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## THE FALSE REALITY OF THE AFRICAN AMERICAN CULTURE: THE FCC AND REALITY TELEVISION

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### Abstract

Television is the gateway of communication across the world, as it projects the news, educational information, and entertainment for viewers. However, television gives false perceptions about the realities of the world, especially pertaining to different cultures, such as the African American culture. Since the beginning of television, the perception of African Americans and their culture has continued to be displayed under a false light: a demeaning light that gives viewers skewed perceptions about the truths of the African American community. Today, reality television itself plays a huge role in creating this “false reality” of the lives of African Americans in the entertainment world or the pathway for an African American to be successful in America. These issues partly rise from television regulation (or the lack thereof) and how past and current regulation has led to the continuous exploitation of African American culture in reality television. This Note will call out the real issues of reality television, and show that television regulation is needed in areas where the public’s interest is protected, show that content regulation laws should be reevaluated, and show that extending game show regulation to reality television regulation may prevent exploitation. Also, a change in reality television would be impactful if African American participants did not allow themselves to be subject to images that degrade themselves to be aired to the public eye, which not only affects them, but also the entire African American culture as well.

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## Introduction to the World of Reality Television

The electronic device in the shape of a rectangle with a glass screen upon it, called a television, is one of the most influential tangible items in the world. Not because of its basic shape, but because of the content that is transmitted through its wires and projector for millions of people to see upon its screen. As Professor of Law Sherri Burr states in her article, “Television images have a pervasive effect on society. Because network television is an audiovisual medium that is piped free into ninety-nine percent of American homes, it is one of the most important vehicles for depicting cultural images to our population.”<sup>1</sup> Due to television being capable of broadcasting anything and everything to millions of homes within seconds, television serves as a persuasive and influential asset to many lives, even more so than people’s actual own personal experiences within their daily routines.<sup>2</sup> Television plays the role of “educator and equalizer,” due to its power to act as a bridge between people and the content that can stimulate one’s mind.<sup>3</sup> However, even though television has its perks in educating the world, television also brings just as many disadvantages in poisoning minds. People across the world have access to not only beneficial information, but also to tainting viewpoints that could (and have) detrimentally pollute education and culture. Television impacts society negatively in multiple different ways, and one specific way is through reality television.

Reality television shows have content based on the unpredictable activities of participants’ “real” world, and participants choose to expose their everyday lives on a reality television show that airs at least once a week.<sup>4</sup> Creators advertise the content to be non-fiction footage from surveillance and hand-held cameras that follow the “stars” around during everyday activities.<sup>5</sup> Reality television also encompasses shows with “real people making real life decisions” while competing for a prize or completing a season for money.<sup>6</sup> These shows run on television 24/7 with content that all viewers hope to be realistic, but in many circumstances, that

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<sup>1</sup> Sherri Burr, *Television and Societal Effects: An Analysis of Media Images of African-Americans in Historical Context*, 4 J. GENDER, RACE & JUST. 159, 177-78 (2001).

<sup>2</sup> *Id.* at 177; see also Eliza Varney, “Reality Television” and Content Regulation—Perspectives and Challenges, 7 ENT. AND SPORTS L. J. 1 (2009) (noting that “our view of the world is influenced more by media than our personal experience”) (quoting MIKE FEINTUCK & MIKE VARNEY, MEDIA REGULATION, PUBLIC INTEREST AND THE LAW 1 (2d ed. 2006)).

<sup>3</sup> Varney, *supra* note 2, at 1.

<sup>4</sup> *Id.* Reality television shows range from shows such as *Say Yes to the Dress* on TLC, *Property Brothers* on HGTV, *Married to Medicine* on Bravo, *Keeping Up with the Kardashians* on E!, and *Growing Up Hip-Hop* on Lifetime. These are all considered to be “reality” shows because the shows involve a cast of individuals, whether they are well-known celebrities or people just looking for a home to buy, who do not abide by a script and have a camera crew that follows them around as they partake in activity that the show is based on. These types of shows air on hundreds of different channels all throughout the day.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.* at 2; Tara Brenner, *A “Quizzical” Look into the Need for Reality Television Regulation*, 22 CARDOZO ARTS & ENT. L.J. 873, 876 (2005) (defining reality television).

is not the case. Reality television has made a negative impact on all aspects of different ethnicities, genders, and other forms of living in America, such as the *Jersey Shore*<sup>7</sup> era, which is commonly known to depict Italians living in the New Jersey area to be heavy in gym, laundry, and tanning. The African American community is also impacted by reality television with content that is either not real or falsely represents what it is trying to portray to be real. Reality television has a significant impact on the African American culture and has taken over in many aspects, such as in the entertainment world. These shows with substantial African American content tend to splatter a false and negative depiction of the culture and livelihood of African Americans across television screens for millions of people to see every day.

In this Note, I will discuss the problems with reality television in portraying the African American community and how that affects the African American community and other communities across the world. I will do so by giving the background of the rise of reality television in Part I. In Part II, I will discuss how reality television content affects the African American culture and its perception to the world, including two vulnerable groups: children and foreigners. Then, in Part III, I will show the different ways the law in the United States regulates television content. In Part IV, I will further discuss the different solutions and practices that our government can implement to ensure the “reality” in reality television remains pure. I will then conclude with an overview of why such regulation is needed in saving the African American culture in reality television.

### I. Background – Reality Television Takeover

As time progresses, the presence of reality television aired on hundreds of channels to millions of viewers continues to develop into a dramatic takeover of cable networks.<sup>8</sup> America loves drama, and television producers ensure to give the

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<sup>7</sup> Lauren Parfidio, *OP/ED: Is the “Jersey Shore” a Bad Influence on Our Younger Generation?*, THE IMPACT (May 5, 2012), <https://theimpactnews.com/items-we-barely-use/archives-2011/2012/05/05/oped-is-the-jersey-shore-a-bad-influence-on-our-younger-generation/>. *Jersey Shore* is an MTV reality television show that was recorded in New Jersey from 2009–2012 for a total of six seasons. The show casted nine Italian Americans to live in one house on the Jersey Shore as cameras followed them through fights, breakups, hookups, and partying throughout their summer. The show grew extremely popular but followed with a negative connotation built upon Italian Americans, giving stereotypes such as disrespecting women, that they are addicted to working out in the gym and tanning, and are sloppy at bars and parties. *Jersey Shore* is also known for producer manipulation in dramatizing situations that were far from the concept of real life. The show created reality stars such as Pauly D, Snookie, JWovv, and Vinny, all of who have been looked upon as representing the Italian-American population, but have also received much backlash for not representing the culture correctly.

<sup>8</sup> Almost every cable network shows some type of content of reality television. Channels, such as The Travel Channel, Bravo, E!, Lifetime, The Food Network, TLC, Disney Channel, Animal Planet, Discovery Channel, OWN, truTV, and many more, all air reality television shows. In this Note, I will focus more on cable networks that are created by Viacom, the home of channels such as VH1, BET, CMT, MTV, Spike, Comedy Central, and Logo.

American people what they want: more drama.<sup>9</sup> However, part of that blame falls on the Federal Communications Commission (FCC) in allowing network producers to create such shows, in trying to save a few cents here and there. Since the late 1980s, television networks have become dependent on reality television because it does not require actual scriptwriters, and is much cheaper to hire talentless actors and use the everyday world as scenery for television shows rather than renting a production studio.<sup>10</sup> Thus, the dependence on reality television for production costs by television networks led to a great dependency on reality television, and led to people yearning for more.<sup>11</sup>

Reality television has become a part of everyone's daily routine in binge watching or tuning into scheduled programming throughout the night. In the 2010s, multiple television networks broadcasted over 1,000 reality television shows.<sup>12</sup> One of the most successful television networks, Viacom, plays a drastic role in the world of reality television. Viacom is an entertainment brand, known for its hand in owning top cable channels that air reality television all day long: BET, CMT, Logo, MTV, Spike, VH1, and more.<sup>13</sup> Most commonly, BET,<sup>14</sup> MTV,<sup>15</sup> and VH1<sup>16</sup> are the top Viacom television channels broadcasting reality television shows – all with their own missions and reasons of what and how content is shown on that specific channel.

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<sup>9</sup> Katie Hopkins, *Unique Legal Considerations In Reality Television*, 13 PGH. J. TECH. L. & POL'Y 1, 23 (2012).

<sup>10</sup> *Id.* at 3.

<sup>11</sup> Varney, *supra* note 2, at 2 (“For producers, part of the appeal of this form of programming rests with the low production costs and with the widespread public appeal.”).

<sup>12</sup> Hopkins, *supra* note 9, at 4–5.

<sup>13</sup> VIACOM: VIACOM BRANDS, <http://www.viacom.com/brands/pages/default.aspx> (last visited Apr. 24, 2018).

<sup>14</sup> BRETT PULLEY, *THE BILLION DOLLAR BET: ROBERT JOHNSON AND THE INSIDE STORY OF BLACK ENTERTAINMENT TELEVISION* 2–3 (2005). Created by Viacom in 1980, BET stands for Black Entertainment Television, which is aimed “to target young Black-American audiences” by providing “Black American culture and entertainment based programming” that was not typically shown on other cable networks, and to provide African Americans a platform to be properly represented in the television world. *Id.*

<sup>15</sup> Chris Longo, *VH1 and Hindsight: 30 Years of “Video Hits One”*, DEN OF GEEK! (Jan. 14, 2015), <http://www.denofgeek.com/us/tv/vh1/242629/vh1-and-hindsight-30-years-of-video-hits-one>. Music Television (MTV) was created by Viacom in August 1981, launching music videos to the songs artists wrote that (at this time) were only heard on radio. MTV created the music video world and opened up the realm of connecting music to television 24/7 with music videos, live performance, artists' interviews, and much more in the entertainment world.

<sup>16</sup> *Id.* Created by Viacom in 1985 as an alternative music channel to MTV, VH1 stands for “Video Hits One” and focused on “artist-centric programming,” shows that centered around the lifestyles of an artist, more so than MTV. Therefore, VH1 grew to be a major server for reality television shows for different celebrities from different backgrounds of music and entertainment who had failing careers (i.e. Hulk Hogan, Bret Michaels, Flavor Flav, etc.) and dubbed them to be reality television celebrities, creating a genre known as “Celebreality.”

A. The New Black Hollywood – African Americans in Reality Television

In today's time, VH1 seems to have a heavy concentration of reality television shows based on the lives of African Americans in the entertainment industry spanning major cities across America. VH1 currently has reality television shows such as *Love and Hip Hop* (Atlanta, Hollywood, and New York),<sup>17</sup> *Basketball Wives* (Miami and Los Angeles),<sup>18</sup> *She's Got Game*,<sup>19</sup> and many more that focus on African Americans making livings in the entertainment world, whether they are producers, rappers, basketball players, dancers, etc.<sup>20</sup> Unfortunately, each show gives a negative connotation towards African American men and women. These implications are not accurate representations of African Americans in the entertainment world in actual reality. These VH1 reality television shows portray African American women as sex symbols with butt and breast implants, substantial amounts of make-up and weaved hair, and dropping "bitch" here and there to instigate petty fights (physically and verbally). African American men are portrayed as entertainers who are involved in messy situations such as infidelity, crimes, scandals, and even drug abuse. All these instances are not exactly what occurs in the entertainment world; when it does occur, it is done so in a way where there are repercussions.

For example, VH1's top viewed show during summer and winter months, *Love and Hip Hop Atlanta*, zooms in on the lives of hip hop and R&B artists of the South currently living in Atlanta who were once famous, but may have been forgotten over time.<sup>21</sup> The cast lineup includes an ongoing love triangle between

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<sup>17</sup> *Love and Hip Hop* is a franchise of reality television shows created by Mona Scott-Young that focuses on African American music and entertainment artists from different parts of the country, such as Atlanta, New York, and Hollywood. Many of these artists once had a successful career in the entertainment business but may have disappeared over the years. These shows consist of artists such as Producer Stevie J from Bad Boy Entertainment, Singer Ray J, the little brother of singer Brandy Norwood and VH1 former reality star, and Female Rap Artist Remy Ma, just to name a few. The shows also cast individuals who are associated with known artists whom themselves are trying to make a come up in the music and entertainment world, such as Joseline Hernandez, Cardi B, and Karlie Redd. These shows are filled with love triangles that bring loads of drama, fights, sex, and sometimes music throughout their seasons.

<sup>18</sup> *Basketball Wives* is a franchise of reality television shows created by Shaunie O'Neal (former wife of Professional Basketball Player Shaquille O'Neal) that focuses on the lives of current and former wives or mistresses of basketball players in the NBA residing in the cities of Miami and Los Angeles.

<sup>19</sup> *She's Got Game* is a reality television show set up for 37-year-old rapper and former VH1 Reality Television Star Jayceon Taylor, known as The Game, to find love with women aged 20 to 25 years old. The show faced controversy as one contestant sued The Game for sexual assault that occurred on the show, which prohibited VH1 from airing certain episodes and eventually from renewing the show for another season.

<sup>20</sup> VH1, <http://www.vh1.com/> (last visited Apr. 24, 2018).

<sup>21</sup> *Cast-Love and Hip Hop Atlanta*, VH1 (2017), <http://www.vh1.com/shows/love-and-hip-hop-atlanta/cast>. *Love and Hip Hop Atlanta* is based on African American music and entertainment artists who live in Atlanta, including Stevie J, Rasheeda, Scrappy, Yung Joc, and others.

*Bad Boy Entertainment*'s "The Hitmen"<sup>22</sup> former producer and current producer of *DangerZone*, Steven "Stevie J" Jordan, his back and forth mistress, Joseline Hernandez,<sup>23</sup> and another mother to one of his six children, Oluremi "Mimi" Faust.<sup>24</sup> Beginning with season one, Stevie J introduced Joseline Hernandez to the music and entertainment world as "first lady" of the *DangerZone* record label, turning a stripper from a major strip club in Miami to a songstress with a Puerto Rican vibe. Throughout the seasons, Joseline turned into Stevie J's mistress, mixing business with pleasure, whom he proceeded to do drugs with, plot a fake a marriage, and cause unnecessary drama amongst other castmates on the show, including with Stevie's baby mama of his second youngest daughter, Mimi Faust. Mimi grew heavily involved within her child's father relationship with Joseline because she too was in love with Stevie, and Stevie was still in love with her. This love triangle ricocheted into many physical fights, involving drinks flying and exposure of vaginas under their dresses in public bars and strip clubs, and slanderous words thrown, such as "Molly da Maid"<sup>25</sup> or "Crazy Bitch," between the two women on national television.<sup>26</sup>

Also, setting aside the drugs and sex, Stevie J's relationship with Joseline was very unhealthy for the both of them. Stevie was controlling Joseline, making her feel as if sleeping with him was the only way for a come up in the music business, and Joseline was extremely messy in her ways of dealing with Stevie's children, as she would get into petty arguments with them and try to steer Stevie's time with his children away from them. Joseline even went through the court system to threaten Stevie to pay child support or to make Stevie seem like an unfit parent to have custody of their infant daughter. She also went through childish means in violating her recording contract under *DangerZone* as she worked with other producers outside of the record label. However, Stevie did dirt on his side of this love story with Joseline when he went behind her back and hired a new "first lady" of *DangerZone* without properly removing Joseline from the record label legally where she was supposed to be the only female artist. Stevie and Joseline also

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<sup>22</sup> Olivia Jade Khoury, *Diddy's The Hitmen Production Team Inducts a New Member: Kanye West*, VIBE MAGAZINE (Apr. 20, 2015, 1:23 PM), <http://www.vibe.com/2015/04/diddy-the-hitmen-kanye-west/>. *Bad Boy Entertainment*, a record label created by Sean "P. Diddy" Combs, hosted a profound list of producers called "The Hitmen" who played a major role in the record label's success, including Stevie J and Kanye West.

<sup>23</sup> Joseline Hernandez, formally a stripper at the largest and most popular strip club in Miami, King of Diamonds, was signed on to *DangerZone* circa 2012 by Stevie J under her stage name, "The Puerto Rican Princess."

<sup>24</sup> Oleremi "Mimi" Faust is the mother to Stevie J's fifth child and CEO of Keep It Clean, Inc., her cleaning service based out of Atlanta. Mimi is also known for a recent sex tape that tarnished her career and has been causing her legal issues with the co-star of the tape.

<sup>25</sup> *Love and Hip Hop Atlanta: Molly Da Maid* (Viacom Apr. 22, 2013). "Molly Da Maid" is a derogatory phrase that Joseline Hernandez used throughout the seasons towards Mimi Faust because Mimi owned a maid-cleaning service in Atlanta, in attempts to devaluing her job title as CEO of her company to incite arguments between the two women.

<sup>26</sup> *Id.*

collectively created lies and false impressions, such as pretending to be married with no legal marriage license.

This ongoing love triangle between these three cast members of *Love and Hip Hop Atlanta* continued through, now, six seasons of the television show, but is just only one of the numerous love triangles and dramatic storylines of the show. All the other reality television shows on VH1 featuring African Americans are exactly the same, with just different cities or different occupations. These VH1 television shows give the impression that scandalous, drug and sexual activity is common amongst African American entertainers and is acceptable to live and aspire for in order to become famous in the entertainment world. Furthermore, these reality television shows are heavily scripted, and amongst all the hours of footage received from surveillance, producers only choose what they believe is “entertainment worthy,” which leaves out the content that could potentially show the good to outshine the evil that actually makes the cut.<sup>27</sup> Therefore, the majority of the storylines occurring on these television shows are not completely real. Producer involvement promotes situations where participants put their reputation and the African American culture in jeopardy.<sup>28</sup> Producers promote reality television shows as “train wrecks, encouraging drinking which tends to lead to increased fighting and danger” because they know that viewers will feed into the drama.<sup>29</sup> However, allowing such interference burns the African American culture more than it does to those who produce the content.

## II. In the Eyes of Children and Foreigners – Effects of Reality Television on the Perception of African Americans

Even though the average 21+ year old American adult can realize that the content on reality television shows is not completely real, other individuals, such as children and foreigners, still develop perceptions of the African American culture through reality television, whether they perceive African Americans using reality television to get rich quick or gain the impression that all African Americans are involved in illegal activity surrounded by sex. Such content is intentionally shown across the world, by cable networks, for groups such as children and foreigners to view 24/7.<sup>30</sup> For example, Viacom produces channels that air not only in the United States, but in all the continents across the world (except in Antarctica, of course).<sup>31</sup> VH1 reaches out to every country in the world besides countries in Africa and Australia, which is not the case for all of Viacom’s channels.<sup>32</sup> Therefore, these depictions of African Americans in VH1 reality television shows are shown in geographic areas where African Americans may not

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<sup>27</sup> Hopkins, *supra* note 9, at 5.

<sup>28</sup> *Id.* at 23.

<sup>29</sup> *Id.*

<sup>30</sup> VIACOM, *supra* note 13.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

live or visit, thus, projecting false impressions that African Americans are “lazy, unintelligent, and criminal” as compared to different groups across the world.<sup>33</sup>

#### A. Coming to False America – False Depictions of African Americans to Foreigners

Prior to coming to America, many foreigners have an impression about Americans and their style of living. Most foreigners believe that white Americans are skinny and picture-perfect, and continue to hold on to this belief until they visit America and are exposed to obesity and out-of shape-people in comparison to our foreign counterparts.<sup>34</sup> Along with false depictions of an all-skinny, white America, foreigners are also exposed to negative connotations of African Americans due to what is aired on television,<sup>35</sup> and reality television, itself, does not help in that matter.

Most television shows tend to give the impression of African Americans as uneducated, silly, or even crooks or drug dealers.<sup>36</sup> Reality television does not help portray images of African Americans in a more positive light. VH1 is the main Viacom channel that targets African Americans for reality television shows and projects them acting wild, loud, violent, disrespectful, and sexual throughout the majority of its content. However, in contrast to Viacom’s channel that was created to solely focus on African Americans in the entertainment world, BET airs more respectful content of African Americans in a positive and truthful light.<sup>37</sup> BET produces shows such as *The Real Husbands of Hollywood (RHOH)*, introduced by comedian Kevin Hart, which is a parody reality television show to expose how fake reality television is in a satirical way.<sup>38</sup> *RHOH* specifically aims to make a mockery of VH1 shows such as *Basketball Wives* and call attention to how the cast members are “unremarkable, petty, confused, obsessive, argumentative and rarely bothered with actual work.”<sup>39</sup>

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<sup>33</sup> Calvin Monroe, *Black Themed Reality Television & Racial Identity: Gendered Perceptions from Black College Students* (May 6, 2015) (unpublished Ph.D. thesis, Georgia State University) (on file with ScholarWorks at Georgia State University).

<sup>34</sup> Burr, *supra* note 1, at 178.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> BET, <http://www.bet.com/> (last visited Apr. 24, 2018).

<sup>38</sup> Gil Kaufman, *Kevin Hart Promises “Real Husbands of Hollywood” is “The Fakest Realist Reality Show”*, MTV (Jan. 15, 2013), <http://www.mtv.com/news/1700238/kevin-hart-real-husbands-of-hollywood/>.

<sup>39</sup> *Id.* (quoting Robert Lloyd, *TV review: ‘Real Husbands of Hollywood’ Are on Perpetual Play Date*, LOS ANGELES TIMES (Jan. 15, 2013), <http://articles.latimes.com/2013/jan/15/entertainment/la-et-st-real-husbands-20130115>).

BET also produces shows such as *Being Mary Jane*<sup>40</sup> and *The Game*,<sup>41</sup> which are shows with real lead African American actresses in Hollywood, such as Gabrielle Union and Tia Mowry-Hardrict, playing roles of successful African American women involved in the entertainment and sports world.<sup>42</sup> Even though these hit BET television shows are not considered reality television, they provide a more real and positive impact on the perception of African Americans, which VH1 lacks. However, BET is only shown in North America and Europe.<sup>43</sup> Therefore, with Viacom exposing VH1 to more audiences than BET, the likelihood of negative content of African Americans reaching the majority of foreigners is much higher, with little effect done by BET. This much exposure of negative content of African Americans overshadows the positive, and leaves a negative impression of African Americans to foreigners.<sup>44</sup>

B. False Future Aspirations – Impact of Reality Television on African American Children

Of the millions of viewers of these reality television shows, sadly, children aged 8 to 14 years old are also victims of the reality television takeover. Studies show that children watch the same amount of television as adults and are exposed to the same content,<sup>45</sup> therefore, leaving children just as susceptible to false depictions of the African American culture as it is to foreigners. Reality shows impact children significantly more than adults because children cannot differentiate morally correct behavior and, therefore, tend to learn violence and other misbehaviors from television and apply it to real life.<sup>46</sup> Television plays a major role in shaping personalities of younger viewers who are in the mental

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<sup>40</sup> *Cast-Being Mary Jane*, BET (2017), <http://www.bet.com/shows/being-mary-jane/cast-info.html>.

*Being Mary Jane* is a television drama aired on BET about a single African-American woman who works as a news correspondent for a major network in New York City while she tries to balance her personal life with family and finding love.

<sup>41</sup> *The Saga Continues: The History of Melanie and Derwin*, BET (Feb. 9, 2011), <http://www.bet.com/shows/the-game/the-game-all-photos/photos/2012/the-saga-continues-the-history-of-melanie-and-derwin.html#!111011-PA-BET-TheGame-0096>. *The Game* was once a Warner Brothers Network/CW television comedic drama but was dropped in 2009 and later picked up by BET after its parent company, CBS, sold the rights to the show in 2011. The show focused on the relationship between fictional characters Derwin Davis, a third string professional player working his way up and gaining fame and power on the San Diego Sabers team, and Melanie Barnett, Derwin's girlfriend (later-to-be wife), who was in medical school and struggling to keep up with being a "Sunbeam" (mistress/girlfriend/wife of a football star) and in the medical field. The show's final season aired on BET in 2015.

<sup>42</sup> *Id.*

<sup>43</sup> VIACOM, *supra* note 13.

<sup>44</sup> Burr, *supra* note 1, at 179.

<sup>45</sup> Monroe, *supra* note 33, at 16.

<sup>46</sup> Ron Leone, Wendy Chapman Peek, & Kimberly L. Bissell, *Reality Television and Third-Person Perception*, 2 J. BROADCASTING & ELECTRONIC MEDIA 253, 257 (2006).

process of developing their own identities.<sup>47</sup> Children, in general, are expected to watch television for up to five hours daily, and African American children, specifically, are also expected to believe in reality television more than any other racial group in America.<sup>48</sup> Due to the dominance of reality shows in the television world, African American children tend to think they are supposed to be rappers or drug dealers in their near future. Reality shows also entice the ideology of “getting money quick” and do not promote the true successes of African Americans through hard work and education.

A paradoxical relationship exists between African American underrepresentation in positive light on the television screen and overrepresentation within the audience realm and how it impacts the identity of African Americans; thus, leading to a negative effect for African American children who are in the process of developing their racial identities.<sup>49</sup> For children, it becomes more than just entertainment, it becomes a reality to them, and such reality is false.<sup>50</sup>

### III. Realities of Television Regulation

An attempt to grab the reigns controlling the effects of reality television on people around the world can be done through television regulation by the federal government, which holds superior power in television regulation. Television regulation was implemented by the United States government over many years. Starting from enacting the Communications Act of 1934, the United States government took a stand in the world of communications, whether it was through radio or television.<sup>51</sup> Most recently in communications history, in 1998, the government created content labels to warn viewers of the type of content of a show before it airs on television screens.<sup>52</sup> Thus, over the years, the government has made attempts to regulate the content shared on television; however, with the rise of reality television and its negative impact on the African American culture and other cultures, television regulation should be reevaluated to tailor towards the spiraling downward path of American cultures portrayed on television. The lack of television regulation in today’s world raises questions of whether the government has been doing enough to ensure that television is still protecting the public interest of all American citizens, including African Americans, and if the Federal Communications Commission (FCC) is serving its purpose as a

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<sup>47</sup> Monroe, *supra* note 33, at 19.

<sup>48</sup> *Id.* at 17.

<sup>49</sup> Monroe, *supra* note 33, at 18; *see also* A.C. Martin, *Television Media as a Potential Negative Factor in the Racial Identity Development of African American Youth*, 32 ACAD. PSYCHIATRY 338, 338 (2008).

<sup>50</sup> Monroe, *supra* note 33, at 18; *see also* C. A. Stroman, *Television’s Role in the Socialization of African American Children and Adolescents*, 60 J. NEGRO EDUC. 314 (1991).

<sup>51</sup> 47 U.S.C. § 609 *et seq.*

<sup>52</sup> Kyonzte Hughes, *Rating & Labeling Entertainment*, Newseum Institute (May 2006), <http://www.newseuminstitute.org/first-amendment-center/topics/freedom-of-speech-2/arts-first-amendment-overview/rating-labeling-entertainment/>; *see also* FTC Regulations Under Specific Acts of Congress, 16 C.F.R. § 305.17 (2015).

government entity. To further understand how undesirable content is aired on national television in reality television shows, we must further dive into how the law regulates content aired on television.

A. The Birth of Television Regulation – The FCC

When it comes to television regulation, the Communications Act of 1934<sup>53</sup> created the Federal Communications Commission (FCC) to regulate all international communications, whether it be through television or radio, that have been transmitted to and from the United States.<sup>54</sup> The FCC has seven bureaus and ten staff offices that serve to handle licenses, analyze complaints, develop and enact regulations, and conduct investigations.<sup>55</sup> In ensuring that the FCC serves for the best interest of the public, the FCC created ways to regulate content in all communications, including television. Even with a distinction between cable and broadcast networks,<sup>56</sup> the FCC regulates television content based on obscene, indecent, and profane standards, as well as through content warning labels of television shows.

1. “I know it when I see it” – Standard for Obscene Content

The FCC tends to base content control on whether the content is “obscene, indecent, and profane” in order to protect undesirable content from being exposed to the public, especially children.<sup>57</sup> These three words depict the three different levels upon which content of television shows are graded to determine whether the content is too much for the viewer’s eyes, with “obscene” being the highest level of banned content. With the term “obscene” being strong and pertaining to the most explicit content, the term has caused controversy and discussion over the years in the Supreme Court and in government statutes of regulation. Determining the definition of “obscene” and what it applies to has not

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<sup>53</sup> 47 U.S.C.A. § 151; *see also The Communications Act of 1934, 47 U.S.C. § 151 et seq.*, JUSTICE INFORMATION SHARING: U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, AND BUREAU OF JUSTICE ASSISTANCE (Nov. 27, 2013), <https://it.ojp.gov/PrivacyLiberty/authorities/statutes/1288>. The Communications Act of 1934 was drafted to expand the regulation of “telephone, telegraph, television, and radio communications” in America. The seven subchapters of the Act regulate “the assignment of frequencies, rates and fees, standards, competition, terms of subscriber access, commercials, broadcasting in public interest, and government use of communications systems” and established the FCC to further what the government regulates. The Act has been amended since 1934 by multiple acts of Congress, including extensive revisions through the Telecommunications Act of 1996.

<sup>54</sup> 47 U.S.C. § 151; *see also Federal Communications Commission (FCC)*, ALLGOV (2017), <http://www.allgov.com/departments/independent-agencies/federal-communications-commission-fcc?agencyid=7325> (defining what the FCC actually regulates and how it regulates what broadcasts on television). Elizabeth D. Lauzon, Annotation, *Construction and Application of Communications Act of 1934 and Telecommunications Act of 1996—United States Supreme Court Cases*, 32 A.L.R. FED. 2D 125, 132 (2008).

<sup>55</sup> ALLGOV, *supra* note 54.

<sup>56</sup> *See infra* Part III(B) for the distinction between cable and broadcast networks.

<sup>57</sup> FCC v. Pacifica Found., 438 U.S. 726, 731-33 (1978); 18 U.S.C. § 1464.

been easy; as in the words of Justice Stewart Potter, it is something that you just “know it when [you] see it.”<sup>58</sup> To pinpoint a more definite standard in regulating obscene content, the FCC uses a three-pronged test, first established in the Supreme Court case *Miller v. California*,<sup>59</sup> which sets the guidelines for the FCC to abide by to ensure obscene content is not aired on television.

*Miller* defines “obscene” as “material that ‘appeals to the prurient interest’ and depicts sexual, [lewd, and inappropriate] conduct in an offensive way and has no artistic or literary merit,” thus creating the three-pronged test.<sup>60</sup> The first prong of the *Miller* test calls for the content to be prurient, as a whole, to the average person while applying contemporary community standards.<sup>61</sup> This prong focuses on ensuring that the content is not unhealthy to the average viewer, based on the current community standards of society at the time the test is applied. Applying this prong to television content shown today that may have been considered unacceptable twenty years ago opens the door for questions and analysis of whether the content fits the contemporary community standards of today to be more or less strict than twenty years ago, and whether such difference is acceptable for the well-being of the public interest.<sup>62</sup> Thus, applying the contemporary community standards of today’s time requires a jury to “draw on his knowledge of the views of the average person in the community of vicinage from which he comes.”<sup>63</sup>

The second prong of the *Miller* test looks at whether the content depicts or describes, “in a patently offensive way,” lewd conduct specifically defined by the applicable state law.<sup>64</sup> “Patently offensive” could mean, as described in *Miller*, “ultimate sexual acts, normal or perverted, actual or simulated.”<sup>65</sup> This prong focuses more on nudity and other obscene images that would be offensive to viewers.

Lastly, the third prong calls for whether the content, taken in its entirety, lacks “serious literary, artistic, political or scientific value.”<sup>66</sup> This prong ensures

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<sup>58</sup> *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring); *Obscene, Indecent and Profane Broadcasts*, FCC, <https://www.fcc.gov/consumers/guides/obscene-indecent-and-profane-broadcasts> (last visited Apr. 24, 2018).

<sup>59</sup> 413 U.S. 15, 24–25 (1973).

<sup>60</sup> *Varney*, *supra* note 2, at 7 (quoting *Miller*, 413 U.S. at 15).

<sup>61</sup> *Miller v. California*, 413 U.S. 15, 24–25 (1973). Contemporary community standard is referenced in the first prong of the *Miller* test, as it calls for the trier of fact (typically the jury) to apply their knowledge of the norms of the community from which they came, and not necessarily of what would be obscene to the “nation as a whole.” The trier of fact is asked to consider the standard of the entire community and not of what is offensive to just himself or herself or offensive to whomever would be most sensitive to the content. Roman A. Kostenko, *Are Contemporary Community Standards No Longer Contemporary?*, 49 CLEV. ST. L. REV. 105, 113 n.50 (2001) (quoting *Smith v. U.S.*, 431 U.S. 291 (1977)).

<sup>62</sup> *Miller*, 413 U.S. at 24.

<sup>63</sup> *Hamling v. U.S.*, 418 U.S. 87, 104 (1973); *see also* *Kostenko*, *supra* note 61, at 112 n.41.

<sup>64</sup> *Miller*, 413 U.S. at 24.

<sup>65</sup> *Id.* at 25.

<sup>66</sup> *Id.* at 15.

that television content is still protected under the First Amendment Freedom of Speech Clause unless the content is deemed to be obscene. Individuals, including on television, have the right to speak on their behalf without the government regulating and prohibiting speech,<sup>67</sup> as long as such material is not offensive. However, once the content fails under the *Miller* test, the content is from then on labeled as “obscene” material and thus fails to be protected under the Free Speech Clause of the First Amendment.<sup>68</sup> The protection of the First Amendment extends to speech through any medium of expression, including television. Therefore, the FCC can impose fines and hold such content against television regulations.<sup>69</sup>

Looking through the lenses of the *Miller* test towards reality television brings the question of whether reality television can be considered obscene material. Reality shows on VH1 have outlandish material that is shown on a weekly basis and can be considered unhealthy for the average viewer in today’s world under the contemporary community standard.<sup>70</sup> VH1, however, does a great job in ensuring that nudity is not depicted in their shows. Any chances of nudity that might appear on the screen, such as women’s wardrobes malfunctions during fights showing breast and vaginas here and there, are blurred out by censor boxes, even though anyone with common sense can still figure out what is behind those censor boxes. But, reality shows on VH1 do struggle with foul language, which contributes to tarnishing the reputation of African Americans. Through this strict standard for obscenity, reality television may not fall into this realm, but reality television does press the envelope of falling under the next level following obscenity: indecency.

## 2. A Much Less Strict Standard – Standard for Offensive Content (Indecent and Profane Content)

The next level under the obscenity standard is the standard for indecent material, where the FCC regulates content that may not be quite obscene but is still deemed offensive. Offensive content encompasses material that would be considered to be profane or indecent.<sup>71</sup> Profane content includes “words [or materials] that are so highly offensive that their mere utterance in the context presented may, in legal terms, amount to a nuisance.”<sup>72</sup> Indecent material is defined as material that “depicts or describes, in terms patently offensive as measured by contemporary community broadcast standards for the broadcast

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<sup>67</sup> U.S. CONST. amend. I.

<sup>68</sup> *Miller*, 413 U.S. at 15, 23. The First Amendment calls for protection from the government “abridging the freedom of speech, or the press.” U.S. CONST. amend. I. However, obscene speech and content is not protected by the First Amendment, and the FCC can regulate such material without infringing on the First Amendment.

<sup>69</sup> *Id.*; see also Varney, *supra* note 2, at 6.

<sup>70</sup> See Kostenko *supra* note 61.

<sup>71</sup> Varney, *supra* note 2, at 7; Samantha Mortlock, *What the [Expletive Deleted] is a Broadcaster to do? The Conflict between Political Access Rules and the Broadcast Indecency Prohibition*, 14 GEO. MASON L. REV. 193 (2006-07).

<sup>72</sup> Varney, *supra* note 2, at 7.

medium, sexual or excretory organs or activities.”<sup>73</sup> Between profane and indecent content, the FCC has established stricter regulations on offensive material, but not as strict as obscenity standards.

As the intermediate level between obscene and profane, indecent material relies on a two-step analysis: (1) focusing on contemporary community standards and whether the broadcast material will be considered “patently offensive” when measured;<sup>74</sup> and (2) focusing on the program itself by looking at the degree of graphicness, the extent to which the offensive images and words are said, and whether the material aims deliberately to shock the audience.<sup>75</sup> Under this analysis, the indecency standard is applied on a case-by-case analysis, for each show is not alike; therefore, each outcome in regulation of each show will not be alike.<sup>76</sup>

However, the FCC has been criticized for this very vague standard, which leads to confusion and more leeway among television networks to air content that could be considered offensive.<sup>77</sup> Indecency serves as the grey area that occupies the level between obscene and profane, allowing television content that may not be quite obscene but is very profane to be protected by the First Amendment and to exist unregulated by the FCC. Since such content is allowed by the First Amendment, if the content falls within the category of being indecent or profane, the show must be aired between the hours of 10 p.m. and 6 a.m., or the broadcaster will face a fine for violating this time constraint.<sup>78</sup>

This opens the door to determine whether content on reality television shows shocks the conscious of the audience. Reality television shows, specifically those produced by VH1, are not aired on television after 10 p.m., and instead are typically shown during the primetime hours between 8 p.m. and 10 p.m. This gives the impression that reality television shows are not quite indecent, but, in actuality, these shows certainly push the line of being indecent to where one can view the content as being offensive. Therefore, reality television, especially those shows aired on VH1, should not be aired before 10 p.m. However, the vagueness of the indecency standard explains why cable networks have been allowed to air offensive language during primetime hours, when everyone is watching television (including children). Possibly, the allowance of reality shows to be viewed at such hours or repeated throughout the day should be reevaluated. But, there is another way the FCC attempts to ensure that possible indecent material does not shock the audience: content warning labels.

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<sup>73</sup> *Id.* Anthony E. Varona, *Out of Thin Air: Using First Amendment Public Forum Analysis to Redeem American Broadcasting Regulation*, 39 U. MICH. J. L. REFORM 149, 161 n.67 (2006).

<sup>74</sup> Varney, *supra* note 2, at 7–8.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 8; DES FREEDMAN, *THE POLITICS OF MEDIA POLICY* 128 (2008).

<sup>77</sup> Varney, *supra* note 2, at 8; Noelle Coates, *The Fear Factor: How FCC fines are Chilling Free Speech*, 14 WM. & MARY BILL RTS. J. 775, 779 (2005).

<sup>78</sup> Varney, *supra* note 2, at 7.

a. Viewer Discretion Advised . . . or Nah – Content Warning  
Labels for Viewers

Due to television reaching out to multiple types of audiences of different age groups, races, sex, and more, the FCC is famously known for regulating content on television shows by assigning content warning labels to indicate to viewers whether the content is child appropriate or has lude language that no one would dare say out of disrespect around their elders, known as the TV Parental Guidelines.<sup>79</sup> The scale of which television content is rated is set up as followed:

- “Y”, designated for all children,
- “Y7”, directed for children 7 and above,<sup>80</sup>
- “G”, for general audience (suitable for all ages/no designated age range),
- “PG”, where parental guidance is suggested,
- “14”, where parents are strongly cautioned, and
- “MA”, for mature audiences only.<sup>81</sup>

Levels “PG”, “14”, and “MA” are all accompanied with:

- “V”, for moderate or intense violence,
- “S”, for some or intense sexual situations,
- “L” for infrequent or strong coarse language, or
- “D”, for intensely suggestive dialogue.<sup>82</sup>

Most reality television shows aired on VH1 are rated TV-14, which is the second-highest warning to viewers, and caution that such content is not meant for children under the age 14.<sup>83</sup> However, since the majority of reality shows are not considered as being “indecent,” such shows premiere at times when children aged younger than 14 are still awake and watching television. Also, some reality television shows are aired all day long, leaving the window open for those younger than 14 to still watch the material. The question of whether some reality shows should be labeled as TV-MA instead of TV-14 arises when the content can be viewed as indecent

With a deeper look into all the current sanctions that are imposed against reality television shows, the next question leads to “is this enough?” The public is not only exposed to content that does not correctly represent African Americans in society, but it also projects material that no child should be exposed to. Possibly

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<sup>79</sup> *Cable Television*, FCC, <https://www.fcc.gov/media/engineering/cable-television> (last visited Apr. 24, 2018). The TV Parental Guidelines were created in 1998 to regulate cable and broadcasting networks content with warning labels to viewers, indicating whether or not the proceeding content contains violent, sexual, or other indecent material.

<sup>80</sup> *Id.* TV-Y7-FV is included in this category. FV is fantasy violence and warns that the content may be more intense or more combative than other Y7 programs.

<sup>81</sup> *Understanding the TV Ratings*, TV PARENTAL GUIDELINES, <http://www.tvguidelines.org/ratings.htm> (last visited Apr. 24, 2018).

<sup>82</sup> FCC, *supra* note 79.

<sup>83</sup> VH1, *supra* note 20; see also *Love and Hip Hop*, COMMON SENSE MEDIA, <https://www.common sense media.org/tv-reviews/love-and-hip-hop> (last visited Apr. 24, 2018) (noting that the *Love and Hip Hop* series is rated TV-14).

there is more to where reality television could be raised to reach the level of indecent or possibly be reconstructed to where there is less producer involvement and more positive outlooks of African Americans.

B. The Struggle Is Real[ity Television] – Difficulties of Cable Television Regulation

In the world of television, there are two different dynamics in the type of channels that air on television: broadcasting network channels and cable network channels. Between these two different types of channels, different sets of regulations are imposed on each one.<sup>84</sup> Broadcasting networks, such as ABC, CBS, FOX, and NBC, travel through airwaves in order to reach antennas of homes with televisions,<sup>85</sup> where cable networks do not. Cable networks are transmitted through “video delivery provided by a cable operator . . . via a coax cable or fiber optics.”<sup>86</sup> Such network channels produced by Viacom, including VH1, fit under the category of cable, not broadcasting, and therefore are held under different regulations than broadcasting networks like CBS.

Differentiating between the two is quite difficult because cable television and broadcasting networks have both been a part of everyday television in today’s world.<sup>87</sup> Almost all households in America pay a cable service for all channels to be included in their packages, without even knowing there is a difference between a cable channel, such as VH1, and a broadcast channel, such as FOX.<sup>88</sup> Cable television has been around since 1948, but did not become extremely popular until 2000, and has been a part of everyday life ever since.<sup>89</sup> Therefore, the line between cable television and broadcasting networks is difficult to distinguish between, especially for those born in 1980s and later.<sup>90</sup> Even though broadcasting networks are more heavily regulated by the FCC than cable networks, the FCC still requires cable networks to abide by a few rules that are also expected of broadcasting networks.<sup>91</sup> Similar to broadcasting networks, cable networks must follow the rules when it comes to obscene, indecent, and profane content.<sup>92</sup> Also, along with content warning labels established by the TV Parental Guidelines, cable networks must also adhere to airing certain content at certain times of the day.<sup>93</sup> Therefore,

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<sup>84</sup> *Broadcast, Cable . . . What’s the Difference?*, NCTA (Nov. 12, 2008), <https://www.ncta.com/platform/cable-programming/broadcast-cable-whats-the-difference>. See, e.g., FCC, *supra* note 79.

<sup>85</sup> *Fixed Microwave Services*, FCC, <https://www.fcc.gov/general/fixed-microwave-services> (last visited Apr. 24, 2018). Broadcasting over the air is done through microwaves, which are very short waves in upper range of the radio spectrum used for communication.

<sup>86</sup> FCC, *supra* note 79.

<sup>87</sup> *Cable’s Story*, NCTA, <https://www.ncta.com/cables-story> (last visited Apr. 24, 2018).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> FCC, *supra* note 79.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

the FCC still has a hand in regulating content of cable network channels such as VH1, ensuring that the content aired does not get out of hand.

#### IV. Solutions to Reality Television Regulation

Under the current regulation techniques of the FCC for cable television, there has been progress in ensuring that “obscene, indecent, or profane” content does not enter the airways of television.<sup>94</sup> The FCC has fined multiple television networks who have violated these standards on live television, from incidents like Viacom’s Super Bowl Halftime Performance stunt with Justin Timberlake, Janet Jackson, and the planned “wardrobe malfunction” on national television, to dropping ‘F-bombs’ at award ceremonies during acceptance speeches, with some fines exceeding more than \$500,000.<sup>95</sup> However, such sanctions are not being placed on reality television shows when their content gets out of hand. Foul language (such as “bitch” and “ass”) is said in every other sentence by reality stars, without any bleeping out.

Also, producer manipulation is prominent in reality television to create drama and indecent behavior by cast members, therefore taking the “reality” away from the show. Even though the FCC has multiple rules and regulations that can block out content such as nudity, there is still more that can be done to ensure that content still does not get out of hand for the average viewer. Also, there are rules, such as 47 U.S.C. § 509,<sup>96</sup> that sanction producer manipulation that should be imposed on reality television as well. By (1) reevaluating content labeling, (2) punishing producer manipulation in reality television, and (3) even individuals reaching within themselves to end the abuse of African American culture in reality television by refusing to participate in demeaning roles on television shows, the FCC can gain a hand back on the world of reality television that has spun out of control throughout the recent years.

##### A. Reevaluating the Protections of Public Interest

One of the main goals of the current television regulation done by the FCC is to protect the public interest.<sup>97</sup> By ensuring that the public’s interest is considered in television regulation, the FCC has included language such as “contemporary community standards” (which encompasses the public’s standards that the time the law is implemented) within their regulation rules.<sup>98</sup> Therefore, due to the current content that is allowed on television, the question is raised of whether the FCC has abided by keeping up with what today’s public interest encompasses.

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<sup>94</sup> FCC v. Pacifica Found., 438 U.S. 726, 731–33 (1978); 18 U.S.C. § 1464.

<sup>95</sup> Varney, *supra* note 2, at 8.

<sup>96</sup> See *infra* Part IV(B) (referencing 47 U.S.C. § 509 and its prohibition against producer manipulation in game shows).

<sup>97</sup> Varney, *supra* note 2, at 6.

<sup>98</sup> Miller v. California, 413 U.S. 15, 24 (1973).

### 1. Where's the Bleep?—Lack of Foul Language Censoring

The quality of television is much different than from twenty years ago, where profanity was completely blocked from the airways. But in today's television world, profanity is something that is said almost between every other word of one's sentence, especially in reality shows. However, common usage of foul language (mainly by adults) in today's world happens, but whenever has it become such a norm where it is allowable under the contemporary community standards applied in television? Foul language is still viewed to be offensive and should not be allowed to be said on television, especially on reality television shows that air during primetime hours and is rated only TV-14. Reality shows that target African Americans in the entertainment world, including those on VH1, allow foul language such as "bitch" and "ass" to slip out without any "bleeps" to tune out the words. This gives the impression that curse words and other foul language are acceptable in the everyday language, or even that African Americans have foul mouths and no respect for each other when they use their words towards one another. Also, such foul language leads to fights and other violence, as shown on reality shows aired on VH1.<sup>99</sup>

Having more control of bleeping out foul language, as it was done twenty years ago, would be a helping hand in cleaning up reality television and also send indicators that such language is unacceptable. It is something about hearing the high-pitched sound, covering foul words, that indicates to viewers, especially children, that such language is offensive. Without having censors over all foul language, especially in shows centered around African Americans, leaves the impression that such language is acceptable in the African American community and that African Americans do not know how to speak cleaner or correctly. Yes, the language is used by anyone of any race, but everyone knows such language to be wrong. Therefore, wouldn't it be wrong to not bleep it out?

### 2. In Between the Blurred Lines – Are Censor Boxes Good Enough?

As mentioned before, obscene content, which includes nudity, is not allowed to be aired on broadcasting or cable television.<sup>100</sup> Therefore, cable network channels such as VH1 have been using the proper censor techniques to ensure that no one's private body parts are exposed. However, when someone sees a blurred censor box appear, they know that body images are being blurred out for the protection of the viewer's eyes. But, when such activity is constant throughout a show, it does become overbearing. For example, in VH1's reality television show *Love and Hip Hop Atlanta*, there were multiple episodes filmed in strip clubs (blurring out naked strippers), and episodes where, women who were fighting in dresses or small tops, breasts and vaginas would pop out, (blurring out their private areas). The censor boxes are being used, but is this enough to blur out the meaning or the representation of what these celebrities' actions are actually

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<sup>99</sup> See *supra* Part I(A).

<sup>100</sup> *Miller*, 413 U.S. at 26. Sexual conduct is deemed obscene when it violates the third prong of the *Miller* test; "sexual conduct must have serious literary, artistic, political, or scientific value to merit First Amendment protection."

insinuating? These censor boxes cover up nudity, but they do not cover up the repeated impression that African American entertainers are always in the strip club or African American females do not know how to be classy and keep their clothes on, especially when they fight. Such content can be overbearing for just a TV-14 rating, especially when such content reoccurs almost every episode. Therefore, just blurring out nudity does not solve the issue of protecting viewers from false impressions of the African American community. If such content where censor boxes are used repeatedly was not aired or promoted by producers, this could lean towards helping the perceptions of African Americans become cleaner than before on reality television shows.

B. One in the Same—Comparison of Game Shows and Reality Television

Game shows are one realm of television that has reached great scrutiny over the years due to producer interaction and manipulation for ratings.<sup>101</sup> Between major game show scandals, such as with shows *Twenty-One* in the 1950s, where producers were caught feeding answers to an average-American contestant in order to keep the show popular amongst average Americans<sup>102</sup>, and *Survivor* in the early 2000s, where producers admitted to intervene with the show and pressuring contestants to vote a certain contestant off the show,<sup>103</sup> producer interaction and manipulation in shows that are recorded “in the reality” had surfaced. The acts of rigging and manipulation is immoral, but it was not illegal until 47 U.S.C. § 509 was implemented in the 1950s, signed by President Eisenhower and only implemented towards television game shows.<sup>104</sup> To avoid fitting under the category of “game show,” producers have learned that calling a television show a “reality drama” does not hold them accountable for rigging and manipulation under the statute 47 U.S.C. § 509.<sup>105</sup> Thus shows such as *Are You The One?*, *She’s Got Game*, *Dating Naked*, and *The Real World: The Challenge* (all television shows produced by Viacom on VH1 and MTV) are considered to be reality television

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<sup>101</sup> Brenner, *supra* note 6, at 888–89.

<sup>102</sup> *Id.* at 882–83. *Twenty-One*, a categorical game show with questions that contestants answer to earn points. The first contestant to reach twenty-one points would win that round and return to the show for the next round. Producers of *Twenty-One* chose to portray contestant Herb Stempel as an average American citizen with average knowledge who remained a reigning champ of the show for quite some time. However, his success in winning rounds was due to the producers feeding Stempel answers to the questions prior to the airing of the show. Once production decided to move on from Stempel to a new contestant who was more personable and attractive, the show’s “rigging” secrets were released.

<sup>103</sup> *Id.* at 890–91 (citing *Stillman v. CBS Corporation, et al.*, No. BC248733, 2003 (Cal. App. Dep’t Super. Ct.); *Stillman v. CBS Corporation*, No. CGC-01-318613 2003 (Cal. App. Dep’t Super. Ct.); *SEG, Inc. v. Stillman*, No. B151712, 2003 WL 21197133 (Cal. Ct. App. 2d Dist. May 22, 2003) (SEG sued Stillman for breach of contract)). Stacey Stillman was a contestant on the reality television show *Survivor* when she was voted off due to producer manipulation in the contestants’ votes, which violated the statute. However, the producers called it “reality drama” and not actual manipulation in the way the show was being run.

<sup>104</sup> Brenner, *supra* note 6, at 886.

<sup>105</sup> *Id.* at 891.

shows, even though they are gaming shows in nature. These shows are under much manipulation by producers, including other shows that may not have gaming rules for contestants, but treat its participants under the same conditions of 24-hour surveillance camera time, competition for a prize (whether it is a date with another person or money), and elimination processes that involve the contestants voting each other off or playing a part in getting each other sent home from the show. As people advocate for reality drama gaming shows to be under more scrutiny, the same needs to be applied to all reality television to ensure that producer manipulation and rigging does not occur just for an increase in ratings.

### C. Black on Black Crime – African Americans Promoting False Content

Of all the television regulation that can be done, nothing can be more impacting than African Americans themselves taking the reins of this reality television exploitation of African Americans. Even though producers of reality television shows are manipulating the shows and allowing embarrassing content to air, African Americans who are signing the “one-hit-wonders” contracts for fame is where it all starts. Many African Americans are too focused on making quick money than they are on their own reputation and how it affects the African American culture. Little do many people realize that, once those contracts are signed, their lives and the lives around them become vulnerable to exploitation and embarrassment, which later leaves a heavy, negative impact on their lives and the lives of the people they represent. Besides waiting on the law to handle it, African Americans too can take a stand and refrain from giving into the depths of reality television. African American producers, such as Mona Scott-Young, producer of the *Love and Hip Hop* franchise, can take a stand and stop soliciting other African Americans to participate in shows where African Americans are made to look uneducated and violent.

Also, many African Americans tend to have a “social distance” with reality television, to where they believe that the content shown on television “does not affect me,” especially in the undergraduate college age group (18-25 years old).<sup>106</sup> However, when the ages of the participants of these reality shows are in ranges similar to its viewers, one should be able to look at the screen and see that those participants as not portraying them. African Americans on reality shows will be viewed to mirror African Americans in reality, no matter how socially distant the targeted audience is from the content. Even if the content is not fooling the targeted audience, reality shows are still being viewed and believed by other groups in all demographics, and judging the targeted audience in such limelight; therefore, the targeted audience is viewed in the wrong perception and affected by reality shows even if they claim to not partake in supporting them. For example, having 21 to 25-year-old young women on dating shows, such as *She’s Got Game*,

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<sup>106</sup> Leone, *supra* note 46, at 258. “Social Distance” is a third-person effect where the targeted audience becomes socially distant from the content, thinking that it does not affect them or the perception of themselves, therefore, not acting upon the content being shown and fighting to fix the content to be correctly depicted.

to lustfully gain attention from a 37-year-old man gives the impression that most women of that age are young and lustful for fame and money, not for love.

African Americans must be careful in what they allow themselves to be exploited in, especially on television in reality shows. If African Americans push towards not admiring “get rich quick” schemes contracts for reality shows, not allowing the production of reality shows that portray African Americans in a negative light, and not becoming socially distant from fixing the problem, African Americans themselves can make a change in the reality television spectrum without depending on the law to make the first move, even though the law itself will be the major moving hand in going the right direction for better regulation of reality television. Taking a stand for what’s right, alone, can create a monumental force against productions of reality television shows once cable networks recognize that support for such shows and ratings have decreased due to the dislike of reality television content that exploit African Americans on their shows.

### Conclusion

Today, the popularity of reality television has reached an all-time high, and in the process, it has dragged down the African American culture. Due to stricter television regulation and African American avoidance in participation and watching shows, this reality television fiasco can be brought down and tamed to where no societal viewpoints of American people are being exploited and misconstrued. At the end of the day, the producers are home-free and free of liability of the impact the content of these reality television shows may have on participants or the African American culture as a whole, due to unequal bargaining terms and the wants for quick fame. But African Americans are the ones who can take the impact head on, whether it gives these perceptions to foreigners or people with the race as well.

By reevaluating the public’s interest and abiding by the contemporary community standards, the government through the FCC can reign in control over the content that is aired on reality television shows and censor foul language and avoid using too many censor boxes by not airing the content at all. With these steps, the government can keep current censorship regulations that are intact, but just need to be used in different directions than how they are being applied today (or the lack thereof). Also, with the government already having 47 U.S.C. § 509 enacted against producer manipulation in game show television, extending such a rule to reality television would make a significant impact against producer manipulation in reality television, since reality television is sort of a creation born from the game show era that turned into a monster over the years due to its high demand and intensity of drama.

Outside of government regulation, reality television can also be controlled by those who participate in the shows. If the mentality of “get rich quick” is veered away from and African Americans themselves refrain from signing contracts to become “one-hit-wonders” while demeaning their reputation and the African culture as a whole, cable networks would stop producing shows that negatively affect the African American culture, so long as African Americans take a stand and refuse to allow the cable networks to make money off the exploitation of the

African American culture. Even for viewers who watch these shows and think the shows do not affect them and the perception of themselves, creating this “social distance” from themselves with reality television, in order to combat the negativities of reality television, those individuals, too, have to recognize that it affects them and that they must stand against supporting such television shows no matter what. The more African Americans that stand against supporting reality television shows which exploit the African American culture, it is more likely that producers and cable networks will stop producing such shows once their pockets and ratings start hurting.

With reevaluation through the U.S. government and people fighting against exploitation of African Americans on reality television, this false representation of African Americans on television could be altered to show the reality of reality television. With the existing laws and regulations, it can be done, for the betterment of not only African American reality television, but also reality television as a whole.