pt. II, at 1, col. 2. Ironically, Run-D.M.C. has been very vociferous and articulate in presenting anti-gang and anti-violence themes in its music. *See also* Baker, *Rap Group Won't Be Part of Street Scene*, L.A. Times, Sept. 17, 1986, Pt. II, at 1, col. 1.

142. According to *Circus Mag.*, there has been a heavy increase of violence and destruction of property at shows. Damage to arenas is approaching millions of dollars, therby raising insurance rates and, as a direct result, ticket prices. Many venue owners are now hesitant about booking metal acts. "When we did Radio City in New York," said Iron Maiden's Bruce Dickinson, "I saw a kid making a bonfire of his seat. I wanted to smack him in the mouth." Similarly, at the Ronnie James Dio concert at Madison Square Garden in June 1986, M-80 explosives, seat cushions and parts of metal bleachers flew through the air. Darzin, *Heavy Metal under Siege*, CIRCUS MAG., Dec. 31, 1986, at 60-69.

143. *Rock Band to Stand Trial In Suicide Law*, L.A. Times, Dec. 5, 1986, Pt. VI, at 14, col. 1.

together an album and video with all proceeds directed toward the hungry in Africa.[144]

Notwithstanding these accomplishments, the recording industry, the publishers, broadcasters, promoters and especially the artists should examine the current situation. The PMRC and other parental and consumer organizations pose a very real threat by raising serious issues to national attention. Even more, they symbolize part of a growing fundamentally conservative moral militancy in the nation which has gravely imperiled personal and artistic freedom.

For example, in the wake of the PMRC media blitz, a San Antonio city ordinance was enacted prohibiting unaccompanied children under fourteen years old from attending musical, stage, or theatrical presentations that "constitute obscene performances." The ordinance is primarily targeted toward rock concerts which were detrimentally affected by the passage of the law. Mayor Henry Cisneros apparently championed the ordinance and described the activities at some rock concerts as "young people going up to the altar to testify for Satan."[145]

In response to consumer pressure, Music Television announced that it was cutting back on its heavy metal videos which comprised almost one-third of all its clips. This disappointed many bands, such as "Twisted Sister" who owed much of their success to the heavy exposure it received on Music Television. Music Television chief Bob Pitman called for the change because of viewer backlash. "People either love it [heavy metal] or hate it. And the people who hate it, hate it with a passion," he said.[146]

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144. Darzin, *supra* note 142, at 61; McBee, *Now It's Labels On "Porn Rock" To Protect Kids*, U.S. NEWS & WORLD REP., Aug. 26, 1985, at 52. There has also been a strong emergence of "Christian Rock" with the success of performers such as Amy Grant, Sparrow, and the metal group Stryper who pass out Bibles at their concerts.

145. According to a telephone interview with the San Antonio City Attorney's Office, City Ordinance 61850 was passed on Nov. 14, 1985. No one has yet been prosecuted, and although there have been threatened suits, none have been filed. Local concert promoter Jack Orbin didn't think that anyone would be able to successfully prove that rock concerts didn't have some artistic merit under the current obscenity laws. Nevertheless, the front page publicity hurt three concerts by KISS, Mötley Crüe and AC/DC, where attendance was off. Goldberg, *Crackdown On "Obscene Shows,"* ROLLING STONE MAG., Jan. 30, 1986, at 9. Interestingly, Jeff Ling, who testified before the Senate at the PMRC hearings, was reportedly very convincing with his slide presentation in front of the San Antonio City Council. Jennifer Norwood of the PMRC has specifically disassociated her organization from Ling's activities in Texas. Likewise, she has distanced the PMRC from religious fundamentalists who conduct record burnings and claim that all rock is evil. Silberman, *Porn Rock Truce: Saving Face For A Few Dollars More*, BAM MAG., Sept. 19, 1986, at 18.

146. Graham, *Heavy Metal On The Outs At MTV*, ROLLING STONE MAG., April 11, 1985, at 15.

In the summer of 1986, a controversial two-volume 1,900 page report on pornography was accepted and released by United States Attorney General Edwin Meese. The eleven-member Commission on Pornography concluded that there was a causal link between violent pornography and aggressive behavior toward women. Furthermore, the Commission also concluded that exposure to sexually explicit material that was not violent but nevertheless degraded women, and bore "some causal relationship to the level of sexual violence." The report also contained a citizen's "how-to-guide against pornography" including suggestions on conducting a "court watch program" and how to monitor the lyrics of rock music.[147]

As a direct result of the Meese Commission's work, massive retail chains such as 7-Eleven and Rite-Aid pulled copies of *Playboy* and *Penthouse* from their newsracks. Reports estimated that this amounted to the loss of 15,000 outlets for *Playboy* and 8,000 for *Penthouse*. The move was prompted by a single letter sent by the executive director of the Commission to twenty-three major American companies including drug and convenience stores, advising the companies that they had been identified in testimony as being involved in the sale of pornography. *Playboy*'s founder, Hugh Hefner, screamed "sexual McCarthyism" and pointed out that in thirty-three years of publication, his magazine had never been found guilty of pornography.[148]

Several weeks later, a leading Southern California supermarket chain pulled *Spin*, a new music magazine, off its counters. According to the management for Ralph's supermarkets, there had been customer complaints about offensive language in one of the issues.

"This isn't a free-speech issue. We're just responding to our customer's needs," said Al Marasca, the vice-president of marketing for Ralph's.[149]

On June 1, 1986, television evangelist Jimmy Swaggart blasted rock 'n' roll and various rock magazines as "the new pornography." Two weeks later, the 890-outlet Wal-Mart department store chain yanked

147. *See, e.g.*, Kurtz, *Attorney General's Panel Says Some Pornography Causes Sexual Violence*, Washington Post, July 10, 1986, § A, at 1; Pear, *Panel Calls on Citizens to Wage National Assault on Pornography*, N.Y. Times, July 10, 1986, § A, at 1, col. 2; Green, *The Shame of America*, PEOPLE MAG., June 30, 1986, at 28; Stengel, *Sex Busters*, TIME, July 21, 1986, at 12.

148. Green, *The Shame of America*, PEOPLE MAG., June 30, 1986, at 32-33. Hefner, *The Blacklist*, PLAYBOY MAG., July 1986, at 1; on May 16, 1986 a suit was filed by *Playboy* against Edwin Meese. *Playboy Sues Meese*, PLAYBOY MAG., Aug. 1986, at 46.

149. Goldstein, *Spin Magazine Fails Ralph's Checkout*, L.A. Times, Apr. 27, 1986, Pt. VI (Calendar), at 88, col 1.

thirty-two rock and teen-oriented publications from their shelves. These included such titles as *Hit Parader, Rolling Stone, Circus* and *Teen Beat.* Just a few weeks earlier, the store had also discontinued selling albums by AC/DC, Judas Priest and comedians Cheech and Chong.[150]

Perhaps most significantly ominous for record artists is the recent refusal by CBS Records to release the latest album by the popular heavy metal group Slayer. The band was signed to Def-Jam Records, a small New York-based label which has an exclusive distribution deal with CBS. The album *Reign in Blood,* contained such titles as "Necropheliac," "Altar of Sacrifice," and "Criminally Insane." According to angered Def-Jam president, Rick Rubin, CBS may have gotten cold feet in the wake of all the Ozzy Osbourne suits and was in no mood to tangle with anti-rock crusaders.[151]

If further inroads into artistic expression are to be prevented, such stories should raise the apprehension of those in the music industry. As with any complex problem, there are no easy solutions. No one, and certainly not the PMRC, has been naive enough to place all of society's problems on rock music. Thus, any remedial action on the part of the music industry will not cure all social ills. Nevertheless, these parental groups have stated a good case by showing that rock music may be a contributing factor and, whether the music industry agrees, it must realize that many people are listening to the PMRC as well as to other conservative groups.

The music industry should also realize that even though most rock 'n' roll is pure entertainment, a tongue-in-cheek "circus carnival" that is accepted as such by most of the public, there is a cadre of people who take the music very seriously. There is a clique of fans, mostly young people, who live the heavy metal lifestyle and idolize these "larger-than-life" stage personalities.

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150. *The Heat Goes On*, PLAYBOY MAG., Nov. 1986, at 41; Goldstein, *Jimmy Swaggart Blasts Rock Porn*, L.A. Times, Aug. 3, 1986, Pt. VI (Calendar), at 86, col. 1. In the wake of the Meese Commission, there are some other "chilling" magazine purgings taking place. For example, the May 1986 issue of *American Photographer* was pulled from some Kansas stores when a stockboy noticed a single naked breast. In Florida, a 120-store-chain pulled issues of *Globe* from their racks because of a steamy kiss in the shower between two stars for the TV show "Dynasty." In Texas, boycotts have been mounted against Calvin Klein products because of its cologne ads. The boycotts spread to three major Houston supermarket chains where the protesting organizations demanded removal of issues of *Vogue, Glamour,* and *Cosmopolitan.* Store managers complied. Even *Ms. Magazine* was criticized for carrying the Klein ads. *See The Playboy Forum*, PLAYBOY MAG., Aug. 1986, at 41; Scheer, *Inside the Meese Commission*, PLAYBOY MAG., Sept. 1986 at 60.

151. Goldstein, *CBS: A Case Of Heavy Metal Poisoning?*, L.A. Times, Oct. 12, 1986, Pt. VI (Calendar), at 80, col. 2.

PMRC's Jennifer Norwood said:

> Most of us have a great time with rock 'n' roll. We're not talking about the kid who listens at home to an hour of Madonna. We're worried about the kids who lock themselves in their rooms and repeatedly listen to this stuff and the ones who get caught up in the whole heavy metal attitude of defiance and power. Heavy metal promotes that sort of activity. That is where it's dangerous.[152]

Accordingly, the artists themselves must realize that the First Amendment is not carte blanche for unmitigated expression . . . even in the name of fun and entertainment. It was never meant to be an invulnerable shield to be thrown up blindly after the fact in the face of those who would object to certain types of creative expression. It is well recognized that the right to free speech does not protect every utterrance, writing, publication, or demonstration and the courts have routinely held that these constitutional rights must sometimes be subservient to competing social policies for the good of the public. For instance, even the though the United States Supreme Court has repeatedly maintained that "above all else the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter or its content," it has consistently failed to protect speech or expression which tended to incite a breach of the peace or lawlessness or was held to be obscene. Further, the Court has recognized the right of citizens to protect the character of their communities from offensive, but not necessarily obscene, influences.[153]

The call for self-restraint may be a step in the right direction. Cer-

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152. Telephone interview with Jennifer Norwood, PMRC Executive Director (Dec. 18, 1986).

153. This has traditionally been a threshold question and a high point of controversy among legal scholars. Among the staunchest of the "absolutists" who held to a strict interpretation of the First Amendment was Justice Hugo Black who served on the United States Supreme Court from 1937 to 1971.

> I believe the words mean what they say. I have no reason to challenge the intelligence, integrity or honesty of the men who wrote the First Amendment. Among those I call the greatest men of the world are Thomas Jefferson, James Madison, and various others who participated in formulating the ideas behind the First Amendment for this country and in writing it. . . . The beginning of the First Amendment is that 'Congress shall make no law.' I understand that it is old-fashioned and shows a slight naivete to say that 'no law' means no law. . . . I have to be honest about it. I confess not only that I think the Amendment means what it says but also that I may be slightly influenced by the fact that I do not think that Congress *should* make any law with the respect to those subjects [religion, speech, press, assembly, petition the government to redress greivances].

Note, *Justice Black and First Amendment "Absolutes," A Public Interview*, 37 N.Y.U. L. REV. 552-53 (196).

tainly, it is a step away from the day that some legislative body takes more drastic measures. But self-restraint is too much akin to, if not the same thing, as self-censorship. As a mere semantic war, the choice between self-censorship, self-restraint and legislation may not be much of a choice at all, since the end result is still the same.

The essential point to make, and all parties seem to agree, is that the true answer lies with the parents. Sticker warnings, labels and ratings do not make any difference if parents aren't listening to their children's music, communicating mutual concerns and trying to understand what is being said. The alternative is having someone else make those decisions regarding what children will see and hear with the resulting impact that it determines what all of us will see and hear.[154]

In the final analysis, the consumer—adults and children alike, decide what gets performed or broadcast. As a free market, consumers have the option of ignoring the unpalatable. If they are not happy with what they encounter on the airwaves, the stereo, or concert stage, they have the option of tuning out, turning off or turning away. Consumers are given what they demand and the consumer's voice is expressed by his or her purchasing, viewing, or listening habits. Obviously enough consumers found Madonna and Mötley Crüe palatable enough to purchase millions of albums. Obviously, Prince was not so offensive in that "Purple Rain" won a Grammy and an Oscar. Anti-rock groups should understand that the public is getting exactly what it wants. There is no need for creating standards because standards are already in place, and for the most part, they are effective. These are the standards determined by the consumers in the community. The public will not tolerate for long that which does not serve its needs and interests. In that respect, the music industry must take notice, and will take notice, because the community is the toughest master.[155]

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154. Police Dept. of Chicago v. Mosely, 408 U.S. 92, 96 (1972); Cohen v. California, 403 U.S. 15, 24 (1971); New York Times Co. v. Sullivan, 376 U.S. 254, 269-70 (1964).

155. Although its decision is subject to a very narrow construction because of the danger of infringing upon protected expression, the U.S. Supreme Court in *Brandenberg v. Ohio*, reversed the conviction of a Ku Klux Klan leader and held that words which were "directed to inciting or producing imminent lawless action" and would be "likely to incite or produce such action" were unprotected by the First Amendment. 395 U.S. 444, 447 (1969). *See also* Chaplinsky v. New Hampshire, 315 U.S. 568 (1942) (control of "fighting words" which by mere utterance inflict injury or tend to incite immediate breach of the peace); CAL. PENAL CODE §§ 401 *et. seq.* (West Supp. 1987) (prohibiting the encouragement of suicide or inciting riots). *But see* Cohen v. California, 403 U.S. 15, 25 (1970) where the Court recognized that "one man's vulgarity is another man's lyric" in overturning the conviction of a man who had worn a jacket to a court house with the words "Fuck the Draft" to provoke a given group to hostile action or that anyone who saw the jacket was violently aroused, or even that the de-

In the ongoing war in the music industry, there can be no real peace where the First Amendment is placed at issue. There are simply too many interests to serve and there will always be a "tension" as long as diversity exists in our society. That, however, is the beauty as well as the bane. The Constitution gives much leeway to diversity and encourages the free flow of expression and information permitting such controversies as "porn rock" to be brought to public attention. The fact that we are sometimes forced to wince or squirm when someone transgresses the boundaries of taste, seems a small price to pay for the preservation of such important freedoms for all.[156]

Because of all the sensationalistic headlines, there is a real danger that much of the "porn rock" issue is being blown out of proportion. Unfortunately, the ramifications could have lasting effects on all of us.

"Haven't we been here before?", wrote Ellen Goodman in the *Washington Post*. "How many times before? Which side were we on before? Surely the Golden Oldies among us titter over the memories of the MOVEMENT to Restore Decency, the midnight record burners, the prudes who televised Elvis only from the waist up. 'They,' as Elvis said, 'are just frustrated old types anyway.' And we were inclined to agree."[157,158]

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fendant intended such a result. According to the Court, the Constitution protected the "emotional" as well as the cognitive "content" of the message.

156. Obscenity, in whatever form, does not fall within the scope of protection provided by the First Amendment. Roth v. United States, 354 U.S. 476 (1957). However, the current definition of obscenity articulated by the United States Supreme Court in *Miller v. California*, has been pragmatically difficult to apply. According to that definition, expression is obscene if

> the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interests, whether the work depicts in a patently offensive way, sexual conduct specifically defined by the applicable state law, whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

413 U.S. 15, 24 (1973).

Although subject to very narrow construction and Supreme Court supervision, the *Miller* definition basically gives states free reign to adopt their own standard of prurience and offensiveness and widely-shared sense of values. Thus, standards in Illiopolis, Illinois need not match the community standards in New York or Los Angeles. Nevertheless, anyone bringing a challenge to rock music shoulders an arguably heavy burden to show that the music, lyrics, album cover, or concert performance lack "serious literary, artistic, political, or scientific value." *See generally* L.H. TRIBE, AMERICAN CONSTITUTIONAL LAW, 662-64 (1978).

157. In Young v. American Mini Theaters, Inc., the U.S. Supreme Court upheld the ability of a community to ban the showing of explicit adult films through the use of zoning laws in order to protect the character of the neighborhood from the effects of adult theaters, even though the films themselves were not necessarily "obscene." 427 U.S. 50 (1976). Likewise, the Court has also held that because of the inherent ability of the broadcast airwaves to pervade the home and the lives of children, the Federal Communications Commission is permitted to regulate an "indecent" broadcast even though it was not "obscene." F.C.C. v. Pacifica Found., 438 U.S. 726 (1978).

-THE END-
(OR JUST THE BEGINNING?)

158. Recent developments to merit consideration (or further cloud the waters): By a vote of 7-2, the United States Supreme Court has ruled that states may not regulate sexually explicit cable TV programs which are themselves not legally obscene. This March 23, 1987 decision apparently affirms that an individual may view in his home the same programs he or she sees at the neighborhood theater. *Wilkinson v. Jones*, 107 S. Ct. 1559 (1987).

Meanwhile, the Federal Communications Commission has expanded its definition of impermissible broadcasts and broadened its interpretation of decency to include "sexual or excretory activities or organs" when it recently cracked down on radio station KPFK in Los Angeles for airing a program about AIDS, station KCSB-FM at the University of California at Santa Barbara for playing a song called "Makin' Bacon," and station WYSP for the activities of "shock jock" Howard Stern, a popular drive-time disc jockey. The cases have been referred to the Justice Department, and penalties could include a $10,000 fine, two years in jail, and loss of broadcast license. Crook & Pagano, *FCC Cracking Down on Radio Indecency*, L.A. Times, Apr. 17, 1987, Pt. VI (Calendar), at 1, col. 2.

Additionally, in order to satisfy the California film industry, the California legislature is considering its own alteration of obscenity definitions to change the criterion from "contemporary community standards" to "statewide community standards." S.B. 5 passed the Senate Judiciary Committee by a 6-4 margin and was sent to the Appropriations Committee for further study. L.A. Times, Apr. 23, 1987, Pt. VI (Calendar), at 2, col. 1.

Finally, Senator Albert Gore (D.-Tenn.) is considering the White House as a future base of operations. Cuniberti, *Tipper Gore: Activist, Mother, Soon-to-be Potential First Lady?*, L.A. Times, Apr. 9, 1987, Pt. V, at 1, col. 5.