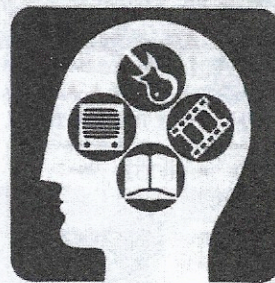


THE POPULAR CONDITION

by Larry Jaffee



Whatever Happened to Sex on Cable TV?

Whatever happened to the notion that cable television was supposed to show programming that broadcast television deemed too risqué?

Although originally touted as a commercial-free medium delivering "narrowcast" programming to all tastes, cable has become every bit as pedestrian and prudish as the big three networks. As the new medium matured into a \$17-billion-a-year business over the past decade (now reaching nearly 60 percent of the country), entrepreneurs and megacorporations both realized that the best way to make money was to reach those same "lowest-common-denominator eyeballs" that CBS, NBC, and ABC covet. Cable has fallen victim to broadcast TV's prime directive: that ratings translate into advertising revenue.

Hence, Andrew Dice Clay gets banned from supposedly "hip, anything goes" MTV for doing the schtick that made him famous, every basic cable network will always bleep out the word *fuck*, more skin is shown on public television than on cable, and the same commercials are shown on CBS and USA.

Yet, even the Federal Communications Commission makes a distinction between cable and broadcast television, applying a separate and more permissive indecency standard for the former since it doesn't use the "public airwaves" like the latter. In other words, George Carlin's "seven dirty words" can't be said on broadcast TV, but they're legally okay on cable.

But cable's general failure to titillate isn't all capitalism's fault. Rather, the country's general conservative shift to the right has not only resulted in the

well-publicized attacks on the National Endowment for the Arts and 2 Live Crew (among others); it has also cast the chill of self-censorship over the communications industry as a whole.

Consider the insidious demise in April 1990 of Home Dish Satellite Networks, Inc., a New York-based company that was indicted on obscenity charges in Montgomery County, Alabama, for transmitting adult movies.

It is the story of how one Bible Belt community has been able to force its morals on an entire nation (keep in mind that in Montgomery County cable subscribers have complained about commercials for condoms and even feminine hygiene products, according to the system's manager). It also demonstrates the inadequacies of a "community" standard that doesn't take into account the technological advancement of satellite-delivered television.

After being named as codefendants in the Alabama action, Hughes and GTE Spacenet, the two satellite companies from which HDSN leased transponder space, gutlessly terminated their contracts with HDSN to avoid prosecution. At that point, HDSN was history.

What is especially outrageous about the disappearance of HDSN's soft-core, R-rated cable network Tuxedo and X-rated home-dish satellite network American Exxtassy is that their termination constituted the worst kind of censorship, since no court ever found their programming to be obscene, as charged. Moreover, the movies on Tuxedo most likely would have been declared, at worst, indecent—yet still protected by the First Amendment.

The episode has taken its toll on HDSN's principal owner, Paul Klein, the former NBC executive who (ironically

enough) invented the theory of "least objectionable programming," which holds that most viewers do not turn on the set to watch a specific show but instead select the least objectionable program after making a decision to watch television.

The American Civil Liberties Union promptly offered their services to Klein in the suit. But instead of fighting the obscenity rap tooth and nail, Klein—an obviously beaten man who had already lost his business—pleaded guilty and paid fines totalling hundreds of thousands of dollars to get rid of the various charges prosecuted against him in Alabama, Utah, and Buffalo, New York.

In Buffalo, where HSDN had its satellite uplink, a dangerous precedent had been set in March 1991. It was the first instance of a defendant being prosecuted under the federal Child Protection and Obscenity Act, which was passed as a result of former U.S. Attorney General Edwin Meese's "anti-porn" commission witchhunt. The obscenity law, which was slyly attached as a rider to the Anti-Drug Abuse Act of 1988, gives prosecutors the authority to indict cable or satellite companies that cross state lines if the programming violates the local standards of communities receiving the signals.

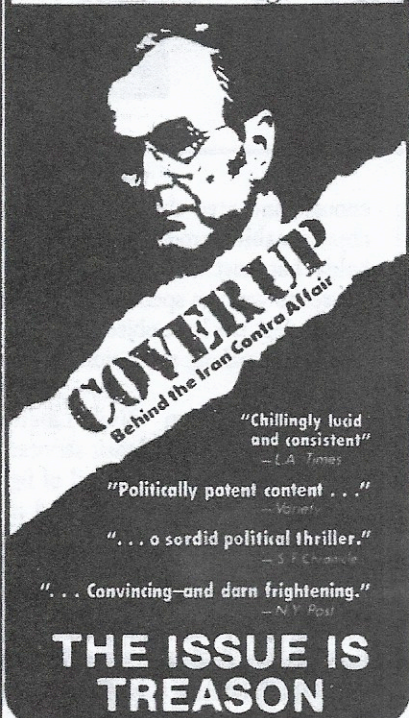
Klein, already in his late sixties, obviously didn't relish the prospect of spending his twilight years in courtrooms, struggling with endless appeals after having been publicly (and legally) labeled a "pornographer."

Before its demise, Tuxedo had been offered nationally by several hundred cable systems to a total of 1.2 million households in such diverse places as St. Louis, Minneapolis, Baton Rouge, Atlanta, Houston, and Cherry Hill,

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New Jersey. Consistently, 17 percent of that subscriber base took Tuxxedo on a monthly basis.

Obviously, there's an audience for this kind of programming—not just dirty old men but, rather, a sizable pool cutting across the social strata. Unfortunately, the cable systems that offered Tuxxedo and the remaining two adult national entertainment services—Rendezvous, now known as Spice (reaching more than two million households), and Playboy at Night (reaching about 500,000)—comprise but a miniscule minority, considering that in the United States there are more than 10,000 cable systems serving more than 60 million subscribers.

Since it's up to the local cable operator to choose which services his or her customers will receive, apparently it still takes the brave (and rare) libertarian-type to make adult entertainment available.

It's important to point out that Time Inc.-owned HBO led the cable industry in successfully fighting previous local and state attempts to prohibit "indecent" on cable in three 1980s cases in which federal courts found such statutes to be unconstitutional. Clearly, the prosecution of HDSN reflects a new strategy of targeting small independent cable TV companies which lack the funds for a protracted legal battle.

Missing the ramifications of Tuxxedo's demise, cable TV honchos largely ignored HDSN's trauma for fear of being labeled pornographers. In contrast to the home video and music industries' recent efforts to fight censorship, the cable industry's lackadaisical response to the loss of a national programming service is embarrassing if it's serious about protecting its First Amendment rights.

The anti-porn argument that children must be protected from such programming just doesn't hold water, since federal law calls for any cable subscriber to be provided with a "lock box" free of charge if he or she would like a particular channel blacked out. And in Tuxxedo's case, subscribers had to specially order and pay an extra charge to receive the signal.

Part of the problem of defending

adult movies in the present climate lies with a 1973 Supreme Court decision which links the definition of obscenity to community standards without providing any specific procedure for determining those standards. I don't know about you, but nobody from my community has ever asked me about my feelings on social issues like abortion, defense spending, and welfare. The inherent danger in so nebulous a concept as "community standards" is that in all likelihood a small but vocal minority (read: religious, right-wing extremists) is taken to represent the community-at-large without any statistical evidence to back up such a representation.

So what if, according to a Gallup poll commissioned last summer by *Newsweek*, 75 percent of Americans don't want anyone imposing new laws on what they can see or hear? A mere 21 percent thought that it is important for society to have laws prohibiting material that may be offensive to some segments of the community.

The beauty of cable TV is that the viewer can subscribe to a particular form of programming and then watch it in the privacy of his or her home, without exposing the rest of the community to what the prudish might perceive as "offensive." In 1969, the Supreme Court made a persuasive case for adult movies on cable TV when it ruled:

If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch.

The Court further stated that an individual in possession of obscene material "is asserting the right to read or observe what he pleases—the right to satisfy his intellectual and emotional needs in the privacy of his home."

Whatever happened to that America? H

Larry Jaffee is a free-lance writer and the former managing editor of CableVision magazine, a trade journal for the cable television industry. His articles have also been published in the New York Times, Rolling Stone, and Mother Jones.