

# THE LEGAL

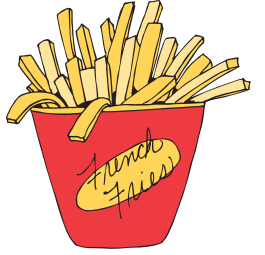


WINTER 2002

## BIOTECHNOLOGY Creating Smart Plants or Frankenfoods?

by Roberta K. Glassner, Esq.

What's your favorite food? Maybe for you it's french fries or potato chips. Maybe it's corn chips, cookies or cereal. It's hard to believe that such ordinary foods—maybe some of your favorites—are at the center of a world-wide controversy and federal lawsuit.



To understand the lawsuit, you must first understand the technology and the controversy surrounding it.

### What's the controversy?

Just as Dr. Frankenstein (in fiction) experimented with creating a new form of life, scientists have introduced a new **gene** into potato, corn and soybean seeds that has transformed these crops into something that never existed before—smart plants. The companies who developed these genetically altered plants consider them "smart," because with their new built-in gene, the plants have the ability on their own to fight off insects that previously could destroy them.

This change in the natural structure of agricultural products such as potatoes, corn and soybeans—all of which are ingredients in many favorite foods—is brought about through a technology known as genetic engineering or **genetic modification**. Genetic modification is accomplished by introducing a gene from one life form into the existing genetic make-up of another plant or animal.

Genetically modified potatoes and corn have been grown, sold and widely used in food products for the past six years. The basic make-up of these foods was changed by the introduction of a bacteria gene, a natural **pesticide** known as Bt toxin. When a destructive beetle bites into a Bt potato, it is killed instantly by the "smart" potato's built-in pesticide.

### What do you get when you cross a flounder with a tomato?

Genetic modification also allows scientists to cross two unlikely and seemingly unrelated entities, creating a stronger one.

CONTINUED ON PAGE 2

## Pending Law Takes Stand Against Bullies

by Barbara Sheehan

You're in the school cafeteria and you notice one of the "popular" boys in your class picking on a more timid student. Although you feel sorry for the boy who is being teased and want to help him, you're afraid of what might happen if you step in. What should you do?

While it would be easier in the short run for you to do nothing, experts agree that the only way to effectively stop bullying in your school and create a learning environment where students feel safe is to speak up against bullies and let them know their behavior won't be tolerated. Soon, in New Jersey a new law may be enacted that should make it easier for you to take a stand against bullies, and harder for bullies to intimidate other students.

### Anti-bullying bill pending

The anti-bullying legislation (which was pending a vote in the Senate Education Committee of

the New Jersey Legislature at the time this article went to press) would require school districts to adopt policies prohibiting harassment, intimidation, or bullying on or near school grounds, at any school-sponsored activity, on school-provided transportation, or at any official school bus stop. These policies would include, among other things, consequences and appropriate remedial action for students who commit acts of bullying, intimidation or harassment. They would also include procedures for other students to report such acts, even anonymously, if they desire.

"We need to create a culture that clearly and

unequivocally sends a message that bullying, ridiculing, or taunting classmates is not acceptable behavior and will not be tolerated," said Senator Barbara Buono (D-Middlesex), who proposed the anti-bullying bill. "This plan will create an atmosphere where students will not fear reprisal for telling a teacher or a trusted adult when they feel their safety is jeopardized."

### One school "Reaches Out in Harmony"

While the legislation, if passed, will introduce a new concept in many New Jersey schools, it will only reinforce what is already happening in schools like the Robert Frost Elementary School in East Brunswick, which has had its own bullying program in place for close to two years now. In that time, students in grades three through five have indicated a seven percent



CONTINUED ON PAGE 3

## Marketing Adult Products to Kids: To Legislate or Not to Legislate

by Phyllis Raybin Emert

It's early evening. You're settled on the couch with your younger brothers and sisters. Popcorn, pretzels, and lemonade are handy for snacking. Your favorite family movie comes on television—The Wizard of Oz, Shrek, Toy Story, you name it. Mom and Dad come in to watch with you.

Cut to a commercial. A kidnapped girl. A maniac with a knife.



A police chase. A woman in a shower. What's going on here? An R-rated movie advertised during the family hour?

Your brother is impressed. Your little sister turns away. You're not sure what to think. Your parents are clearly annoyed.

So is Senator Joseph Lieberman of Connecticut.

Senator Lieberman, the former Democratic Party Vice-Presidential candidate, doesn't think it's right to advertise and promote adult-

rated films (and videos and CDs) in time slots where kids will be watching. And, Senator Lieberman has sponsored legislation that, if it becomes law, will fine those who do just that.

Jack Valenti, president and chief executive officer of the Motion Picture Association of America (MPAA), believes that such legislation would take away the right to freely advertise. Valenti believes it would violate the First Amendment to the U.S. Constitution by granting the government authority over **freedom of expression**. Such a

CONTINUED ON PAGE 3

## INSIDE

Biotech Food Facts .....	pg. 2
Bullying Facts.....	pg. 3
Glossary.....	pg. 4

This publication was made possible through funding from the IOLTA Fund of the Bar of New Jersey.

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It may sound like a science-fiction movie, but it has already been done. Recently, scientists transferred the gene that keeps a flounder from freezing in ice cold water into a tomato, creating a tomato that can resist frost and grow in the winter. Imagine Jersey tomatoes all winter long. Don't get too excited. Although this "smart" tomato was grown, it has not been sold—yet.

**An end to world hunger?**

Supporters of genetically modified foods believe these foods are a solution to the world hunger problem. Additional benefits of the altered plants, supporters claim, are improved resistance to pests, increased crop yields, the elimination of toxic chemical pesticides and a more productive use of available farmland.

In a 60-Minutes report titled, "What Have They Done to Our Food," Hugh Grant of Monsanto, a multi-national biotech company and the developer of a genetically modified leaf potato, was interviewed.

"Today, we meet the world's food needs with a limited resource base that is not likely to expand significantly unless we destroy more rain forests and wetlands," Grant said. "Simply to feed an increased population, that base will need to produce 60 to 100 percent more food in the next 30 years or so. Biotechnology is the single most promising approach to feeding a growing population while reducing damage to the environment," he stated.

Grant also noted in the report that since these new crops of "smart" plants have been launched with their built-in pesticides, millions of gallons of **insecticides** have not been needed.

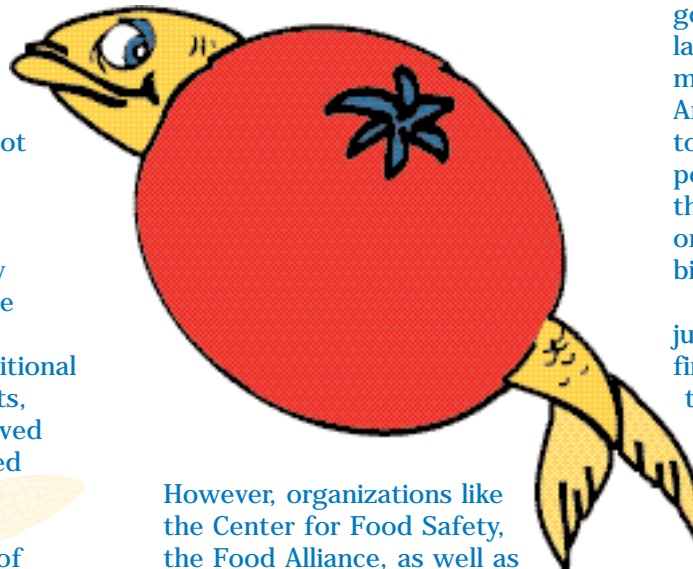
Biotech companies, such as Monsanto, foresee still more potential benefits from genetically engineered foods. Some of the research currently being conducted is the development of pneumonia- and cancer-fighting tomatoes, a potato that prevents animal viruses, broccoli packed with cancer-fighting nutrients, vaccine-infused bananas and vitamin A-rich rice that could prevent blindness in undernourished children.

The biotech industry maintains that in the 10 years since genetically engineered foods have been on the market, no evidence exists that they are harmful to humans. The scientific council of the American Medical Association reports no detected long-term health effects from genetically modified foods. James Maryanski, in charge of biotechnology for the Food and Drug Administration (FDA), claims the FDA is convinced that the genetically engineered foods currently on the market are safe for consumers. The FDA is the government agency that sets safety and quality standards

for foods, drugs and other consumer products.

**So what's the problem?**

The potential benefits that could result from genetically altered food is not in question.



However, organizations like the Center for Food Safety, the Food Alliance, as well as environmentalists, scientists and health groups, argue that possible side-effects of introducing new genes into the foods we eat are still unknown. These organizations believe the foods should be tested more thoroughly to assure their long-term safety to human health and to the environment.

The Union of Concerned Scientists claims that one of the problems with genetically modified foods is their unpredictability. A person with certain allergies may have an unexpected reaction to a food he or she has eaten safely for years if that food now contains the gene of another food to which the person is allergic. Also, many genes being introduced into genetically modified plants have never been in the food supply before, so it is impossible to know if they will prove to be **allergenic**.

In addition to greater testing of biotech foods, critics of the biotech industry are calling for labeling of all food products that have been genetically altered.

"Consumers have a right to know what they are eating and what has gone into their food," said attorney Andrew Kimbrell, head of the International Center for Technology Assessment, a non-profit advocacy organization that seeks to limit the growth of destructive technology.

**What about the lawsuit?**

Kimbrell argues that it is up to the FDA to provide

consumers that information and in 1998, his company, along with the Alliance for Bio-Integrity, the Center for Food Safety and others brought a lawsuit against the FDA. The lawsuit called for **mandatory** government safety testing and labeling of all genetically modified foods by the FDA. Among other things, the lawsuit took the FDA to task for not performing its own tests of these foods, instead relying on scientific data from the biotech companies.

In September 2000, a federal judge dismissed the lawsuit, finding that these organizations, the **plaintiffs** in the case, failed to prove that the FDA's position that genetically modified crops are basically the same as all other crops violated any environmental laws. The judge further ruled that labeling foods as genetically altered was not required based on the FDA's position that the new genes are not considered food additives. As a result, you as a consumer have no way of knowing whether or not the potato or corn chip you are nibbling has been genetically modified with Bt toxin.

Although many of the organizations dropped out of the lawsuit after the judge's ruling, the Alliance for Bio-Integrity intends to **appeal** the decision. In addition, a movement by consumer groups is also underway to convince the U.S. Congress to pass legislation mandating long-term government testing and labeling of genetically modified food products.

**Super pests**

Environmentalists are also concerned that insects will become resistant to the pesticides in the bioengineered plants and that eventually insects will become **immune**. The fear also exists that the new traits in genetically modified plants could migrate into and destroy other crops. The environmentalists foresee new generations of "super beetles" and "super weeds" that are immune to pesticides.

The American Medical Association reports that while the Bt toxin in corn effectively attacks plant pests, laboratory tests have shown it also destroys

CONTINUED on PAGE 4

**Biotech Food Facts**

Following are a few facts about genetically altered foods that you may not know.

- Up to 70 percent of processed foods have been genetically altered. At least one-quarter of corn, two-thirds of soybeans and two-thirds to three-quarters of cheese is produced through biotechnology.
- Biotech corn is used in many popular foods, including cereal, corn chips, taco shells and in corn syrup to sweeten foods like soda, cookies, cake and candy.
- Soybeans are found in hundreds of food products, from candy to margarine to cooking oil.
- Milk contains a genetically engineered hormone that increases a cow's milk production. Approximately one-third of U.S. dairy cattle are given this hormone.

Source: Purdue News, December 1998

# Marketing

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bill, Valenti contends, would eventually lead to the abandonment of the movie-rating system.

## How it started

The controversy started in September 2000 when the Federal Trade Commission (FTC) released a report on the marketing practices of the movie, music and video game industries. The FTC found that these industries were attempting to sell heavily violent adult products to children. According to the report, even items that movie studios and the music industry voluntarily admitted were intended for adults, were being targeted to kids.

The FTC asked the movie, music and video game industries to adopt policies prohibiting these practices and punish any violators. In a follow-up report released in April 2001, the FTC reported that only the video game industry had agreed to adopt new policies.

Some movie studios, like Warner Brothers, Disney and Twentieth Century Fox, have made efforts not to advertise R-rated movies to child audiences. But, other companies continue to sell their products where they know kids are watching and reading.

## The legislation

Senator Lieberman, along with Senator Herb Kohl of Wisconsin and Senator Hillary Clinton of New York, sponsored the Media Marketing Accountability Act to stop these marketing practices. In Congress,

this Act is described as “a bill to prohibit the targeted marketing to minors of adult-rated media as an unfair or deceptive practice.”

The Media Marketing Accountability Act would define the marketing of R-rated movies (R=restricted), M-rated video games (M=mature), and musical recordings with parental advisory

labels to minors as a deceptive act under the FTC, making it illegal. Under the Act, the FTC could fine companies that target **minors**, or advertise in settings where children are a large portion of the audience, up to \$11,000 per day for each specific violation.

The legislation is aimed directly at companies who have already rated their products as inappropriate for children, then market and promote them to children, ignoring their own voluntary rating.

“We are simply saying,” stated Senator Lieberman, “that if you voluntarily label a product as being unsuitable for kids, and then turn around and market it in a way that directly contradicts that rating, you should be held



CONTINUED on PAGE 4

# Pending Law Takes Stand Against Bullies

CONTINUED FROM PAGE 1

decrease in bullying behavior, and 100 percent of staff noted an improvement in the school climate, according to a school survey.

Called “Reaching Out in Harmony,” the Robert Frost program emphasizes a bully-free climate and a consistent method of solving normal conflicts. One key component of the program, says Principal Pat Wright, is participation and support from all stakeholders in the process, including students, teachers, support staff, administrators, and parents, alike.

“It doesn’t need to be very complicated,” says Wright. “It needs everyone to be speaking the same language.”

## What is a bully?

Like Wright,

anti-bullying advocate Nancy Mullin-Rindler agrees that in order for anti-bullying legislation to be truly effective, school policies must be clearly and effectively defined and have the full, continued support of all people involved, including adults and school personnel.

If there’s not a climate in schools that prohibits bullying and makes adults accessible, she says, then students will not have the support they need to stand up to, and ultimately defeat, bullying behavior.

Mullin-Rindler, who is director of the Project on Teasing and Bullying at Wellesley College Center for Research on Women, defines bullying as aggressive behavior or intentional harm-doing that is carried out repeatedly and over time.

Another thing that characterizes bullying,

Mullin-Rindler says, is an imbalance of power. Usually, she says, bullies are boys who are of at least average popularity, even popular, and who are drawn to aggressive behavior. Girls, however, also engage in bullying, especially indirect aggression, such as verbal bullying, which is the most common type of bullying regardless of gender.

Contrary to past beliefs, bullies do not have low self-esteem but rather low empathy, says Mullin-Rindler. Additionally, they tend to be good at manipulating people in social situations.

## Tragic consequences

Given this profile of a typical bully, it is easy to see why some students find it difficult to stand up to bullies. But sadly, the consequences of doing nothing have, in some cases, proven tragic, like in the fatal shootings at Columbine High School in Colorado, which resulted when two students who were bullied decided to seek revenge. Another example is the case of Evan Ramsey of Alaska, who in 1997 at the age of 16, shot and killed a classmate and the school principal after enduring repeated taunting and bullying from peers.

Aside from creating potentially tragic consequences, bullying also infringes on a more basic right. Bullying limits children’s rights to feel safe in schools and learn in a safe environment, points out Mullin-Rindler.

## “Caring majority” needed

While Mullin-Rindler does not recommend that bullying victims fight back—that would just “escalate things,” she said—she and others strongly urge students who are being bullied at school to find a grown-up they trust (such as a guidance counselor, teacher, or someone else) and seek help.

It should be clear, Mullin-Rindler says, that it is not the victim’s fault. It really is an adult’s responsibility to step in and help out, she adds.

Mullin-Rindler advises bullying victims to find a peer who can provide social support, if possible.

“Kids who are bystanders (students who are neither bullied, nor doing the bullying) in this have a lot of responsibility,” she says.

According to Leisa-Anne Smith, who runs the New Jersey State Bar Foundation’s Teasing and Bullying Initiative, an estimated 85 percent of the school population fall into the bystander category and are witnesses to bullying behavior.

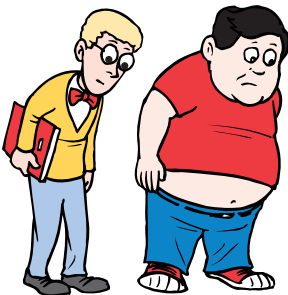
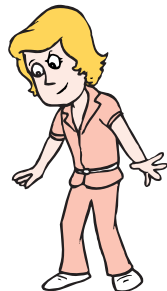
“Studies have consistently shown that children who witness incidents of bullying regard it as a distressing experience,” said Smith. “These students experience feelings of confusion, guilt about what to do and fear of becoming the next target,” she said.

In addition, Smith says that children who consistently witness incidents of bullying without intervening become sympathetic to the bully, not the victim.

“The bystanders are the kids that need to send the strongest message,” Wright of Robert Frost Elementary says. “They’re the silent majority. The key is to change them to the caring majority.”

Smith urges schools and kids to remember the words of Dr. Martin Luther King when considering the power that bystanders have.

“In the end, we will remember not the words of our enemies, but the silence of our friends,” Dr. King said.



## Bullying Facts

The following facts about bullying were provided by the National Association of School Psychologists.

- Bullying is the most common form of violence in our society. Between 15 percent and 30 percent of students are bullies or victims.
- A recent report from the American Medical Association on a study of more than 15,000 sixth through tenth graders estimates that approximately 3.7 million youths engage in, and more than 3.2 million are victims of, moderate or serious bullying each year.
- Since 1992, there have been 250 violent deaths in schools that involved multiple victims. In virtually every school shooting, bullying has been a factor.
- Direct, physical bullying increases in elementary school, peaks in middle school, and declines in high school. Verbal abuse, on the other hand, remains constant. The U.S. Department of Justice reports that younger students are more likely to be bullied than older students.
- Over two-thirds of students believe that schools respond poorly to bullying, with a high percentage of students believing that adult help is infrequent and ineffective.

Here are more disturbing statistics about bullying.

- An estimated 160,000 children miss school everyday due to fear of attack or intimidation by other students. (National Education Association)
- Students identified as bullies by the age of eight are six times more likely to become involved in criminal behavior. (Dan Olweus, National School Safety Center, Westlake Village, CA)

# GLOSSARY

**allergenic**—causing an allergic reaction (i.e., sneezing, skin rashes, itching, etc.).

**appeal**—a complaint to a higher court regarding the decision of a lower court.

**censorship**—blocking the distribution or publication of, for example, movies, plays, publications, etc., because of questionable (i.e., obscene, immoral) material.

**escalate**—to increase in intensity.

**freedom of expression**—a right guaranteed under the First Amendment to the U.S. Constitution and includes freedom of religion, speech and the press.

**gene**—an unit that controls the transmission of hereditary characteristics.

**genetic modification**—alteration of genetic material by introducing new genes into a life form.

**immune**—resistant to (in this case) insecticides or pesticides.

**insecticide** — an agent, usually a chemical, that kills insects.

**mandatory**—required.

**minor**—a person under 18 years of age.

**pesticide**—an agent used to destroy pests (i.e., insects).

**plaintiff**—person or persons bringing a civil lawsuit against another person or entity.

## BIOTECHNOLOGY


CONTINUED FROM PAGE 2

the larvae of the monarch butterfly and other butterflies and moths. As a result of the potentially deadly effect on monarch butterflies, in 2000, the Environmental Protection Agency (EPA) ordered American farmers to plant between 20 and 50 percent of their corn crop with seed that had not been altered.

### What does the future hold for biotechnology?

Although the FDA continues to maintain that genetically modified foods are safe, in December 2001 it announced that it will propose required safety reviews of new genetically altered foods, but stands by its policy that labeling of these products is not required.

Food biotechnology is a new science that continues to advance rapidly. It has the potential not only for solving the problem of hunger throughout the world, but for improving the quality of our food supply as well. Just as we do not know all the possible future benefits of these foods, their effect on the long-term health of those who eat them and the environment is also still unknown.

In the meantime, stay tuned for other lawsuits in addition to the one under appeal now, and increased legislation urging for more testing and possibly labeling of these products. 

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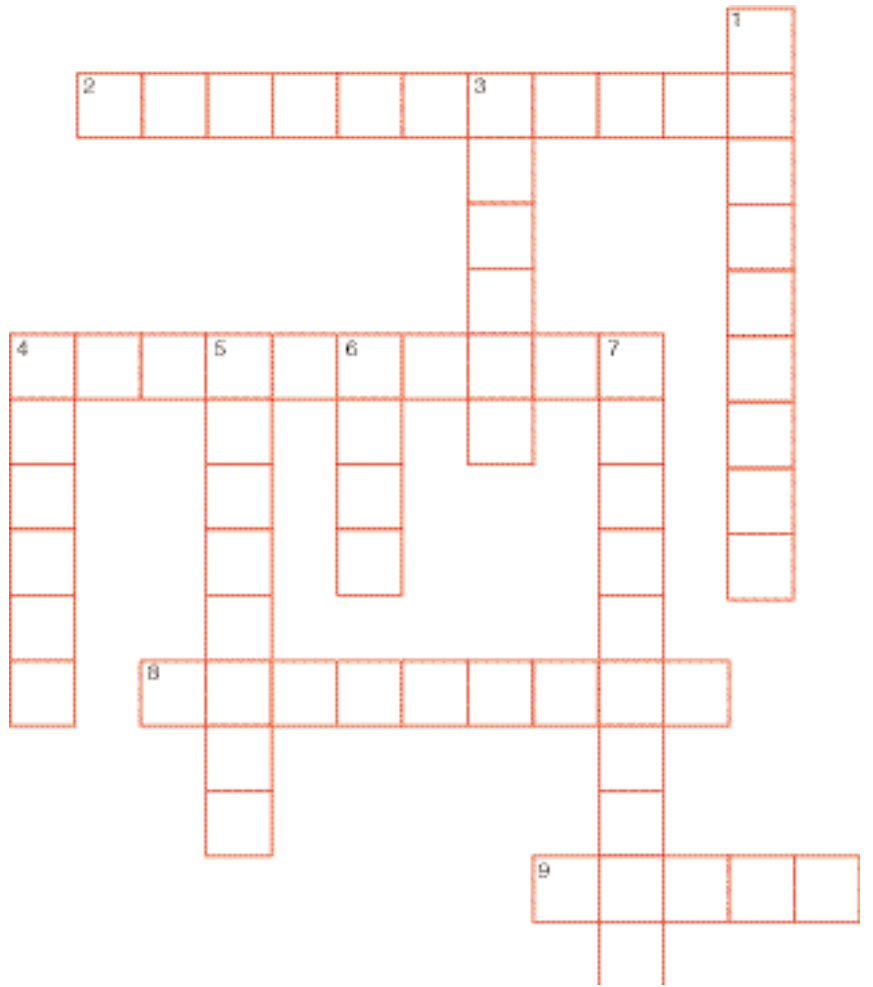
# Crossword

## ACROSS

- an agent, usually a chemical, that kills insects.
- causing an allergic reaction (i.e., sneezing, skin rashes, itching, etc.)
- required.
- a person under 18 years of age.

## DOWN

- an agent used to destroy pests (i.e., insects).
- resistant to (in this case) insecticides or pesticides.
- complaint to a higher court regarding the decision of a lower court.
- to increase in intensity.
- a unit that controls the transmission of hereditary characteristics.
- blocking the distribution or publication of, for example, movies, plays, publications, etc., because of questionable (i.e., obscene, immoral) material.



Crossword solution below

## Marketing

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accountable, just like any other company that misleads consumers. That's not  **censorship**, that's common sense."

### What exactly would be illegal?

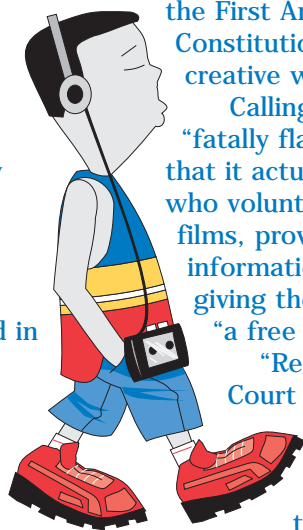
For one thing, if the legislation is passed and becomes law, you won't see R-rated movie trailers shown in movie theaters before viewing a G-rated or PG-rated movie. It would also be illegal for R-rated movies or M-rated video games to be advertised in teen magazines such as *Seventeen*, *Tiger Beat* or *Teen People*. Commercials for these products would also not be allowed to air during television programs aimed at young adults or those under 17 years of age.

Similarly, it would be illegal for musical recordings that contain explicit content or come with a parental advisory label to be advertised in these venues. That has the music industry bristling.

"Music is unique," Hillary Rosen, president of the Recording Industry Association of America, said in a prepared statement after the initial FTC report was released. "For the same reason that there is no rating system for books, the works of musical artists are not rated by age or content specificity—as it is virtually impossible to categorize words," she said.

### What about the movies?

Jack Valenti is similarly upset and believes the Media Marketing Accountability Act should be called "A Death Sentence Bill for Voluntary Film Ratings."



## Voluntary Movie Rating System

Following are the ratings used by the Motion Picture Association of America.

- G** General Audiences—Any age admitted
- PG** Parental Guidance Suggested—Some material may not be suitable for children
- PG13** Parents Strongly Cautioned—Some material may be inappropriate for children under 13 years of age
- R** Restricted—Anyone under 17 years of age requires an accompanying parent or adult guardian
- NC-17** No one under 17 years of age admitted

Valenti believes the voluntary rating system, in effect since 1968, (see sidebar) is the best way to help parents evaluate what is suitable for their children and that the Media Marketing Accountability Act "violates the First Amendment to the Constitution, which guards creative works."


Calling the legislation "fatally flawed," Valenti claims that it actually punishes those who voluntarily rate their films, providing valuable information to parents, while giving those who do nothing, "a free pass."

"Recent Supreme Court decisions clearly strike down any laws that deny advertisers the right to advertise," Valenti says. "The High Court has said that the governmental interest in protecting children from harmful material doesn't justify suppressing speech to adults."

Senator Lieberman counters that the First Amendment is not a license to deceive.

"The entertainment industry cannot label their products for adults and target them to kids,"

says Senator Lieberman. "And they cannot continue to undermine their ratings and undercut the authority of parents. All we're asking is (for them) not to market material that they rate as inappropriate for children to children."

Presently, the Media Marketing Accountability Act is being studied in the Senate Committee on Commerce, Science and Transportation, and the House of Representatives Subcommittee on Commerce, Trade and Consumer Protection. 

## Crossword solution

