

2 years. It would go farther, it would prohibit the presentation of a series of programs with an interconnected plot.

This, I submit, is regulation of program content, the very one thing which the Commission has resisted throughout its entire career. The farthest the Commission has ever done insofar as regulating program content is indicating it might have some authority over broad categories of types of programs but never to my knowledge did it ever come out before the fourth report with a regulation which would depend upon the very nature and content of the program being presented.

Now obviously these are the only conditions under which even the Commission or the committee would allow pay television. Yet, both the proponents and the opponents of pay television have argued vociferously—not all proponents but some—that these are unconstitutional if not illegal under the censorship provisions of the Communications Act.

Commissioner Loevinger pointed out that under the committee's recommendation, pay television might not be able to present the plays of Shakespeare because there are a series of interconnected plots or they could be so defined. This kind of judgment would lead the Commission into a morass of programing judgments which they have heretofore, I think properly, eschewed.

But in any event, the present act, I believe, does not give them the power to do it or at least there is a very serious question that the act gives them the power to do it.

Under these circumstances, how can it seriously be contended that the present Communications Act gives them the authority to authorize pay television? The very conditions which they think are necessary may not be within their power to impose. This would start litigation that I think would be with us for years on definition of programs.

The chairman just touched one area of definition, whether the sports program to be prohibited must be within the community or throughout the country. That is just one of them, that is an easy one. I don't consider that one a particularly hard one. That is one of the easy ones.

I don't think the Commission really wants to do that in this way. Those are perhaps the main reasons why I don't think they have the power. Even if they did, I don't think they ought to do it before this committee at least would tell them to have the power.

I am a lawyer with no particular reputé and if I don't know the answers to the question it does not mean very much. I don't think this committee knows the final answer to this question. It ought to be made very clear instead of leaving them in a morass of uncertainty.

Secondly, the history of the Hartford test has made it clear that there is no demonstrable demand for pay TV. The committee is undoubtedly aware that the only instance in which this question was put to the people in California. They voted it down by a sizable margin.

Later the courts struck down the legislation but I think the public reaction was at least indicative that there is no tremendous public demand for this service. There has been only one test.

Now the Commission envisioned a number of tests I think in the third report but there has been only one test run under the Third Report.