FREEDOM FROM CHOICE.
THE PERSISTENCE OF CENSORSHIP IN POST-1968 AMERICAN CINEMA.

A thesis submitted to The University of Manchester for the degree of
Doctor of Philosophy
in the Faculty of Humanities

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HENRY THOMPSON

SCHOOL OF ARTS HISTORIES AND CULTURES
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ABSTRACT
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Jack Valenti, then President of the Motion Picture Association of America (MPAA), formally announced the commencement of a new Motion Picture Code and Rating Program on November 1, 1968; a mode of industry self-regulation designed to replace the, by then discredited, Production Code. Despite the Program’s intended role in providing freedom of choice, censorship has persisted after 1968. Censorship is defined here as the efforts by some to restrict the viewing options of others, for reasons of personal morality, commercial self-interest or ideological necessity. American moviegoers and other consumers of American cinematic culture have, paradoxically, been freed from choice. The availability of 24/7 porn on cable television and the undoubted explosion of explicit violence in mainstream cinema after 1968 are superficial distractions from the homogenising effects of both the pressure to make movies that can be screened to large predominantly teenage audiences and the pressures not to upset vocal pressure groups. In extending and mapping out the territory of the consumer the industry has, both in the types of movie on offer and in the mode of regulation chosen, effectively curtailed the space for the citizen to ask more demanding questions either about movie content or about the benefits of allowing a small number of media conglomerates to construct the viewing menu. The Program remains in place but its efficacy has been widely questioned.

The thesis breaks the development of the Program into three phases organised around Richard Heffner’s operation of the Program between 1974 and 1994. In the early years, despite the self-styled liberalism of the New Hollywood renaissance, both ideological and commercial constraints were applied to content. Only after Heffner’s arrival in 1974 did the Program begin to function as Valenti had originally envisaged. However, the slow emergence of narrowcasting and the expansion of conglomerate ownership ensured the continuance of commercial self-censorship. These changes found maturation in a third phase of the Program’s operation, after 1994. The research considers evidence of commercially motivated self-censorship as well as evidence of politically motivated censorship.

The cumulative effect of industry change has been a commodification of entertainment- a denial of any interest other than that of the consumer- and the privatisation of a key part of the process of setting cultural norms. The thesis considers the risks for a functioning democracy posed by the emergence of a global entertainment complex that has an overwhelming economic interest in shaping the ‘marketplace of ideas’.
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THE AUTHOR

The author graduated in Psychology in 1981 and following postgraduate study in Organisational Psychology (MA) and relevant work experience, qualified as a Chartered Psychologist. Following work as a psychologist, and later, in commercial management, within the telecommunications industry, the author returned to part time postgraduate study in American Studies (MA) in September 2004 and commenced doctoral research in September 2006.
Freedom from Choice.  
The persistence of censorship in post-1968 American cinema.

**ABBREVIATIONS**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>ARRB</td>
<td>Assassination Records Review Board</td>
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<tr>
<td>CARA</td>
<td>Code and Rating Administration (Classification and Rating Administration after 1974)</td>
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<td>EIC</td>
<td>Entertainment Industries Council</td>
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<tr>
<td>FCC</td>
<td>Federal Communications Commission</td>
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<td>FTC</td>
<td>Federal Trade Commission</td>
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<td>GOP</td>
<td>Grand Old Party</td>
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<td>HUAC</td>
<td>House Committee on Un-American Activities</td>
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<td>IFIDA</td>
<td>International Film Importers and Distributors Association</td>
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<td>MPAA</td>
<td>Motion Picture Association of America</td>
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<td>MPPDA</td>
<td>Motion Picture Producers and Distributors of America</td>
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<td>NBCMP</td>
<td>National Board of Censorship of Motion Pictures</td>
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<td>NBRMP</td>
<td>National Board of Review of Motion Pictures</td>
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<tr>
<td>NCOMP</td>
<td>National Catholic Office for Motion Pictures</td>
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<tr>
<td>NcoC</td>
<td>National Council of Churches</td>
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<tr>
<td>PCA</td>
<td>Production Code Administration</td>
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<tr>
<td>SMA</td>
<td>Suggested for Mature Audiences</td>
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<tr>
<td>SRC</td>
<td>Studio Relations Committee</td>
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<td>USCCB</td>
<td>United States Conference of Catholic Bishops</td>
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<td>USIA</td>
<td>United States Information Agency</td>
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Freedom from Choice.
The persistence of censorship in post-1968 American cinema.

**ARCHIVES**

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<tr>
<td>I-PF</td>
<td>Ixtlan Production Files. Ixtlan Inc. Suite 322, 12233 W. Olympic Blvd., Los Angeles, California (by prior agreement)</td>
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<tr>
<td>PCA-A</td>
<td>Production Code Administration Archive. Department of Special Collections, Margaret Herrick Library, Academy of Motion Picture Arts and Sciences, Beverly Hills, California.</td>
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Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

First Amendment, Constitution of the United States.

It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee.

Introduction

Jack Valenti, then President of the Motion Picture Association of America (MPAA), formally announced the commencement of a new Motion Picture Code and Rating Program on November 1, 1968. The date was pivotal in the industry’s own collective recollection of its evolution and has been largely accepted at face value by film studies scholars as a marker for the dawning of a new era. The new Program was designed to replace the, by then discredited, Production Code- itself an exercise in industry self-regulation introduced almost forty years earlier. However, the name chosen by Valenti for the replacement was telling- it was indeed a Code as well as a Rating Program. The Code element of the new Program, which had first been issued in 1966, set out eleven specific Standards for Production. These standards echoed, albeit in reduced form, the strictures of the Production Code they purported to replace. The Rating element of the Program was novel, if not original. It would provide, via the particular rating applied, advance notice to parents of the kind of material in a film, allowing parents to make informed choices about what their children saw on the screen. There would be no constraint on content targeted at adults only. Originally four ratings were introduced- General (G), suitable for all; Mature (M) later re-designated as Parental Guidance (PG), suitable for adults and mature young people; Restricted (R) younger teenagers not admitted without parent or guardian, and X, only adults admitted. The central principle governing this new form of industry regulation was responsible self-restraint when dealing with non-adult fare- also referred to as voluntarism. Enforcement of the system would be achieved through the co-operation of all filmmakers and exhibitors. Whilst Valenti sought to position the Program as a source of artistic freedom and asserted in the introduction to the new Program that censorship was an “odious enterprise”, the central proposition to be examined in this thesis is that while voluntarism gradually lost its purchase, censorship in cinema did in fact continue after 1968. Indeed, in an industry that is perceived to have virtually free reign on the kind of images and ideas it can present on screen, censorship still continues today.

Establishing a working definition of censorship is problematic, as is the assemblage of evidence of its presence. As a starting point for this discussion, censorship can be characterised as the efforts by some to restrict the viewing options of others, for reasons of personal morality, commercial self-interest or ideological predisposition. Whilst that definition encompasses the actions of regulators and pressure groups it also offers scope to consider the ways in which economic self-interest and patterns of ownership within the industry may be skewing the types of content and range of ideas and information that cinema contributes to cultural discourses. Our present understanding of censorship in cinema is mediated not least by the social and political upheavals that emerged in the 1960s and the subsequent increase in tolerances for explicit on-screen content. The pace of that change is illustrated by the fact that the source of the censorship described by Valenti after his arrival at the MPAA in May 1966 as odious had been defended just

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months earlier by Geoffrey Shurlock, Director of the Production Code Administration (PCA) as a “striking example of American democracy.” As the competing ideological positions of liberalism and social conservatism took shape in the late 1960s, cinema thus became a cultural totem both for freedom of expression and for the denigration of moral standards; a battleground for the forces of both left and right.

In December 1967, for instance, Time magazine celebrated the release of Bonnie and Clyde (1967) as part of a new freedom in film, while just four months later, the industry’s attention was focused on a Supreme Court case in which residents in Dallas were seeking to restrict movie access in the city based on a locally derived definition of obscenity. Whilst that ideological tension between industry liberalism and public morality has remained, a cursory review of the progressive expansion of sexual and violent content in contemporary cinema would suggest that those arguing for an unfettered liberalised cinema have successfully removed all vestiges of the censorship that existed under the Production Code. An important part of the story of Hollywood after 1968 is indeed a steady extension of freedom of expression. The heated debates over how many utterances of fuck might be permitted in a PG-rated version of All The President’s Men (1976) or the media attention focused on the appearance of Sharon Stone’s labia in Basic Instinct (1992) were very much of their time: markers on a route towards- depending on the viewpoint of the observer- greater artistic freedom or a coarsening of popular culture (or possibly both). Neither development appears on first inspection to support a charge of continuing censorship. The formulaic and rather stiff dialogues found in Production Code era films quickly gave way after 1968 to the more informal and realistic on-screen dialogues of the New Hollywood era films, epitomised by the work of directors like Martin Scorsese and Francis Ford Coppola. The early years of the new Program also witnessed the incursion of pornography into mainstream cinema- a trend marked most notably by the nomination of Bernardo Bertolucci’s Last Tango in Paris (1972) for two Oscars. Many metropolitan cinemas re-styled themselves as art house venues catering for the new market in pornography. Whilst that situation was reversed somewhat in the mid-1970s, following the Miller v California Supreme Court case, pornography has remained as a thriving niche market at the margins of mainstream film culture where it has grown to become a key source of corporate revenues not just for the film industry but for premium cable and satellite providers, hotel chains and credit card and mobile phone companies. Whilst noting an economic downturn in the porn business, a recent Los Angeles Times report cited evidence that the annual revenues for the industry in the US might still be in the region of $13 billion.

These aesthetic, cultural and economic shifts have confused the discussion about censorship as a result, and thus the presence and growth of on-screen sex and violence has been wrongly read as evidence of the absence of censorship- a tendency given additional traction by the industry’s own willingness to label any attempt to control or even discuss the impact of any contentious subject matter as a censorious interference in its private business. In the wake of accusations of

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3 Geoffrey M. Shurlock, “It’s the Treatment That Counts”, speech to NATO annual convention, Ambassador Hotel, Los Angeles, October 29, 1965.
5 Los Angeles Times, August 10, 2009.
blasphemy directed at Martin Scorsese’s *Last Temptation of Christ* (1988) Jack Valenti had, in a *Variety* article, defended Universal’s “absolute right to offer the people whatever movie it chooses.”6 The Directors Guild of America chimed in with similar sentiments just two weeks later. A statement from a number of leading directors including Warren Beatty, Peter Bogdanovich, James L. Brooks, John Carpenter, Walter Hill, Michael Mann, Penny Marshall and Sydney Pollack, defended both Scorsese’s right to his artistic vision and “the right of individuals to decide for themselves what they will see and think.”7 The industry position was put in stronger terms in response to protests about *Basic Instinct* (1992). In refusing to respond to calls from the Queer Nation and other gay rights groups for changes to the script given revelations that Sharron Stone’s central character was a bi-sexual serial killer, executives at Carolco and Tri-Star stated that “Censorship by street action will not be tolerated.”8 More recent controversies about content included a debate over what scenes in *Team America: World Police* (2004) needed to be removed to allow an R rating. These and other examples all followed a similar narrative trajectory that pitted commercial freedom against censorious restraint.9

This tension between the rights of movie studios and directors to pursue their business unfettered versus the rights of the public to have some engagement in this aspect of their cultural landscape will be a key and recurring theme in this thesis. That tension is encapsulated in the distinction between the *consumer* and the *citizen* and a corresponding distinction between choice and engagement. Under the Production Code, choice had effectively been constrained by a vociferous minority of religious citizens- a substantial minority- but nonetheless a minority. Engagement with this constituency was the price paid by the industry for security from federal regulation. The new self-regulatory framework freed the industry from the previous bargain that it had struck with the national religious community, but the Program’s singular focus on parental choice as its driving principle essentially sidestepped any public debate and engagement about evolving standards in cinema. This was unsatisfactory for religious conservatives but it would also prove unsatisfactory for liberals who soon found that the “creative freedom” promised in the Program came with constraints.

The emerging view that posited censorship in cinema as primarily something that restrained explicit content was driven by a complex mix of technical, political and commercial factors. In 1968, the only way to watch a movie was at a theatre, drive-in or on broadcast television. While the Program allowed some expansion of portrayals of sex and more particularly, violence, the television companies continued to operate a longstanding strict regime of censorship. By the mid-1970s the narrowcasting revolution was getting underway with home video, cable and satellite all helping to increase viewer choice. In parallel, the neo-liberal ascendency epitomised by the two presidential terms of Ronald Reagan created a business environment that allowed the movie

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industry to foreground the consumer in a way that hadn’t been possible under the Production Code. The progressive removal of anti-trust constraints on media holdings made it increasingly easy for studio-owning corporations to build and control multiple channels to market, including not just cinema and broadcast television, but also the new media of video and premium cable. Consumers who wanted more explicit content could pay a fee and opt into premium services. Entertainment and in particular explicit entertainment was becoming commodified in that there was a de facto denial by the entertainment corporations of any interest other than that of the consumer. The consequence of this privileging of choice was not just that censorship could be construed as anything that impedes the free market in entertainment, but that the Program was seen by some to be the instrument of that restraint. This put the Program and its administrators under constant pressure to acquiesce in studio efforts to re-draw rating boundaries and nudge upwards the overall level of explicit content permitted by the Program.

While some groups, particularly social conservatives, expressed concerns about the effects this aspect of neo-liberalism was having on American society, many Americans were content to exercise their rights as consumers of movies in much the same way they had consumed automobiles and refrigerators throughout the postwar years- asking for more bells and whistles, in the form of visual spectacle and explicit content. This pattern of consumption was reinforced by a further effect of the neo-liberal ascendency, as the ideological shifts that ushered in the deregulation also precipitated the era of global conglomerates. The US entertainment industry, as with other sectors including oil and pharmaceuticals, coalesced around a small number of companies with global holdings. The accumulation by six corporations of interests in film, television, satellite broadcasting, cable networks, publishing, music, games and ancillary activities including merchandising spin-offs from films, theme parks, hotels and cruise ships has created a global entertainment complex that requires content that will translate with relative ease in multiple markets and multiple formats. Logics of scale, plus the need to protect brand identities, call for content that does not offend local social or political orthodoxies. The global entertainment complex offers many choices but the menu is of necessity subject to certain undeclared constraints. Thus many film projects become subject to the homogenising effects of a commercial rubric that calls for movies that will appeal to large predominantly teenage audiences. In practice this has meant a foregrounding of the kind of spectacle associated with, for example, producers Jerry Bruckheimer and Michael Bay, as well as the increasingly explicit on-screen violence witnessed in, for example, the Saw franchise (2004-2009). In pursuing this course, the studios have steadily pushed at and increased the range of acceptable material for each rating category within the Program. Conversely studios have sought to avoid themes or treatments that might precipitate significant protest from social or religious pressure groups. As a result, violent content as well as increasingly explicit sexual content have been pushed further into the mainstream while socio-cultural views of a more contentious political and moral dimension have been reined back. A recent example of the latter trend occurred in the case of The Golden Compass (2007), based on Philip Pullman’s novel

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Northern Lights. The critique of religious authority that is such a central feature of the book was specifically removed from the screenplay to avoid the risk of giving any offence to religious groups. The director, Chris Weitz, saw this as a commercially justified sacrifice - an acceptance that the presentation of ideas needed to give way to entertainment industry product requirements. In extending and mapping out the territory of the consumer, the industry has, both in the types of movie on offer and in the mode of regulation chosen, effectively curtailed the space for the citizen to ask more demanding questions either about movie content or about the wisdom of allowing a small number of media conglomerates to construct the viewing menu. That is not to deny that contentious social satires and political critiques do, on occasion, enter the marketplace, but their numbers are small and their presence is limited by restrictions placed on their distribution.

This privileging of the consumer was complemented by a shift in orientation among the justices of the Supreme Court following several appointments to the bench by President Nixon in the early 1970s. These changes saw the emergence of a doctrine of free speech which both emphasised individual liberty and sought to avoid state intervention. Owen Fiss, Sterling Professor of Law at Yale University, has argued that this libertarian view has tended to construe free speech as an individual right, at the expense of its wider democratic function in ensuring collective self determination. That distinction is crucial for the discussion about censorship in this thesis. The chosen mode of self-regulation enshrined in the new Program was in tune with the wider de-regulatory ethos of business and the judicial predisposition of the Supreme Court at the time. Cumulatively, these forces pushed the debate about censorship towards the defence of individual rights rather than the facilitation of a collective discussion about the effects of cinema on the cultural landscape or a search for an accommodation between individual choice and public engagement. Significantly, the individual rights being discussed were, increasingly, the rights of corporations - a position most clearly revealed in a case brought before the Supreme Court in the 1990s, and discussed in detail in chapter four. The case, which was brought by Ted Turner, founder of CNN and former vice-chairman of Time-Warner, concerned Turner's attempt to claim a First Amendment protection for his cable business, thereby helping it to avoid compliance with a Congressional requirement to carry educational programming.

In succeeding decades after the introduction of the Program, the emergence of multiple new outlets for content, the impact of de-regulatory policies on corporate holdings and the increasing reluctance of the Supreme Court to pursue the interventionist social agenda it had mapped out in the 1950s and 1960s, all tended to reinforce the primacy of the market in the determination of standards in movies and in the associated articulation of cultural values. The difficulties in seeking an understanding of censorship as something other than the attempt to restrict the operation of a free market in explicit on-screen content was given a further complicating twist by the movie industry's own shifting position on its new regulatory regime. Having launched a new Program whose central purpose was the provision of adult and non-adult ratings for films, the industry took

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12 TURNER BROADCASTING SYSTEM, INC. v. FCC, 000 U.S. U10372 (1994).
fright at the negative associations arising from the use of the X rating for pornographic films and the associated blurring of the distinction between adult-oriented material and pornography. In response to this trend, the industry, almost from the outset, sought to shoehorn all of its content into non-adult ratings.

Not surprisingly, the gradual shifting of social norms and the framing of censorship within a rhetoric of the marketplace have not only limited our perspective on the issue of censorship but have made the identification and assessment of evidence equally problematic. Consumers in the US who in recent decades have found that their local mall cinema wouldn’t play X-rated films because of a restriction in the lease agreement with the landlord, might have been the unfortunate victims of a commercial contract but the question of censorship did not seem to arise. They could after all go and rent the film at Blockbuster some months later without any apparent infringement of their First Amendment rights. Well not exactly. Blockbuster made an early business decision not to stock any X-rated movies in their rental stores. However our consumer need not be concerned. There are other stores. They could go to Wal-Mart- except Wal-Mart made the same calculation about being a family friendly business that Blockbuster made. In fact the scenario being described would barely have arisen at all because the studios have for many years insisted through contractual obligation that their directors deliver films that will achieve no more than an R rating. Coincidentally, everyone involved has a business interest in avoiding adult-rated content. In the case of the hypothesised consumer above, two supplementary points need to be made. Firstly, if our consumer was really determined to find pornography then there is no problem- there are definitely other stores or mail order facilities happy to meet that need. Secondly, more nuanced sexual content and pretty much any level of violence that the consumer could care to imagine have in recent years found their way into mainstream cinema. If our test of censorship merely focuses on the presence in the marketplace of explicit sexual and violent content then there appears to be no case to answer. What goes unquestioned is the potentially distorting effect of avoiding any content that is not rated suitable for children- built on the assumption that adult content is no more and no less than explicit sexual content.

If some restrictions in choice of viewing content could be passed off as no more than the vagaries of commerce, others appeared more intentional. One interesting twist in the Turner case noted above was the cancellation by Turner, in his capacity as head of Turner Network Television, of a film critical of one of the Supreme Court justices due to deliberate on the case. Whilst Turner was called to account in both the national and movie industry press, such exposure was and remains unusual and is presumably not welcomed. Evidence of censorship is consequently sparse but, as the succeeding chapters reveal, it is there. Crucially, these instances of censorship demonstrate a key contention in this thesis- that they have less to do with explicit content than with the presentation of ideas.

This thesis therefore takes as its central hypothesis the notion that what has ensued post-1968 is a systematic skewing of viewing choices, despite the stated aims of the Program and the foregrounding of individual choice and market freedom. The effects of narrowcasting, the availability of 24/7 porn on premium cable channels and the undoubted increase in explicit sex and
violence on mainstream screens are in truth superficial distractions from a much more constraining development. American moviegoers and other consumers of American cinematic culture have, paradoxically, been freed from choice. Whilst later chapters will review evidence from within the industry of specific interventions by individuals that can be characterised as the efforts by some to restrict the viewing options of others, for reasons of personal morality, commercial self-interest or ideological predisposition - constituting specific instances of censorship - that evidence is itself only symptomatic of a more nuanced set of restrictive influences on content that have developed since 1968. The real charge against the industry is that commercial self-interest and the absence of any regulatory oversight have, in combination with the industry’s size and consequent influence on contemporary culture, led to a skewing of cinematic content and viewing choices that amounts to a systematic and market driven distortion of the “marketplace of ideas.” This term, which is often associated with the writings of John Stuart Mill, concentrates on the importance of hearing all opinions on a topic, and has been used as a judicial reference point in a number of Supreme Court cases where issues of censorship and First Amendment protections for free speech in cinema and in the media more generally were being considered.\(^\text{13}\) The distortion in question is not censorship as conventionally understood - the unbridled restraint exercised by some authoritarian state apparatus. Much - though not all - of the distortion in question appears to arise as a result of economic self-interest rather than any intent to misinform. However, the absence of malign intent does not lessen the effect. To call this systematic distortion anything other than censorship is to under-estimate its far-reaching and negative societal consequences. Understanding the wider circumstances of this distortion and the contributory role played by the Program will be a central theme in this research. In contrast to the position taken by scholars like Jon Lewis and Kevin Sandler this thesis will argue that while the tweaking of explicit content on the R / NC-17 boundary is important in the context of a discussion about censorship, it is not the main story or indeed the key failing of the Program. The R / NC-17 boundary is important not because those working within the Program are attempting to or are even interested in censoring content, but because the vast majority of exhibitors refuse to play NC-17 rated films. The collusion of the industry in the avoidance of adult treatments on film is where our concerns need to lie, rather than attempting to call CARA to account for requesting changes to allow a film to achieve the non-adult rating the studio are asking for. Through the use of ratings, the Program sought to engage with the public on the issue of providing parents with advance information about film content when a much more robust engagement about the “freedom of choice” discussed in the Program’s introduction was needed.\(^\text{14}\)

In exploring the cultural consequences of this failure, two points raised by Fiss will be taken as central assumptions in the discussion. Firstly, a free market is not a guarantor of democratic values.\(^\text{15}\) In other words we cannot assume a serendipitous alignment between the commercial self-interest of the entertainment industry and the functioning of a democracy. Secondly, cinema

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\(^\text{14}\) MPAA, *Motion Picture Code*, 2.
\(^\text{15}\) Fiss, *Irony of Free Speech*, 56.
plays a key role in the construction of our cultural values. It is, as Fiss argues, one of the means by which “the public finds out about the world that lies beyond its immediate experience.”16 In so far as our cultural values include a commitment to democracy, then the direction cinema takes is of the widest public importance, and not merely one of corporate profitability or consumer choice.

The notion that cinema plays an important part in the communication of ideas was acknowledged by the Supreme Court in its 1952 Burstyn decision when it rejected efforts by the New York State Education Department to ban Roberto Rossellini’s The Miracle (1948) on the grounds that it was sacrilegious. Giving the Court’s opinion, Justice Clark confirmed that movies did enjoy free speech protection under the First Amendment and added that:

> It cannot be doubted that motion pictures are a significant medium for the communication of ideas. Their importance as an organ of public opinion is not lessened by the fact that they are designed to entertain as well as to inform.17

Valenti’s ambition for the Program was certainly within the spirit of that ruling. He wanted the Program to deliver “freedom of choice” for all citizens and allow parents to make decisions about the kind of movies that their children were exposed to. Despite the principled commitment of many of those involved in operating the ratings system within the Program, that ambition was slowly compromised, not least by a collective conceit about the superiority of self-regulation and by the venality that permeated the industry. Having made a commitment to voluntarism as a principle, those responsible for the Program found it both hard to acknowledge the fact that filmmakers were bending the system for their own commercial ends, and impossible to apply any real control. The lack of any real MPAA led process of public engagement on the impact of cinema— a means of acknowledging the disparate concerns about the direction the industry was taking— has led to a situation where consumer choice has become a proxy for corporate choice. This thesis will argue that this has not only facilitated commercially motivated self-censorship but provided a discrete avenue for more explicit political censorship.

Sources and structure

The development of the Program and the testimony of those individuals who have been or who are central to its operation provide a unique platform from which to explore the workings of the entertainment marketplace, as well as the issues of personal choice and public engagement. A distinctive feature of this thesis is the collection of first hand testimonies from participants in the operation of the Program’s rating system that, taken together, cover the entire period of the Program’s operation from 1968 to the present day. Through the insights of these key participants and through an analysis of the difficult cases that the Program was forced to deal with, this research seeks to build an analysis that registers the undoubted liberalisation in cinema since 1968, but highlights the systematic constraints that have nevertheless become established— the distortion in the marketplace of ideas.

16 Ibid., 53.
The central source for this thesis is the oral history prepared by Richard Heffner, Professor of Communications and Public Policy at Rutgers University. Heffner, as Chair of the Classification and Rating Administration (CARA), had day-to-day administrative responsibility for the Program between 1974 and 1994, a period that saw all of the key changes made to the Program including the introduction of two new ratings. Heffner’s record is in fact rather more than a conventional oral history. He began recording the history with Charles Champlin, a broadcaster and writer with the *Los Angeles Times*, in July 1995. However Heffner recalls that:

> though Chuck knew more about my “Hollywood Years” than anyone else, he didn’t - indeed, couldn’t - have at his fingertips enough information to probe me as deeply as I really wanted to be probed about the matters at hand. When I realized this unhappy fact . . . I decided to take on myself the burden of preparing “informational packets” on my activities in Hollywood on a year to year basis.\(^\text{18}\)

The result of this undertaking runs to several thousand pages of materials including both commentaries and correspondence. Of particular interest is the correspondence between Valenti and Heffner- both because of the clarifications it provides, and the insight it offers into the significant disagreements about matters of policy that developed between the two men. In the absence of any public access to Valenti’s MPAA records, the Heffner papers provide the best available record of the operation of the Program. Insights gleaned from all of this material have been tested and augmented during the research through numerous discussions and emails between Heffner and the author.

In an effort both to build out from this platform to cover the period before and after Heffner’s tenure at CARA and to cross-check facts where possible, interviews have also been conducted with Albert Van Schmus and Joan Graves. Van Schmus joined the PCA in 1949 and subsequently worked on the Classification and Rating Administration as Heffner’s deputy, retiring from his full time role in 1982. Graves joined CARA in 1988, and took fulltime responsibility as Chair in 2000, a position she retains today. Both had close working experience of Heffner’s tenure. A further perspective and degree of cross-checking has been made possible by an interview conducted with Jim Wall. A journalist, ordained member of the Methodist Church and former editor of the *Christian Century*, Wall is one of two religious representatives that currently sit on the MPAA body that hears appeals from filmmakers who are unhappy with the rating they have received. He has a long involvement both with the Program and with Heffner. In addition to building an understanding of the ratings system from within, the research has also sought the perspective of one high profile user of the system- the producer and director Oliver Stone. Through interviews, emails and access to production files for key movies including *JFK* (1991), a film that incensed Valenti, Stone’s perspective provides a valuable insight into the issue of censorship within the movie industry as well as providing further cross-referencing of events pertaining to Heffner’s archive. In addition to these sources, interviews and email correspondence have also been conducted with Bob Daly, former chairman of Warner Brothers, and Alfred Schneider, formerly with the ABC television network. Daly had firsthand experience of working with Heffner, Stone and

\(^{18}\) Richard D. Heffner, email to author, August 31, 2008.
Valenti. Schneider headed up ABC’s Broadcast Standards and Practices Department for some thirty years from 1960. It was a role that he characterised as that of a censor and he had dealings with Heffner on the question of censorship of movies on television. Taken together these sources provide a detailed picture of the operation of the Program, of specific instances of censorship and of the cumulative shaping of the cultural horizons and choices available both to American cinema goers and consumers of related entertainment industry output.

The thesis takes as its starting point the proposition that the conventional academic narrative, articulated for example in works by Geoff King and Peter Krämer, about the end of the Production Code signalling the end of censorship and the beginning of the auteurist New Hollywood era is deeply flawed- a theme explored in detail in chapter two. Whilst the introduction of the Program played a key enabling role in the continuing evolution of the industry, the emphasis placed by the MPAA on 1968 as a significant break with the past has had the effect of obscuring important continuities both on and off screen. The term New Hollywood may have signalled the arrival of a new generation of auteur directors including Scorsese, Nichols and De Palma but this new Hollywood had plenty of old Hollywood in it. Instead, it will be argued that 1975 provides a more useful marker for several key changes including the emergence of a new management ethos at the Program that finally abandoned long established self-regulatory practices of overt censorship, the emergence of technical innovations including cable and video, and a stabilisation of industry fortunes as the corporate funded studios re-settled on big budget family-oriented spectacular blockbusters as their core product.

In succeeding chapters, three main phases of the Program’s operation will be explored, organised around the tenure of Heffner at CARA. Evidence of specific instances of censorship will be recorded and discussed in the context of shifting social and political tastes and pre-occupations. In chapter two, the focus is on the establishment of the Program. The chapter begins by noting the similarities in theme, if not narrative length, between the old Production Code and the new Code that accompanied the ratings system. Those responsible for launching the new Program were at pains to emphasise the continuities with the old regime. These continuities were reinforced by the transfer of several PCA staff members to CARA and by the continuance of PCA practices such as pre-reading of scripts. Two different modes of industry censorship quickly became apparent - that resulting from direct interference by members of CARA, and a more subtle commercial self-censorship as studios quickly realised that the PG rating was the most financially lucrative. The chapter also explores the continuing pressure for censorship from concerned citizens around the country through an analysis of cases that came before the Supreme Court under Chief Justice Burger. The Court’s actions in allowing communities to restrict cinematic content during these early years of the Program is contrasted with the line of reasoning that the Court had followed during the late 1950s and early 1960s under Chief Justice Earl Warren. The chapter also considers the emergence of the auteurist New Hollywood cinema of the early 1970s and seeks both to place it within the context of the shifts in national politics and to assess just how ‘new’ it really was.

In chapter three, the focus shifts to Heffner’s tenure at CARA and in particular his efforts to reform what he saw as a rating system lacking in granularity. Heffner eventually succeeded in
introducing two new ratings: a PG-13 which cautioned parents that material might be inappropriate for children under thirteen- although it did not restrict entry- and an NC-17 rating that prohibited entry to anyone under seventeen- later raised to eighteen. The chapter explores the deteriorating relationship between Heffner and Valenti and considers how ratings disputes such as those over *Cruising* (1980) all but destroyed the system of self-regulation. In addition to this Program focused analysis, the chapter also considers how the industry as a whole was affected both by the presidential terms of former actor Ronald Reagan and their associated conservatism and by the technical and market changes ushered in under the banner of narrowcasting. As regards censorship, Heffner quickly put an end to the direct interference in film projects that members of CARA had persisted with after 1968, including the pre-reading of scripts, but his role meant he had no real influence on the emerging industry commercial model which favoured spectacle over narrative, which sought to further increase the levels of sex and violence in mainstream cinema and which chose to largely ignore adult-oriented cinema. None of these developments would have qualified as censorship under the Production Code; however, the chapter argues that they nevertheless constituted a systematic skewing of content.

Evidence of this skewing effect is also discussed in chapter four as part of the exploration of the post-Heffner era at CARA. In addition, the chapter considers how the MPAA’s rating system became the basis for the introduction in 1997 of ratings for broadcast television. The chapter also picks up a theme of earlier chapters- the emergence of entertainment corporations with global interests- and considers how pressures of brand identity and the need for content that can be re-packaged for different cultural markets outside the US has both led to specific cases of direct censorship of material and resulted in a more diffuse filtering of the kinds of treatments and themes offered on film. This analysis is complemented by the experience and observation of Oliver Stone- a producer and director who has found himself at the centre of several controversies relating to censorship. From his re-examination of the Kennedy assassination in *JFK* (1991), which resulted in his being condemned as a propagandist by Valenti, to his recent documentaries on Fidel Castro, Stone has challenged both the entertainment industry’s aversion to controversy and the political establishment’s efforts to impose its own hegemonic narrative on national events.

In the final chapter the analysis returns to the central organising theme in this research, arguing that the cumulative effect of the neo-liberal political hegemony, the emergence of a global entertainment complex and the choice by the movie industry of a regulatory regime that privileged the consumer but limited any wider public engagement, has indeed led to a systematic distortion of the marketplace of ideas.

Before entering this analysis it is however important to position this research within the industry and recent academic narratives about censorship.

**Censorship**

It is without doubt the case that the pre-1968 Production Code, also known as the Hays Code, represented a comprehensive and overt exercise in censorship. The Code, first introduced in 1930
by Will Hays, then chairman of the MPAA’s predecessor organisation, was both an exercise in damage limitation following press coverage of the proclivities of some of Hollywood’s celebrities and an effort to forestall moves towards federally imposed censorship. After some early vacillation, the administration of the Code was strengthened in 1934 by the introduction of an industry-run body known as the Production Code Administration (PCA), under the resolute stewardship of Joseph Breen. For the next thirty years the PCA first under Breen and then his successor, Geoffrey Shurlock, operated a rigorous vetting of all studio film scripts prior to production. The detailed provisions of the Code, as described in chapter two, both recalled the high moral tone of some elements of the progressive movement established under the presidencies of Theodore Roosevelt and Woodrow Wilson and more specific concerns about drifting standards in American cinema as it rode the tide of hedonism and consumerism during the boom years of the 1920s. The Code’s pre-occupation with all things sexual reflected this wide range of influences. The reading of scripts and writing of numerous memos to studios, listing required deletions and changes, were nothing less than the operational manifestation of a far reaching exercise in national moral rectitude as well as a prolonged effort in business self-preservation. However, to suppose that the final removal of these arrangements in 1968 also signalled an end to the desire from both inside and outside the industry to control and influence cinema is flawed in logic and contested by the evidence. Yet the conventional narrative in much film studies writing, as discussed in chapter two, suggests instead that increased liberalism and reduced pressure for censorship in the 1960s allowed the industry to dispense with the Production Code in 1968, ushering in a new era of freedom and contemporary film making- the New Hollywood.

The portrayal of New Hollywood as synonymous with an emerging freedom from censorship appears to reflect a wider trend in American culture, although it also owes a debt to the movie industry’s own construction of its history. Both the cult of personal freedom surrounding the youth movements of the 1960s and the assertion of individualism during the Reagan presidencies have tended to encourage a particular sense of American exceptionalism- a national view that censorship was something that happened to other people in other countries. In her 1990 survey of censorship in US society, for example, Donna Demac observed that despite this widely held view, the evidence in fact suggested that many areas of American life including libraries, schools, print and broadcast media, corporations and government were all experiencing some kind of restraint.  

In the case of the movie industry, the sense of exceptionalism, as applied to its own past, was an important ingredient in the rhetoric deployed around the time of the Program’s launch. In a series of speeches given by Albert Van Schmus and two of his PCA colleagues in early 1968, the new Code was described as offering a change from the “past purpose of mass beguilement to more progressive, democratic principles.” This theme of emerging freedom for cinema had been developed by Valenti soon after his arrival at the MPAA. It is apparent in the wording used in the

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Chapter 1: Components of the censorship debate.

new Program documentation, and it was a theme that Valenti persisted with in later re-tellings of the history of the Program.21

The sense of emerging freedom has also been reinforced by the release of PCA files for study by researchers at the Motion Picture Academy Library in Los Angeles. These files have produced many fine reviews of censorship in the pre-1968 era, including for example Lee Grieveson’s study of the establishment of the industry in Policing Cinema, and Thomas Doherty’s review of the Production Code in Pre-Code Hollywood.22 The effects of this tethering of movie censorship to a particular era have been accentuated by the wider trends in academic film theory evident in the successive paradigms of auteurism, genre and star studies as well as later refinements offered via psychoanalytic and feminist perspectives plus contributions from reception studies and culture theory.23 As important as the distinctions in these formulations have been, they have all tended to take the focus of research away from any systematic consideration of the operation of the industry, or of the possibility of a continuing systematic bias in viewing choices.

A much less romantic appraisal of the movie industry and the issue of censorship is reflected in, for example, studies written by De Grazia and Newman concerning legal restraint of cinema and in Charles Lyons’s study of the protests associated with several high profile releases of the 1980s and 1990s. In Banned Films, De Grazia and Newman’s study of legal action against specific films highlights the continuity of such action before, during and after the New Hollywood era.24 Whilst the focus in Lyons’s study is more recent than the New Hollywood era, the protests that he notes over films like Dressed to Kill (1980) and Basic Instinct (1992) serve as markers for the continuing debate about censorship after 1968.25

More recently, several researchers have sought to look at the self-regulatory regime operated by CARA for evidence of censorship. In Freedom and Entertainment, a study that also draws on Heffner’s oral history, Stephen Vaughn focuses on the post-1968 development and operation of the entertainment industry, with particular emphasis on the influence of technology. Using materials from Heffner’s oral history, Vaughn acknowledges the enormous influence wielded by the industry; however, his perspective on censorship is limited to specific events and campaigns, including for example the Meese Commission on pornography and the legislative efforts by feminist groups in the 1980s to restrict portrayals of violence against women. Vaughn’s conclusion that by the last decade of the twentieth century “cinema and related forms of mass entertainment had outpaced efforts to regulate them” is an important part of the story, but it leaves unexplored the possibility

23 See for example, Joanne Hollows and Mark Jancovich, eds. Approaches to Popular Film (Manchester, New York: Manchester University Press, 1995).
that the enormous industry influence he observes in his analysis might be imposing its own regulation or censorship.\textsuperscript{26}

Film historian Jon Lewis argues for a more systematic assessment of censorship in Hollywood and his perspective is the launching point for this thesis. Lewis contends that whilst systems of content regulation - including the Program - significantly inhibit artistic freedom and dumb down the final product, the real purpose of these regulatory systems is economic self-preservation through regulation of the marketplace. To take the example of the Program, the logic was straightforward. A single national system of ratings removed the financial unpredictability and possibility for protest that myriad local rating regimes would permit. Within the new system, films issued with an R (restricted) rating which required children to be accompanied by a parent or guardian would however prove less attractive to exhibitors than ones that could be made available to all family members (G or PG). The evidence in chapter two from Albert Van Schmus certainly indicates that the studios very quickly started to make exactly that kind of calculation. By exhibiting already-rated films, exhibitors could insulate themselves from the risk of a particular unrated film generating damaging local protests. As the sole supplier of rated films to exhibitors, this effectively put the MPAA in full control of which films would get shown. In acknowledging this commercial constraint, Lewis concludes that “the political and social utility of film censorship is altogether secondary to its economic function.”\textsuperscript{27}

In his recent study of the ratings system, Kevin Sandler, who also draws on Heffner’s oral history, concurs with the overall assessment offered by Lewis. He argues that under the PCA, self-regulation functioned as “a smokescreen for larger issues of economic dominance by the MPAA,” and further that the new classification system introduced in 1968 offered continuity and a “means to govern the flow of product through the production, distribution and exhibition pipelines of the film industry.”\textsuperscript{28} Sandler suggests that a key part of CARA’s role has been the policing of the boundary between R and X / NC-17, and he argues that a set of rules on the representation of sex and nudity can be discerned during the 1990s. Whilst different in philosophy and procedure to the system operated by the PCA, Sandler sees a key similarity - the presence of a “strategic forethought” that seeks to avoid public offence that might in turn jeopardise the MPAA’s economic and political interests. With respect to the changes to a film that allow an R rather than an NC-17 rating, Sandler observes:

These acts of accommodation allow us to consider boundary maintenance under CARA as a prohibitive and productive process like the PCA, as something that is not only done to texts but something that also creates and shapes texts, ideologies and meanings.\textsuperscript{29}

Both Lewis and Sandler rightly call attention to the economic imperatives that drive self-regulation, and both suggest, directly and indirectly, that this amounts to self-censorship, however

\textsuperscript{26} Stephen Vaughn, \textit{Freedom and Entertainment. Rating the Movies in an Age of New Media} (New York: Cambridge University Press, 2006), 251.


\textsuperscript{28} Sandler, \textit{The Naked Truth}, 9.

\textsuperscript{29} Sandler, \textit{The Naked Truth}, 124.
their lines of enquiry into the operation of the ratings system tends to emphasise the specific regulative consequences for on-screen content rather than the wider constitutive consequences. This focus on the operation of the ratings invites a discussion about censorship where the industry is in fact on fairly solid ground. If CARA argues that scenes in Team America are unsuitable for teenagers- accompanied or otherwise- they may with some justification claim that they are discharging their remit. There is nothing to stop the studio releasing an NC-17 rated version for adults, complete with scenes including puppet defecation, and an R rated version that accommodates the assumed sensitivities of some parents. The distortion in the marketplace that we should be concerned with is the wider and less obvious or constitutive consequences for film content caused by the industry’s unwillingness to make and exhibit adult-rated films.

This distinction between regulative and constitutive censorship has been explored by Helen Freshwater. Regulative censorship includes all activity aimed specifically at making changes to the content of a film. Freshwater argues that regulative censorship is inherently weak because it requires the censor to limit all wayward interpretation of a text. As a result of drawing overt attention to the process of censorship, the censor invites the possibility of hidden meanings and interpretations. Constitutive censorship is, by contrast, hidden. It operates within a cultural camouflage where the act of censorship becomes subsumed in an entirely different cultural process, for example the maintenance of globally viable movie franchises. The practice of censorship in Hollywood during the first half century was primarily regulative in nature. The Production Code, plus local interventions via State censorship boards and the widespread issuing and revoking of municipal licences for places of amusement all constituted regulative censorship. It is possible to identify more constitutive effects during this period, for example the Justice Department’s intervention to force the studios to sell their exhibition interests- known as divorcement. This had the effect of creating a financial instability within the industry and reinforced the sense of vulnerability and aversion to controversy that had been generated as a result of the House Un-American Activities Committee hearings the previous year. However, in the main, the constraints were explicit and regulative. After 1968, with the removal of the Production Code and the more gradual winding down of the remaining State censorship boards, the nature of the controls on cinema slowly became less regulative and visible and more constitutive and embedded, as commercial self-interest dictated the avoidance of contentious treatments. A degree of public pressure for explicitly regulative censorship remained after 1968 as the protests described by Lyons and the court cases documented by De Grazia and Newman all testify. Evidence reported by both Lewis and Sandler also points to instances of economically motivated self-censorship on the part of studios seeking R rather than NC-17 ratings. This produces on-screen effects that are tangible and regulative although not always easy to identify as a consequence of the administrative arrangements surrounding the way in which the MPAA and NATO operate the Program. This however is by no means the whole story. Lewis’s conclusion about the primacy of the economic utility of film censorship leaves a key area still to be explored- the wider political and cultural

consequences of a process that has constitutive as well as regulative elements- and Sandler’s conclusion rightly highlights the need for a more contextualised study of the ratings process.

This thesis seeks to begin that contextualisation by positioning the debate about the ratings system and economic self-regulation within a set of questions about the wider democratic threat posed by self-regulation. In his analysis of the development of arguments about free speech and the scope of the First Amendment, Owen Fiss has argued that the early 1970s marked a key watershed in the debate. Immediately prior to this period, Fiss notes that the Supreme Court under Chief Justice Earl Warren had, in their interpretation of the First Amendment, sought a middle ground between the competing claims of individual liberty, with its corollary of limited state intervention, and equality, which might on occasion require the state to intervene to assist the weak or even, in the interests of ensuring the widest public debate, silence the dominant. In the case of New York Times v Sullivan (1964), the Court had upheld the primacy of press freedom in the face of a government suit alleging libel against the state, while in Red Lion v FCC (1969) the Court had supported the Federal Communications Commission’s right to enforce the Fairness Doctrine, designed to prevent editorial bias.31 After Warren Burger’s appointment as Chief Justice in 1969 the Court slowly shifted in its position away from this effort to balance liberty and equality towards a much reduced desire for state intervention- a position that privileged the libertarian view of free speech over the democratic view. Fiss has suggested elsewhere that this transition was part of a wider disenchantment with government in the wake of Vietnam and Watergate as well as deepening economic worries.32 In moving towards a libertarian view of free speech the Court was also moving away from a key theme in its earlier deliberations on free speech- the belief in an uninhibited marketplace of ideas.

The notion of a marketplace of ideas, as described by John Stuart Mill- although he doesn’t use the exact term- is one with a long provenance in Supreme Court jurisprudence.33 Oliver Wendell Holmes Jr., an influential Supreme Court justice who sat on the bench between 1902 and 1932, wrote, for example, in a dissenting opinion in a case involving questions of free speech in 1919 that “the best test of truth is the power of the thought to get itself accepted in the competition of the market.”34 Almost fifty years later, in a majority opinion concerning academic freedom of speech, Justice Brennan wrote that “[t]he classroom is peculiarly the “marketplace of ideas.”35 The same point of reference was adopted by Justice White in the 1969 Red Lion case. Chief Justice Rehnquist’s 1993 initial deliberation in the Turner case, discussed in chapter four, also relied on the concept, although the full Court later rejected this line of reasoning. For free speech advocates like Justice Brennan, the government crucially had some right to regulate the “how” and the “where” of the exercise of the freedom that powers that marketplace.36 That qualification faded after 1969.

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31 Fiss, Irony of Free Speech, 55-58.
33 Mill, On Liberty, 75-118.
34 ABRAMS V. UNITED STATES, 250 U.S. 616 (1919).
What this meant in practical terms was that the Court began to see protection of free speech only as an issue of free expression analogous to religious freedom, and a right that needed to be protected from incursion by the state. Whilst this formulation has some appeal, it ignores the alternative “countervalue” described by Fiss, which proposes that speech is protected by the Constitution not because it is a form of self-expression but because it is “essential for collective self-determination.” In such circumstances the state may need to act to further debate by allocating resources that will assist those who would not otherwise be heard. Under Chief Justice Warren Burger the Court was heading in the opposite direction.

What really concerns Fiss is that whilst the private ownership of media including the movie industry secures economic independence from government, the market can still exert deleterious economic pressures. Both the need to sell copy and avoid upsetting influential politicians may impair the wider democratic role required of these interests. In distilling Fiss’s argument, market control appears to present two key dangers. Firstly, the market-constructed customer may not be getting what he or she wants as the market precipitates a race to the bottom in terms of quality. Secondly, the customer, or more properly the citizen may not be getting what he or she needs in furtherance of a thriving democracy.

Neither of these vulnerabilities was caused by the Program. They have their roots in wider social, political and industrial factors including the neo-liberalism ascendency associated with the presidencies of Richard Nixon and Ronald Reagan, the emergence of narrowcasting technologies like video and cable that changed the ways in which cinematic content could be accessed and a consolidation of ownerships within the entertainment industry. However their impact was accentuated by the mode of self-regulation chosen by Valenti- a system that both encouraged an innate political conservatism in output and sought to limit wider public engagement on questions of standards.

Self-regulation under the Program, as under the Production Code, has always been about economic self-interest. The new Program offered a means of delivering this self-interest whilst taking some account of public tastes and sensibilities. Striking the correct balance between commercial imperatives and public sensibilities against the shifting backdrop of social attitudes, political rhetoric, technical change and corporatisation of the industry was always going to be difficult. From the industry’s perspective, the Program has succeeded in retaining control within the enlarged industry, in pushing content boundaries to attract teenage audiences and in diffusing specific calls for content censorship.

From a wider societal perspective the Program’s benefits are less clear-cut. Those who have and who continue to operate the Program have acted in good faith but part of the legacy of the ratings system is a commodification of entertainment- a denial of any interest other than that of the consumer- and privatisation of the process of setting cultural norms in entertainment content. Thus far, the consumer’s individual right to choose his or her entertainment has trumped the citizen’s right to make collective choices about this aspect of the cultural fabric of the world around them. The Program did not bring about the transfer of cultural power to the entertainment industry but it did- and continues to- play its part.
Introduction

In the United States today, all mainstream movies are rated before viewing by the Classification and Rating Administration (CARA), a body that operates under the auspices of the Motion Picture Association of America (MPAA) and the National Association of Theatre Owners (NATO). On its website, CARA explains its mission in a document titled *The Movie Rating System. Its History, How It Works and Its Enduring Value*, in the following terms:

The mission of the Rating Board is simple — to assign ratings to films that it believes reflect the rating a majority of their fellow parents would give each film. In assigning ratings, the Board considers factors such as language, sex, violence, drug use and other themes and situations that they believe would be of significant concern to most parents.\(^37\)

CARA seeks to deliver against this mission by applying one of five ratings to any film submitted for rating. These ratings and their qualifications are as follows: G, General Audience (all ages admitted); PG, Parental Guidance Suggested (some material may not be suitable for children); PG-13, Parents Strongly Cautioned (some material may be inappropriate for children under 13); R, Restricted (under 17 requires accompanying adult or guardian); NC-17 (no-one 17 and under admitted). The ratings are applied by a group of thirteen raters - the Rating Board - based in Los Angeles. The Board Chairman (currently Joan Graves) is appointed by the MPAA President (currently Dan Glickman) but the Rating Board is intended to function independently of the MPAA and its studios. Funding for CARA is provided from fees collected from studios on a per film basis. The key qualification for being a member of the Rating Board is parenthood. CARA’s website states that “[r]aters have no prior film industry affiliation. And all share the common prerequisite experience of parenthood.”\(^38\)

Sitting above CARA is an Appeals Board. This board, which is chaired by the MPAA President, primarily consists of representatives from the studios and NATO. Although not widely publicised, the Appeals Board also includes two non-voting, non-speaking religious observers, one each from the Catholic and Protestant churches. These representatives have been there from the outset, and their continued presence is a clue both to the importance of the church organisations to the original establishment of the ratings as well as a testament to a continuing interest on the part of the church representatives in encouraging and supporting the development of film as art rather than merely entertainment.

The present ratings have evolved from a more basic structure established by Jack Valenti in 1968 as part of the Code and Rating Program introduced that year. The original structure, as noted in chapter one, had just four ratings: G; M, R, and X. Crucially, Valenti did not trademark the X rating which therefore could be self-applied by a studio or distributor. In his original plan there had only been three ratings G, M and R. The X category had been introduced at the insistence of

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\(^{38}\) Ibid.
NATO in an effort to avoid potential local legal action against exhibitors. 39 Valenti’s initial aspiration for the Program was that it would be a way of escaping what he described as the “odious smell of censorship” emanating from the Production Code. 40 This chapter traces the early development of the new Program. In particular the chapter will argue that whilst there was a transition to a new system, there was nevertheless a continuity of purpose if not of process. To achieve this, the chapter will examine some of the early influences on the Production Code and consider whether the moral precepts contained in several re-iterations of the Code were carried forward into the documentation and the operation of the new Program. The chapter will also look at how the concept of First Amendment rights for cinema were shaped in the wake of a series of Supreme Court judgments as well as examining the role the Court took in hemming in popular efforts to extend the censorship that Valenti deplored. Finally the chapter will look at the development of New Hollywood and the emergence of pornography in mainstream cinema relating these back to the effects of the new Program and decisions in the Supreme Court.

The evidence suggests that 1968 was much less of a break with the past than either the industry or much academic review has suggested. The transfer of personnel from the Production Code Administration (PCA) into the Code and Rating Administration (CARA) resulted in a continuation of old practices like pre-production script reading. This tendency was accentuated under the leadership at CARA provided both by Eugene Dougherty and Aaron Stern. Detailed rules for rating films were developed by Stern, and as CARA became involved in the detail of the content of films it moved away from simply rating films to having a significant impact on the final content- much like its predecessor organisation. Only after Stern’s departure and the appointment of Richard Heffner did CARA begin to operate as described in the Program. Alongside this continuing regulative censorship it also became quickly apparent that there was a commercial advantage in G and PG ratings that would allow admittance to everyone. As a result, the pressure to accommodate increasingly explicit content in non-adult ratings became an integral feature of the system.

Throughout the chapter the focus will be on understanding how the birth of the Program related to a series of other cycles of events including, the rise and fall of liberal politics, the emergence of a new political conservatism, the growth of a new wave of US-based realist cinema in the early 1960s, the longer term restructuring of studio ownership and investment in television, developments in camera technology, the shift from studio owned projects to one-off film projects, the financial crisis in the industry in the late 1960s and the continuing local pressure for censorship.

The relationship between the Program and the renaissance in the film industry in the late 1960s, generally referred to as New Hollywood, is a complex one mediated by all of the factors noted above. What is clear is that the Program neither precipitated a new wave in American filmmaking nor did it end the desire for, or practice of, censorship. Many of the stylistic features and innovations associated with the renaissance have their origins not just in French New Wave cinema, but in the steady development of American home-grown social realist cinema during the

40 Jack Valenti, “How it all began”. The statement has been recently removed from both the MPAA and CARA web sites.
early 1960s, drawing on directors like Welles and Hitchcock. The conventional academic narrative linking the ending of censorship, the abandonment of the Production Code and the emergence of New Hollywood reflected in for example the work of Peter Biskind, Peter Krämer and Geoff King all tend to overplay the significance of 1968 and the introduction of the new Program.

The pressure for censorship, often associated with the pre-1968 history of the film industry, produced significant Supreme Court rulings during both the 1960s and 1970s. What distinguished the rulings in the two decades was the transition from Chief Justice Warren to Chief Justice Burger. Efforts undertaken by the Warren Court to constrain local attempts at censorship were significantly changed or reversed in the 1970s and in that respect the Court’s judgments were in tune with the changed social and political climate of the 1970s.

Valenti, as architect of the Program, exercised great influence on the ratings system throughout his tenure at the MPAA. He retired from the MPAA in 2004 and died in April 2007. Despite his efforts to consign the very prospect of censorship to a previous era, the new Program began to operate in a way that showed evidence of both regulative and constitutive censorship; even as it trumpeted the demise of censorship and the Production Code. That continuity had consequences both for adults, with or without children in terms of the range of topics tackled in mainstream cinema, as well as for teenagers for whom the boundaries of acceptable content was being pushed ever wider by an industry seeking their attention and their money.

Moral underpinnings

One of the earliest efforts by the MPAA’s predecessor organisation, the Motion Picture Producers and Distributors of America (MPPDA), to place controls on cinema was enacted in 1927. The MPPDA had been formed in March 1922, under the leadership of Will H. Hays who had vacated his position as Postmaster General in Washington to take on the new role. Hays characterised his position as being opposed to censorship but supportive of self-regulation. His desire was to marshal the cooperation of “right thinking men and women” in the pursuit of “clean movies.”

Fostering this demand would, as Hays saw it, help the movie industry steer a virtuous path, avoiding the pitfalls of government regulation and deliver “wholesome” entertainment to the public. These views were wholly consistent with Hays’s background as an elder of the Presbyterian Church and chimed with the desires of the progressive movement, prevalent at the turn of the century, for a social and moral uplift. One progressive organisation, the People’s Institute of New York, as part of its general concern with the “unrest of the masses” called, in 1909, for “competent broadminded censorship” of moving-picture shows to ensure “cheap, wholesome, (and) dramatic entertainment for the people.”

This call had followed a joint report from the People’s Institute and the Women’s Municipal League published in 1908 which saw the new moving pictures, if properly

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regulated, as a desirable alternative to the wayward influences of penny arcades and cheap vaudeville. 43

The drive for a moral re-birth that found traction amongst the progressives of the early twentieth century was a movement that was well underway before Adolph Zukor, Carl Laemmle and their contemporaries began exploring the potential in penny arcades and five cent theatres. 44 Riding a wave of post Civil War enthusiasm for social re-birth, Anthony Comstock, had on March 2, 1872 launched himself into the crusade that would define his life. Having discovered two of his fellow employees with indecent books, he took it upon himself to arrest the book dealer. He joined forces with the New York YMCA, and in 1873, became head of the newly formed New York Society for the Suppression of Vice. New laws were subsequently passed and Comstock in his new role as Post Office Inspector, supported by the Society, immediately set about the confiscation of books, pictures and other “immoral articles” plus the prosecution of those involved in the trade of these items. 45 In the years that followed, similar societies dedicated to the eradication of “obscene” materials were formed in many of the major urban centres in the northeast of the country. As the new medium of cinema broke into the national consciousness, attention turned to the circumstances in which it would be justifiable to censor a film, and how that could then be achieved in practice. In 1907, the city of Chicago passed an ordinance allowing the local police department to inspect all films prior to exhibition. In June 1909, the Madison Avenue based National Board of Censorship of Motion Pictures (NBCMP) began pre-screening censorship. The board was optimistic about the future of cinema describing it in 1910 as “cleaner” “more moral” and “a more intellectually versatile form of dramatics than any other form of the cheap theatre now extant.” 46

The possibility of First Amendment protections for cinema soon became a focus for national debate and was first ruled upon- and against- by the Supreme Court in the Mutual Film Corporation decision in 1915. The possibility that federal regulation might further constrain the movie industry began to loom as Congress debated the issue in 1915. A further move towards Congressional oversight in 1926 was only stopped after the express opposition of President Calvin Coolidge. 47

Increasingly, the industry became aware and fearful of encroachment unto its business territory by moral zealots, progressive reformers and federal regulators. At Hays’s first public appearance in his new role as head of the MPPDA, toastmaster John Emerson warned that the industry, if it was to succeed, needed to ward off “the blighting effects of the frightful wave of Puritanical fanaticism which has engulfed a small but exceedingly active and powerful minority of the citizens of this

46 Walter Storey, General Secretary, National Board of Censorship, letter to the Editor, New York Times, October 1, 1910, 12.
Hays immediately appointed Colonel Jason S. Joy to be his public relations “liaison officer” working with a special committee whose task was to help interpret public opinion and foster better application of motion picture output in support of citizenship and social benefit. Public opinion was however moving against Hays. By December 1922, in the wake of actor Roscoe “Fatty” Arbuckle’s trial and acquittal for rape, the public perception of an unwholesome association between sex and Hollywood forced Hays to abandon attempts to rehabilitate Arbuckle. In its editorial of December 22, the *New York Times* conceded that Arbuckle had been acquitted and was the “victim of a mischance that might have happened to any man when drunk and disorderly” but that “he had become the symbol of all the vice indulged in by movie people, or falsely imputed to movie people” and deserved no second chance. Following further public criticisms of the industry Joy, who was by then head of public relations in Los Angeles, produced a “Don’ts and Be Carefuls” list, which was adopted by the industry on June 8, 1927. The list of eleven “don’ts” was compiled from his meetings with local censorship boards and contained several proscriptions that would appear again in the 1930 Production Code, including those on sex perversion, miscegenation, sex hygiene, childbirth and children’s sex organs. The tone and content of Joy’s list suggested John Emerson’s exhortation had been ignored.

The Production Code was in truth a much more considered document. The perceived need for such a document so soon after Joy’s list can in part be traced to the negative impact of two economic factors, the investment cost needed for the introduction of sound in 1927 and the reduction of stock values and revenues following the Wall Street Crash two years later. Following low-key attempts to shape opinion earlier in the decade, for example the establishment of the Catholic Motion Picture Actors Guild in 1923, in Los Angeles, by Bishop John J. Cantwell, the Catholic Church now sought more direct influence. The investment in sound equipment and the impact of the Depression on box office takings increased the studios’ exposure to their financial backers. Seeing the trend, the Church sought to recruit bankers to help bring pressure to bear on cash starved studios, and later, even sought to solicit support from President Roosevelt for the same purpose.

If financing of sound provided an opportunity for influence it also brought a need. The addition of sound to the already hot cinematic topics of sex and gangsterism had brought new worries for those concerned about moral uplift. A Harvard Law Review assessment of motion picture censorship written in 1930 gives a good indication of the mood of the time. The Review notes the case of the Maryland Censorship Board as typical of the six states with such Boards at that point. The censors were directed to disapprove films that were “sacrilegious, obscene, indecent, inhuman or immoral” as well as those that would “tend to debase or corrupt morals or incite to crime.” The pre-licensing operated by these states was distinct from the numerous criminal prohibitions in

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51 De Grazia and Newman, *Banned Films*, 44.
53 The others were Pennsylvania, Ohio, Kansas, New York, and Virginia.
operation in many other states covering for example the depictions of obscene behaviour, felonies and boxing matches. Hays’s thinking had been influenced by these censorship boards, which directed their complaints to his New York office. Fearing further public criticism of the industry, Hays turned to an eminent Catholic publisher Martin Quigley to help draft a new Code. Quigley worked with Daniel Lord, a St. Louis University professor and church minister on a set of principles that drew on the sentiments of Joy’s list as well as earlier codes. The resulting document had two main components, a Code based on Joy’s list, written by Quigley, and a more philosophical section written by Lord entitled Reasons Supporting The Code.

The new Code was introduced in 1930, administered by a Studio Relations Committee (SRC) headed up by Joy. Geoffrey Shurlock, who worked on the administration of the Code between 1932 and 1968, later recorded that some of the prohibitions in the Code had come not from Quigley or Lord, but had been added by Hays based on the most common complaints received at his New York office. Quigley, for example, had not seen miscegenation as an issue of moral standards. Its retention in the move from the Don’ts and Be Carefuls list to the Code was, as a result of Hays’s intervention.  

The implementation of the new Code was initially patchy and after intense pressure from the Catholic Church, control of the Code passed to a new industry body, the Production Code Administration (PCA) in 1934, under the leadership of a devout Catholic reporter, Joseph Breen. In the same year, the Church created a Legion of Decency, which invited Catholics to sign up to a pledge condemning “vile and unwholesome motion moving pictures.” The Legion put further metal into its pledge by introducing, in February 1936, a set of ratings for Hollywood’s films; a move that anticipated Valenti’s Program by over thirty years. The Catholic Church exercised enormous influence over its parishioners, and a directive from the pulpit not to watch a particular film would dramatically reduce box office takings in metro areas like NYC, Chicago and Boston. As a result, two catholic members of the PCA had the role of working with the Church to secure agreements that would avoid the Legion’s worst rating- C, meaning condemned. This was always done with studio approval. With the introduction of the PCA, the moral rectitude that had been snapping at the heels of the new industry since its inception, finally closed its jaws in a grip that held firm through the social upheavals of the wars to come, hot and cold, until finally the cultural destabilisations of the early 1960s broke its hold. After Breen’s retirement, Shurlock took over as director of the PCA in 1954 and the Code underwent one further revision in 1956 before the final revision undertaken by Valenti in 1966. Both the 1930 Code and its 1956 revision included a long list of “particular applications” which guided directors on the handling of crime, sex, vulgarity, obscenity, blasphemy and profanity, costumes, religions, national feelings and a list of “repellent” (or in the 1956 revision) “special” subjects. This latter list called for discretion and restraint, and treatment “within the careful limits of good taste” for the following topics; bedroom scenes,

54 Shurlock, GS-OH, 74.
hangings and electrocutions, liquor and drinking, surgical operations and childbirth and third degree methods.  

Despite the retention of the original ethos in the 1956 revision of the Code, Shurlock was already looking for ways to reform the system. In the immediate wake of discussions in Europe about the effects of cinema on children, precipitated by the release of *The Blackboard Jungle* (1955), Shurlock began to consider classification as a solution for the US market. Following the release of *Anatomy of a Murder* (1959), directed by Otto Preminger, Shurlock discussed the possibility of a rating system with Eric Johnston, then President of the MPAA, but the idea was rejected due to their worry that theatre owners would not accept such a restriction on entry. There matters rested until Valenti’s appointment as President of the MPAA in May 1966.

Whilst Shurlock was interested in reform and whilst there were a number of high profile disputes within the industry during the 1950s that pointed to a loosening of control, the detailed documentation being prepared by the PCA in the early 1960s underlined the continuing influence of the Code even in the decade of its abandonment. In the examples of the oft-cited disputes between Otto Preminger and the PCA over *The Moon is Blue* (1953) a comedy that seemed to break the letter of the Code but hardly the spirit, and *The Man with the Golden Arm* (1955), where the depictions of drug use offered a more direct challenge, the release of both films without a PCA seal of approval indicated a weakening but not a failure of the system.

The continuing close working relationship between the Catholic Church and the PCA was well illustrated in the making of Robert Mulligan’s *To Kill a Mockingbird* (1961). At the outset, the book and working script posed problems for the PCA. In October 1961, Shurlock had written to the production team at Universal asking that phrases like “nigger lover” be somehow “toned down.” The film was finally granted a seal on October 25, 1962. However the Legion of Decency judged the film to be category A-3 (morally unobjectionable for adults). Gregory Peck, who played Atticus Finch, wrote to Father Little at the Legion, expressing shock at the A-3 rating and asked that the rating be changed to A-2 (morally unobjectionable for adults and adolescents) in order that this essentially moral tale could be seen by adolescents. Father Little eventually obliged. It was subsequently agreed that the Catholic Bulletin would publish the revised rating on January 8, 1963, on the understanding that there was to be “no indication of controversy or pressure.” Peck wrote back to Father Little on January 14, thanking him for his understanding.

Shurlock faced other difficulties with apparently morally acceptable material. The MPAA files on the making of *The Longest Day* (1961) reveal that Shurlock, on reviewing the script, was concerned about “an excessive amount of slaughter in this story” and he produced two full pages of required deletions of “damn”, “hell” and “bastards.” Representations of sex had been a core concern for the PCA since

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58 Shurlock, GS-OH, 168-170.
60 *To Kill a Mockingbird*, PCA file: Production Code Administration Archive (hereafter PCA-A), Department of Special Collections, Margaret Herrick Library, Academy of Motion Picture Arts and Sciences, Beverly Hills, California.
61 *The Longest Day*, PCA-A.
its inception and despite Shurlock’s liberalising tendencies it remained so until the end. Following a review of the script for *Mutiny on the Bounty* (1962), Shurlock had written to Robert Vogel at MGM on June 23, 1960 expressing concern about the suggestion that Captain Bligh (eventually played in the film by Trevor Howard) might be homosexual.\(^{62}\) Shurlock also provided guidance to Vogel that love making should not be portrayed as “unduly passionate, prolonged or open-mouthed.” In similar vein, Shurlock advised Hal Wallis that references to “whore” and “whorehouses” in the script for *Beckett* (1964) would need to be removed. On January 25, 1963, Shurlock suggested that “whorehouse” might be replaced by “brothel” and that a reference to “rape” be replaced with “debauched.”\(^{63}\) Perhaps the overall absurdity of the position the PCA had found itself in by the early 1960s was best, and fittingly, illustrated in the discussions between Shurlock and Stanley Kubrick on the preparations for *Dr. Strangelove* (1964). In addition to the common place requirements to tone down profanities like “hell” and damn”, Kubrick was advised that an “extreme kind of bikini” would not be allowed and that any “Pie throwing” should not involve the President.\(^{64}\)

Whilst Valenti was, upon his arrival, interested in the removal of the Production Code his initial action was not to abandon it but to revise it into a much smaller and less detailed document. The revision came in response to a series of disputes over Mike Nichols’s directorial debut *Who’s Afraid of Virginia Woolf?* (1966), Lewis Gilbert’s *Alfie* (1966) and Michelangelo Antonioni’s *Blow-Up* (1966). The dispute over *Virginia Woolf* concerned language. Drawing on Edward Albee’s successful Broadway play, the script included numerous terms that were proscribed under PCA rules. The issues had first surfaced in discussions between Shurlock and Jack Warner in 1963. On March 20, 1963, Shurlock had informed Warner that profanity and blunt sexual dialogue were major issues in the script. In a follow-up letter on March 26, Shurlock had recorded four full pages of script deletions of offensive words including “goddam”, “bastard”, “screw you” and “angel-tits.”\(^{65}\) After much reviewing and amending of scripts during the following three years, Shurlock eventually concluded he could not issue a PCA seal for the completed film.\(^{66}\) Warner asked the newly appointed Valenti for an appeal hearing on the *Virginia Woolf* decision, and this was heard by the Production Code Review Board on Friday, June 10, 1966 in New York. Prior to the hearing Shurlock had contacted Father Little at the National Catholic Office for Motion Pictures (NCOMP) office in New York to ascertain the organisation’s position on the film. Father Little informed Shurlock that the film would be categorized as A-4 (morally unobjectionable for adults with reservations). Valenti was aware of the NCOMP position when the appeal was heard- and granted. The fact that the NCOMP had not sought to apply its more stringent “Condemned” rating left Valenti with some room for maneuver on the appeal. The MPAA press release, issued on the day of the appeal indicated that the appeal had been granted in view of the fact that Albee’s play had been seen throughout the country. The press release included a caveat that no-one under eighteen would be admitted without a parent. At Valenti’s suggestion the film would be advertised as

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\(^{64}\) Shurlock, letter to Stanley Kubrick, January 21, 1963, *Dr. Strangelove*, PCA-A.


“Suggested for Mature Audiences” (SMA), although *Variety* reported that this had come as a direct result of a recommendation from the NCOMP. 67 The film went on to receive thirteen Oscar nominations and won five, a result that gave some indication of the widening gap between PCA protocols and public and critical sentiments. In its review, the *New York Times* praised the film’s forthright dealing with the play, describing it as “one of the most scathingly honest American films ever made.” 68

Only days later, Shurlock was in detailed discussion about Lewis Gilbert’s *Alfie* (1966). The film presented many challenges to the letter of the Code but of particular issue was the treatment of abortion. Shurlock eventually wrote to Howard Koch refusing a PCA seal and advised him that he could appeal to the Review Board. 69 The appeal was heard on August 2, 1966 and granted. As a result of both the *Virginia Woolf* and *Alfie* cases, a revision of the Code was issued on September 20, 1966 and the SMA label was proposed as a working solution to be applied to films on a limited basis. 70 However a further dispute between the PCA and MGM over *Blow-Up* indicated that the SMA device would not be the final solution. Having been refused a PCA seal by Shurlock due the scenes of nudity, MGM opted to side step the voluntary agreement to only release PCA approved films, by releasing *Blow-Up* via a subsidiary company. 71

While Valenti considered his options, Shurlock and the PCA continued to make the best of the situation they were in. With some relatively minor editing, the PCA were able to approve *Bonnie and Clyde* (1967). The original screenplay, which had portrayed Clyde Barrow (Warren Beatty) as bisexual, had been changed to suggest Barrow was impotent. The change was made in response to fears that American audiences would see all of the characters as “freaks.” However this was not a PCA instigated change, but one made by the director Arthur Penn. The PCA might have asked for changes anyway, but the issue was never tested with them. In a vivid illustration of how the myth of New Hollywood was already overtaking reality, *Time* magazine’s December 8, 1967 issue featured a front page still from *Bonnie and Clyde* and trumpeted the film, as well as two others, in an article titled The Shock of Freedom in Film. The article noted that they “are not what U.S. movies used to be like. They enjoy a heady new freedom from formula, convention and censorship. And they are all from Hollywood.” 72 The film did exhibit some new departures in terms of for example Penn’s juxtaposition of comedy and violence, the more relaxed approach to lighting during location shooting and the use of slow motion photography in the closing sequence. However, the re-working of the screenplay by Penn illustrated a certain censorious continuity between the Code and the emerging new style of film making in Hollywood. Penn was not making a moral point but he was acknowledging a commercial reality, and his changing of the screenplay was an early indication of the commercial self-censorship that would gather pace under the new Program.

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70 Shurlock, *GS-OH*, 201.
72 *Time*, December 8, 1967.
Chapter 2: The New Rating Program

Having approved the poster child for New Hollywood, the PCA found that the question of reform was slipping out of their hands as a result of an impending appeal before the Supreme Court. The case in question had arisen from the prosecution in Dallas of an exhibitor for allowing under sixteen-year-olds to see Louis Malle’s *Viva Maria* (1965); in contravention of a Dallas ordinance. The case was eventually appealed to the Supreme Court. The Court’s ruling, delivered by Justice Marshall on April 22, 1968, made it clear that the Dallas film classification ordinance was too widely drawn. The wording allowed the Classification Board to restrict entry to under sixteen-year-olds if the film was “likely to incite or encourage delinquency or sexual promiscuity on the part of young persons or to appeal to their prurient interest.” The deficient Dallas Code had further stated that:

> A film shall be considered as appealing to ‘prurient interest’ of young persons, if in the judgment of the Board, its calculated or dominant effect on young persons is substantially to arouse sexual desire.

The Court noted that there was a failure to define “sexual promiscuity” and other key terms in the ordinance, giving the censor a “roving commission.” The Court was concerned that the overall vagueness of the ordinance would leave it open to erratic administration. In the detail of the judgment the Court spelled out the implications of the Dallas code for the film industry as a whole. In the Court’s view a filmmaker or exhibitor faced with an unclear ordinance like this and wishing, amongst other things, to make money, would have to assess the uncertainty of losing a significant proportion of the movie going public, and might reduce that risk by making available only the most “innocuous” or the “totally inane.” The prospect, noted in the opinion, of other cities and states using the Dallas code as a model underlined the wider implications of the case for the movie industry. Significantly, the Court reaffirmed the principle of restricting access to minors. This provided the opportunity for the Dallas authorities, and others if they wished, to draft local ordinances that would pass the Supreme Court benchmark for a tightly drawn ordinance that would nonetheless restrict access for minors. Shurlock saw this as a significant turning point in the thinking of the National Association of Theatre Owners (NATO). The implication for exhibitors and the studios was that if local communities could set their own standards, then the industry would have no secure basis for projecting likely revenues for any particular film. In addition, the introduction of a myriad of local ordinances would at the very least generate endless litigation costs. Rather than have local communities restrict access, NATO would want to take control of access themselves. Shurlock realized that the *Dallas* decision meant that clear classification guidance from the studios would be important. In a further Supreme Court decision delivered by Justice Brennan the same day as the *Dallas* decision, the Court confirmed in *Ginsberg v New York* that in well defined circumstances, minors could be refused access to printed materials otherwise available for adults. The case was about the selling of a “girlie” magazine to a sixteen year old, but it had direct relevance to the movie industry. Its ruling on the legitimate restriction of access rights for children- in effect a reduced right for children under the First Amendment- effectively signaled that classification and age-based segregation of movie audiences was inevitable.

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Valenti’s task in the months that followed was not so much the crafting of a totally new approach to film regulation but an effort to catch up with, and place some control over, local communities whose actions threatened the economic stability of the exhibition market. His interest was not so much in the forestalling of censorship - a task he self-evidently failed in - as in avoiding further commercial instability for an already struggling industry. Despite the corporate restructuring in the mid-1960s that had resulted in takeovers at Universal, Paramount, Warners and United Artists, the studios were struggling to maintain their audiences and the new Program offered an effective means of controlling the marketplace.

Transition to the Program

The formal adoption of the SMA label had marked the beginning of a two year transition to the rating system which was completed with the launch of the Program. The revised Code issued in September 1966 had been substantially shorter than the Production Code and listed ten Standards for Production. The objectives of the 1966 Code were:

1. To encourage artistic expression by expanding creative freedom, and
2. To ensure that freedom which encourages the artist remains responsible and sensitive to the standards of the wider society.

These same objectives were re-stated in the November 1968 re-launch. The 1966 Standards for Production, having been slightly re-arranged to form eleven Standards, were re-issued, together with a declaration of principles stating that:

The Code is designed to keep in close harmony with the mores, culture, the moral sense and change in our society.

The 1968 version of the Standards for Production included the following:

- The basic dignity and values of human life shall be respected and upheld. Restraint shall be exercised in portraying the taking of life.
- Evil, sin, crime and wrong-doing shall not be justified.
- Special restraint shall be exercised in portraying criminal or anti-social activities in which minors participate or are involved.
- Detailed and protracted acts of brutality, cruelty, physical violence, torture and abuse shall not be presented.
- Indecent or undue exposure of the human body shall not be presented.
- Illicit sex relationships shall not be justified. Intimate sex scenes violating common standards of decency shall not be portrayed.
- Restraint and care shall be exercised in presentations dealing with sex aberrations.
- Obscene speech, gestures or movements shall not be presented. Undue profanity shall not be permitted.
- Religion shall not be demeaned.
- Words or symbols contemptuous of racial, religious or national groups, shall not be used so as to incite bigotry or hatred.
- Excessive cruelty to animals shall not be portrayed and animals shall not be treated inhumanely.

What is striking about these standards is the degree of continuity with the old Production Code that they replaced. Indeed in an accompanying MPAA information leaflet titled “What everyone should know about the Motion Picture Code and Ratings” the industry was at pains to emphasise the continuity. Adopting a question and answer format, item seven asked if the new voluntary film rating system mean that the Code no longer functioned. The answer to this was an emphatic no, and in the subsequent answer, to a question about the Standards for Production, the leaflet explained that these standards

...are a set of principles based on standards common to most communities in the USA. These standards serve as guidelines by which to measure the acceptability of films for American audiences. Although the standards are stated in broad terms, they are applied thoughtfully to each film.77

The new Standards for Production were in essence a slimmed-down version of the earlier Code documentation. The first three Standards in the 1968 list, concerning the taking of human life, crime and the portrayal of minors drew directly on a section of the old Code that dealt with crime. The Standard on human dignity and taking of life, for example, had appeared in 1956 as:

Action showing the taking of human life is to be held to the minimum. Its frequent presentation tends to lessen regard for the sacredness of life.78

The last three standards on religion, incitement to bigotry and cruelty to animals, referenced specific sections of the Code and indeed direct references to bigotry and religion had also appeared in Joy’s 1927 list. The three standards which deal with exposure of the body, illicit sex and sexual aberrations were based on extensive treatments of these topics in the Code. In the Supporting Reasons section of the Production Code the wording about sex aberrations had reflected the religious perspective and moral concerns of the writers. Lord had noted that:

Scenes of passion must be treated with an honest acknowledgement of human nature and its normal reactions. Many scenes cannot be presented without arousing dangerous emotions on the part of the immature, the young or the criminal classes.79

Two paragraphs later Lord continued to offer guidance on the handling of “impure love, the love that society has always regarded as wrong and which has been banned by divine law.” Strictures on nudity and sex perversion had also appeared in Joy’s 1927 list, and their appearance in Valenti’s list, albeit in terms that were described as ‘broad’ suggests a significant continuity with the earlier threads of religious morality rather than a discontinuity.

The purpose of that continuity between the Production Code and the new Standards for Production may have had much to do with the selling of the new Program to religious groups. To help build support from for the new proposals, Valenti engaged William Fore of the National Council of the Churches of Christ (NCCoC) and Father Sullivan, from the National Catholic Office for Motion Pictures (NCOMP) - the organisation that had replaced the Legion of Decency in 1965. The NCCoC membership was estimated at that point to be in the region of 40 million. The political

77 Motion Picture Association of America, “What everyone should know about the motion picture code and ratings” (New York: MPAA, undated).
strength of the NCOMP had certainly waned from the heyday of its predecessor organisation; nevertheless, Valenti was keen to engage support from both main religious constituencies. Henry Herx became involved as Father Sullivan's assistant, while Jim Wall, editor of the Christian Century, took on the roles of assistant to Bill Fore and chair of the Film and Broadcast Committee of the NCCoC.\(^80\) This would be the beginning of a long running association between Wall and the ratings system. Along with Bill Fore and Father Sullivan, Wall also joined a committee formed to review the operation of the ratings system.\(^81\) Wall's involvement with the MPAA continues to this day as one of two religious representatives who sit on the Appeals Board.

If the presence of religious representatives within the appeals process helped secure their commitment, it also provided a wider service for Valenti. He referred to these representatives as "witnesses" and looked upon their presence as a means of warding off public criticism and possible federal interference in the industry.\(^82\) Both the NCOMP and the NCCoC were initially predisposed to recognising American-produced art films as a new and emerging genre of expression. However, they were concerned that the industry would simply exploit the commercial possibilities of more explicit content. The challenge therefore was to find a solution that allowed art film to flourish as a means of expression but which ensured that children could be protected.\(^83\) All involved saw ratings as a viable solution. To further garner support, NATO, a co-sponsor of the new Program, actively encouraged their local members to contact members of the clergy and asked them to publicise and editorialise the new rating system in church bulletins.\(^84\)

The efforts to re-assure the religious community were however balanced to a degree by the need to bind more liberal sentiments into the new Program. Valenti’s task was made easier by the 1966 revision of the Code. Valenti was able to use this revision as a source of re-assurance to social conservatives in 1968- stating that the Code would continue- while at the same time emphasising to liberals the significance of the transition. In the immediate years before the Program, Shurlock had been at pains to defend the democratic credentials of the Production Code. In a 1960 appearance in front of a House Committee, Shurlock had described how the Code did not censor but provided "compensating moral values."\(^85\) Five years later, in a speech given to NATO members at the Ambassador Hotel in Los Angeles in 1965, Shurlock had trumpeted the Production Code as "a singularly striking example of American democracy in action."\(^86\) Shurlock’s argument, outlined later in the speech, relied on the conceit that Code self-regulation was only concerned with the treatment of a topic “in conformity with fundamental standards of morality and within the generally accepted limits of good taste” and did not seek to censor ideas. By the spring of 1968, as the industry contemplated the outcome of the Dallas decision, the collective memory of what the

\(^{80}\) Jim Wall, interview by author, Chicago, IL, November 1, 2008.
\(^{81}\) Shurlock, GS-OH, 119.
\(^{82}\) Wall, interview by author, November 1, 2008.
\(^{83}\) Ibid.
\(^{84}\) National Association of Theatre Owners, NATO News, October 1968, Vol. 1, No.4.
\(^{86}\) Geoffrey M. Shurlock, “It’s the Treatment That Counts”, speech to NATO annual convention, Ambassador Hotel, Los Angeles, October 29, 1965.
Production Code meant required some delicate re-telling that would allow reassurances to conservatives and liberals to sit side by side without cancelling each other out. This was achieved by members of the PCA embarking on a national tour promoting the “new look” 1966 Code with its Suggested for Mature Audiences tag. Albert Van Schmus and two of his PCA colleagues toured the country with a prepared speech telling audiences that the new 1966 Code offered a change from the “past purpose of mass beguilement to more progressive, democratic principles which will cultivate the maturity of the creative artist in proportion to the intelligent selectivity of the audience.”

Thus depending on the viewpoint of the observer, the 1968 Program delivered both change and continuity. Whilst there is no evidence that this came about as the result of a carefully executed plan that Valenti had initiated on his arrival at the MPAA, it is nonetheless clear that he was able to bring his considerable skills, learned as a publicity man in Texas, to bear on the evolving situation he found at the MPAA.

One final piece of continuity between the old Production Code and the new Program was of course the whiff of American exceptionalism on the question of censorship. Shurlock’s position as reflected in his comments to the House Committee and to NATO was not that far from the one adopted by Will Hays in 1922. Hays had deplored censorship but sought “wholesome” movies. Valenti, in his turn, sought artistic freedom coupled with social responsibility. Hays, Shurlock and Valenti all shared the desire to present what they were doing to their respective industry representatives, and wider audiences, not as censorship but as forms of socially responsible self-interest.

Despite Valenti’s efforts to present the Program as a clear break with the past, the evidence in the wording of the relevant documents points to a continuity between the Production Code and the Program- a continuity that was confirmed both by the transition of personnel from the PCA to CARA and by the way in which CARA began to operate. That continuity was certainly about business self-interest, about retention of control and about the use of the threat of federal censorship as a bogeyman, but it also revealed a blindspot for Valenti. What he also appeared to share with Hays and with Shurlock was an inability or unwillingness to see that his new construction might have the unintended effect of limiting free expression.

**Early days at CARA- business as usual**

The transition from the PCA to CARA was a gradual one. Of necessity, a number of PCA personnel including Shurlock, Van Schmus, and Eugene Dougherty, all long time members of the PCA, plus a recent recruit, Richard Mathison, all assumed roles within CARA. Shurlock remained as a consultant, albeit a very influential one, while leadership of the new structure passed to Dougherty.

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While CARA settled relatively quickly to its new task, some of the old PCA preoccupations began to surface. A typical day at CARA involved a 9am start. The raters would all watch two movies in the morning and take a break about 1pm. A third movie would be viewed after lunch. All raters would take notes as they went along and Van Schmus, as deputy director, would take the vote immediately after each screening and would then call the studio the same day.

Initial reaction to the new system was favorable. Just three months after the Program was launched, NATO, perhaps a little prematurely, reported in its newsletter than the new system was an overwhelming success.\(^8^9\) CARA’s own estimate, based on feedback from NATO was that during the first two years of operation they had made mistakes with only eighteen films, just 2.5% of the total rated. Despite this evidence, there were also indications of difficulty. Shurlock took the view that the new ratings would need to be viewed as a rolling science.\(^9^0\) As new films were produced and rated, CARA would be able to assess the feedback and refine its categorisations accordingly. However even with that accommodation, the working definitions of the initial G, M, R and X ratings soon began to produce difficulties. One difficulty concerned how to deal with adult-oriented films. Van Schmus recalled that Dr Jacqueline Bouhoutsos, a new member of the team and a child psychologist, had labeled the X rating as being appropriate for “garbage pictures.”\(^9^1\) In a Los Angeles Times article she amplified this view by claiming that these were films “without any kind of artistic merit.”\(^9^2\) Van Schmus immediately recognised the potential difficulties that making X a no-go area would lead to. Adult-oriented content would not disappear, and if it couldn’t go into the X category it would emerge elsewhere.

The image of adult films was not helped by publicity surrounding a soft porn non-rated film called Vixen! which was released, initially unrated, just six weeks before the new Program came into operation. CARA later assigned it an X certificate. By the end of 1969, almost half of all theatre owners would not exhibit X-rated films. The MPAA responded in January 1970 by re-aligning the age constraint for the Restricted (R) category to persons under seventeen; changed from under sixteen. Whilst bringing more films back within the scope of local theatre owners, the change also reinforced a view that X-rated films were essentially pornography. Problems also surfaced over the public’s understanding of the Mature rating and the name was changed, also in January 1970, to GP, for general audiences with parental guidance recommended. The letters were subsequently reversed to give the PG rating in February 1972.

As CARA fine-tuned the public face of the ratings the organisation also worked on developing rules of thumb that would determine ratings. Despite Shurlock’s liberal inclinations he continued to take a relatively conservative line on portrayals of sex. By his own account, this reflected his view that American film audiences remained preoccupied with portrayals of sex, in contrast to European audiences who were more relaxed about on-screen sex but more concerned about portrayals of


\(^{9^0}\) Shurlock, GS-OH, 209-210.


\(^{9^2}\) Los Angeles Times, December 20, 1968.
violence. However he was not alone and the new organisation generally followed a similar collective view of portrayals of sex. One of CARA’s earliest rating rules was the adoption of a prohibition of “fuck” in the dialogue of a PG film. One “fuck” automatically pushed the film to R. Initially nudity was not acceptable in R’s but this changed over the first few years of the system.

The commercial dimension of the new ratings also quickly became apparent. The X rating had been seen by theatre owners as a “leper” category from the outset. However producers quickly saw that any age restrictions on their films would affect box office takings. Burt Schneider, producer of *Easy Rider* (1969), the definitive road movie, petitioned unsuccessfully for a GP classification rather than an R. The studio, Columbia, quite simply expected to make more money with a GP rating. As it turned out, *Easy Rider* became a cult hit for its director Dennis Hopper. Its depiction of the counter-culture excesses of two bikers, played by Hopper and Peter Fonda, coupled with a soundtrack featuring Steppenwolf’s *Born to be Wild* have made it an enduring symbol of New Hollywood. United Artists made a similar calculation over *Alice’s Restaurant*. Initially rated R in 1969, the film was re-edited to achieve a GP rating in 1970. In the case of *Paint Your Wagon* (1969), Paramount wanted a G but a mild sex scene pushed it into M. They appealed twice and only just failed to overturn the rating. Each of the major studios had one person who was the primary interface with CARA. These studio representatives were all time served industry people, mostly with hands-on editorial experience. Their role was to understand exactly what CARA was telling them and then communicate this to the producers. In their dealings with CARA, they indicated that in general they preferred PG ratings. A G rating was generally seen as problematic in that it would discourage teenagers from attending.

Thus the studios quickly found themselves avoiding X, R and G ratings. In a very real sense the conditions had already been set that would push the industry in the direction that church representatives like Jim Wall had feared. Having adopted a graded rating system, the industry almost immediately found itself in the position of trying to appeal to all audiences from within the relatively narrow band afforded to it by the PG rating. The rating did not exclude any children, merely advising parental discretion. Without any obvious intent on Valenti’s part, this was nevertheless the beginnings of a constitutive form of censorship, where commercial self-interest essentially set working boundaries for themes and treatments in most mainstream US produced films. Stephen Farber, an intern at CARA during 1970 recorded that, even by CARA’s own account, 102 of the 325 films rated in 1969 had been re-edited to achieve the rating required by the distribution company.

In parallel with this downward pressure on ratings, the relaxation of portrayals of sex and violence, relative to what had been permitted under the Production Code, began to generate criticism from church organisations and despite Dougherty’s favourable start as head of CARA, he was replaced on July 1, 1971, by Dr Aaron Stern. According to Van Schmus, United Artists and

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93 Shurlock, *GS-OH*, 300-301.
Arthur Krim were primarily responsible for influencing Valenti on Stern’s appointment. Stern had first come into contact with the rating board indirectly in 1969. The board had made an initial assessment of a United Artists film, *Midnight Cowboy*, as an R and UA’s chairman Arthur Krim invited a psychiatrist- Aaron Stern- to give an opinion. Stern apparently convinced Krim to take an X rating instead. According to Farber, it was this involvement that both brought Stern to Valenti’s attention and led to his immediate appointment as a consultant to CARA. 98 Consistent with his advocacy of the X for *Midnight Cowboy*, Stern argued for tighter guidelines for the non-adult categories, a position which appeared to echo the more moralistic pre-occupations of the Production Code. Farber records, for example, that Stern proposed that any depictions of sex in a G or GP film should always be in the context of a loving relationship.

Despite his gifts of persuasion- or being “excessively articulate”, to use Van Schmus’s words- Stern had less success in building good working relationships with several members of the rating board, including Bouhoutsos, Mathison and new recruit Richard McKay and Bouhoutsos soon left CARA as a consequence. Stern’s management style and outright conservative views became a source of friction not just within CARA but with Jack Valenti. Stern was eventually enticed to leave CARA for a producer role at Columbia. The studio subsequently reneged on the deal and Stern successfully sued the studio. Richard Heffner, who replaced Stern in 1974, harboured the suspicion that Valenti might have finessed Stern’s exit by arranging the Columbia offer. 99

One of Stern’s rules which highlighted the continuing pre-occupation of CARA with sex called for any scenes with rhythmical movement that might be construed as “humping” to be removed. Failure to make the change would result in an X certificate. Other rules of thumb meant that the sight of a knife going in would produce a PG rating while the same knife coming back out with blood on it would result in an R rating. 100 The sight of a nipple would produce an R rating. Indeed, Heffner’s initial impression when he arrived was that CARA appeared pre-occupied with nipple counting. Stern was not just concerned about nudity, but about the damaging effects of portrayals of any kind of rebellion against the establishment. During his period as a consultant to CARA he criticised the GP rating for *The Revolutionary* (1970), not because of any violent content but because Stern felt that the theme of radical terrorism was inherently an adult topic. 101 As head of CARA, Stern sought to develop this agenda and Farber’s account certainly suggests that CARA began to re-acquire a strongly censorious approach to the rating of films during this period.

This kind of intervention represented a continuation under the rating Program of a quite explicit regulative censorship, something made easier by the continued prior submission of scripts. Heffner later calculated that of all the films rated in the two-year period before his arrival in July 1974, some 22.1% of these had first been submitted to CARA as scripts. 102 Such regression was certainly not

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98 Ibid., 85.
101 Farber, *Rating Game*, 87-88.
what Valenti had wished for in November 1968 and Stern’s interventions in the detail of the content and editing of several films almost certainly contributed to his subsequent removal by Valenti.

Beyond these internal struggles, Valenti was facing wider challenges to the new Program. The early support that he had built for CARA with the public and with the national church organisations began to wane within a couple of years, both as a result of the public reaction to some of Hollywood’s output and to wider political circumstances over which Valenti had little real control. Those wider political circumstances were essentially that the political centre of gravity of the country was moving to the right. The election of Richard Nixon in 1968 confirmed a deep rooted transformation in American politics. The emergence of this Sun Belt conservatism- a term coined by writer and campaign aide Kevin Phillips- reflected a wholesale rejection of the liberal ethos that had been building since the New Deal and it would prove to be the dominant force in US national politics in the closing quarter of the twentieth century. The Republican Party ceded ground to the Democrats in the North and East of the country and emerged stronger in the South and West. Nixon’s appointment of Warren Burger as Chief Justice in 1969 and subsequent appointment of three new Justices was only one sign of this re-alignment but it proved to be a crucial one. A case quickly came before the Court that allowed it to re-draw the definition of obscenity in a way that undid much of the liberalising work on obscenity and First Amendment rights undertaken by the Supreme Court under Earl Warren. Not for the first time, the Supreme Court was invited to make a significant impact on the development of the movie industry, and it did not miss the opportunity. The 1973 *Miller v California* decision, concerning the unsolicited mailing of sexually explicit materials, together with a series of other decisions prompted by attempts to censor individual films helped to draw a sharp divide between the pornography industry and mainstream Hollywood- a line that films like *Last Tango in Paris* (1972) had blurred. The *Miller* decision encouraged the continuing local pressure in the early and mid-1970s for censorship of film based on locally-determined standards. Valenti’s new Program did not succeed in setting the industry free of that pressure.

**Influence of the Supreme Court**

In the decade before, and in the decades after the introduction of the Program, two key censorship-related issues of interest to the movie industry emerged in a range of Supreme Court decisions. The first concerned the broader constitutional debate about where the balance should lie between liberty and equality when defining First Amendment free speech protections. The key question facing the Court was to what extent the government should be supported in its efforts to regulate against concentrations of power to ensure an uninhibited marketplace of ideas- a debate examined in chapter four. The second key issue concerned the more specific question of what constituted obscenity in cinema. In the late 1950s and 1960s the Court moved progressively to

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restrict the circumstances in which a film might be judged obscene. That situation was reversed in the 1970s.

The Court’s influence had of course long pre-dated the debate about obscenity. There had been historically significant decisions in 1915, when the industry had been denied First Amendment protections in the Mutual Film case, and in 1948, when divorcement- the separation of ownership of production and exhibition- had been forced upon the industry in the Paramount case. However from the early 1950s until the Dallas case, noted earlier, the Court had made a series of interventions that significantly affected the potential scope of regulative censorship. First Amendment rights of free speech within cinema were re-established in the 1952 Burstyn decision, and several subsequent decisions sought to limit censorship by drawing a tighter boundary around what might be considered obscene- and hence legally subject to censorship. In the Roth and Kingsley Pictures cases (respectively 1957 and 1959) the Court had, in summary, held that material with sexual content could only be considered obscene if taken as a whole the material could be seen as appealing to a prurient interest, as judged by contemporary standards (Roth), and that the portrayal of an idea- for example adultery- could not be held as obscene (Kingsley). In the Times Film case, in 1961, the Court examined the use of pre-exhibition permits in Chicago. The Court reaffirmed that movies enjoyed the free speech and free press guarantees of the First and Fourteenth Amendments. Justice Clark, who gave the opinion, concluded that the very specific issue in this case- the authority of the censor to require pre-submission of any film prior to issuing of a permit for viewing- was a different question to the standards applied by that censor. On the narrow challenge raised- that the censor simply had no right to request pre-submission- the Court upheld the right of the Chicago authorities. In reaching this conclusion the Court noted that the freedom of speech protection under the First and Fourteenth Amendments were not absolute in all circumstances for film any more than they were for other classes of speech. Four members of the Court including Chief Justice Warren and Justice Brennan, wrote a lengthy dissenting opinion in the case, even quoting sections from Clark’s opinion in Burstyn to support their view that the majority opinion had misinterpreted the case at hand and that the consequence of the decision would give “formal sanction to censorship in its purest and most far-reaching form”, resembling the licensing laws operated in the seventeenth century by the English courts to suppress dissent. Indeed the dissenting opinion saw it possible that the decision could open the way to licensing regimes for newspapers, books, television and other modes of public expression.

Despite this prognosis, and the residual difficulty created in Roth of a rather vague definition of obscenity as being something that appealed to a prurient interest, the Court continued on its trajectory of defining increasing First Amendment freedoms and limiting the scope for censorship in cinema. In 1964, Justice Brennan who had written the Roth decision returned to, and strengthened, his position on the need to test obscenity against contemporary community standards. The case concerned a theatre manager in Cleveland Ohio named Nico Jacobellis. He had been convicted in 1962 for exhibiting an obscene film- Louis Malle’s The Lovers (1958). The case was appealed to
the Supreme Court and Brennan gave the judgment on June 22, 1964. Brennan reiterated some earlier themes, asserting that treatments of sex that advocated ideas or had any redeeming social, scientific or artistic value could not be labeled as obscene. Further, and crucially the judgment concluded that it would be unworkable to support a local decision to suppress materials as this would imply a decision on behalf of the rest of the country. There was only one Constitution and rights of expression had to be upheld nationally. In other words, the common community standard had to be a national one- a position later rejected in the Miller v California case. One further aspect of the Jacobellis judgment is of particular interest given Shurlock’s interest at that time in classification as a solution to PCA difficulties with the Production Code. Justice Brennan had given implicit support for classification when he concluded that the fact that material was deemed harmful to children did not justify its total suppression.

Given the general trend in the cases from Roth to Jacobellis, the Times Film judgment in 1961, which had upheld the practice of state pre-licensing, appeared something of an anomaly and it would fall to Justice Brennan to write an opinion (in line with his dissent in Times Film) which would place severe limits on the operation of any state pre-licensing scheme. The judgment in 1965 (Freedman v Maryland) reversed a lower court decision supporting pre-licensing. The Court’s concern was that the overall effect of pre-licensing was that it presented “a danger of unduly suppressing protected expression.” Brennan laid down rules of procedure for the timely operation of any pre-licensing decision-making process, and crucially placed the burden of proof with the censor to show that the material was obscene rather than with the exhibitor to prove that it was not. This decision made the operation of state censorship boards very difficult. Several closed in the wake of Freedman, although the Maryland board which had been at the centre of the Freedman case clung on until June 1981.

Despite all of this judicial clarification of obscenity and First Amendment freedoms, the core issue of placing an exact definition on obscenity had never adequately been addressed, and the progress that had been made was based on majority decisions. An indication of this underlying difficulty emerged in 1967 when the Court sought to stop unreasonable state action in breach of First Amendment protections, by dismissing cases where the materials in question had not been shown to be obscene. This took the Court away from seeking to apply a consistent set of tests and relied instead on a majority of the Court reaching the conclusion that materials were or were not obscene, based on whatever rationale each Justice applied. This “Redrup” principle was then used as a summary reference for the disposal of later cases where the Court could (only) reach a majority opinion that there was no obscenity involved, but without actually agreeing what constituted obscenity. The case highlighted the contingent nature of the approach that Justice Brennan had pursued, and in hindsight served notice that, on the question of defining obscenity and on the circumstances within which a local community could take action to censor a film, a changed bench would reach a significantly different approach- as they duly did in the Miller case.

The *Miller* case was given its first breath of life when a restaurant owner in Newport Beach in California complained to the police about an unsolicited brochure received in the post from a seller of exotic books. The brochure advertised four sexually explicit books plus a film titled “Marital Intercourse.” The police eventually prosecuted the bookseller, Miller, using a California statute against obscenity. Upon conviction the case was appealed first to the superior court in California and ultimately to the Supreme Court. Following initial argument in January 1972, the case was eventually decided in June 1973, when the state prosecution was upheld.

The case had particular significance because of the changes in membership of the Supreme Court immediately before the case was first argued. Chief Justice Earl Warren retired from the Supreme Court in June 1969 and was replaced by a Nixon appointment—Warren Earl Burger. Prior to Burger’s appointment, Nixon, it transpired, was already taking steps to unseat more liberal members of the bench and a degree of “dirty tricks” activity was deployed against both Justices Douglas and Fortas. Action against the latter had some success and leaks from the administration about his alleged involvement in a securities fraud helped facilitate his early replacement.107 Burger’s appointment, the early departure of Justice Fortas, and the retirement of Justices Black and Harlan in 1971, both strong defenders of First Amendment rights in their judgments, signalled an overall change in orientation of the Court, but it was a rather more subtle change than perhaps many conservatives, including Nixon, had anticipated.108 The Court certainly later developed a distrust of government and an increasing unwillingness to intervene to assist what Owen Fiss has described as the preservation of equality, preferring instead to tip the balance towards individual liberty.109 However, that longer term trend aside, the question of censorship proved one of the few areas where Chief Justice Burger met, in part at least, early conservative expectations for a revision of the social ethos promulgated by the Warren Court.

Like Warren before him, Burger’s Republican Party sentiments did not translate into wholesale conservative revisionism. Far from the reversal of Warren decisions that some conservatives had hoped for, Burger supported the Warren Court approach on desegregation and in 1972 delivered two crucial libertarian decisions on domestic surveillance (*United States v United States District Court*) and capital punishment (*Furman v Georgia*). The early years of the Burger Court also included the landmark *Roe v Wade* decision on abortion rights in 1973 and the enforcement of the Special Prosecutor request to receive White House tapes and other documents in the summer of 1974 related to the developing Watergate investigation; decided in *United States v Nixon*.

The *Miller* case was the first of two that allowed the new Chief Justice to foreground a set of views that had simmered in several of his earlier minority opinions on First Amendment rights. In both *Cain v Kentucky* (1970) and *Walker v Ohio* (1970), Burger had written minority opinions when the Supreme Court reversed lower court support for censorship. In the majority opinion in *Miller* written by Burger, the allowance for protection of potentially obscene material if it had some

redeeming social value, a position that had stood since the Court’s 1957 Roth decision was rejected as a constitutional standard. In addition the guidance that material should be judged by a “contemporary community standard” first introduced by Roth and then clarified as a de jure national standard in the Jacobellis case in 1964, and reiterated in the Memoirs case in 1966, was also rejected. The Court’s ruling in the Miller case concluded that:

A work may be subject to state regulation where that work, taken as a whole, appeals to the prurient interest in sex; portrays, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and, taken as a whole, does not have serious literary, artistic, political, or scientific value.

The judgment added that the jury “may measure the essentially factual issues of prurient appeal and patent offensiveness by the standard that prevails in the forum community, and need not employ a "national standard."”

A key outcome, recorded in the detail of the judgment, was the singling out of “hard core” pornography as a form of obscene material that would not enjoy First Amendment protections. This judgment met one of Valenti’s needs in that, as a result of its foregrounding of local determinations of what might be considered obscene cinema, it effectively consigned hard-core pornography, as a mainstream attraction, to its place in history, and offered at least the prospect of an adult film market un-stigmatised by prurient sexual content. However the possibilities for endless local challenge to cinema content with communities seeking to operate their own local standards were by no means a welcome prospect for the industry.

The danger for the MPAA implicit in the invitation to local challenge provided by the judgment was underlined by a further Court decision, again penned by Burger, and delivered on the same day, June 21, 1973. The Paris Adult Theatre case concerned two films, Magic Mirror and It All Comes Out In The End, which had been exhibited in two “adult” theatres in Atlanta, Georgia. In the case, which had started its run through the courts in late 1970, the local District Attorney had alleged that the films were obscene. The Supreme Court found in support of the District Attorney and asserted that “States have a legitimate interest in regulating commerce in obscene material and its exhibition in places of public accommodation, including "adult" theatres.” The judgment continued as follows:

There is a proper state concern with safeguarding against crime and the other arguably ill effects of obscenity by prohibiting the public or commercial exhibition of obscene material. Though conclusive proof is lacking, the States may reasonably determine that a nexus does or might exist between antisocial behavior and obscene material .

In this last sentence, Burger underwrote Nixon’s earlier rejection of the President’s Commission on Obscenity and Pornography. The Commission, established under President Johnson in 1968 to assess the impact and potential dangers of exposing juveniles to sexually explicit materials, had, to the consternation of conservatives, found no proven adverse effects. Burger simply re-affirmed Nixon’s position that absence of evidence would not stand in the way of asserting local community standards of decency. Moreover, the fact that the exhibitor in this instance had taken steps to

111 PARIS ADULT THEATRE I v. SLATON, 413 U.S. 49 (1973).
ensure minors were not allowed entry to this entertainment for “consenting adults” was not a defence. In other words an “adult only” theatre could not claim the same rights of privacy that might be claimed for someone watching the same material in their own home.

Some sense of the industry reaction to the Miller decision may be inferred from comments in Variety the following Wednesday. In an article entitled “Porno Thicket Now Jungle?” the trade magazine spelt out what the restoration of the “local option” was likely to mean when it opined that “[s]ince censorship matters have always had a high-visibility factor which attracts publicity seeking campaigners for public office the Supreme Court stand should put hundreds of Mr. Cleans into their saddles.”

Just two days after Variety ran that article, the Supreme Court announced a further decision which, despite the outcome, illustrated the extent of difficulties posed to the MPAA and NATO as a result of continuing local censorship action. The case concerned a Kentucky county sheriff who on September 29, 1970 had attended a local drive-in and watched Cindy and Donna (1970), an X-rated, marijuana fuelled, teenage sex romp. At the end of the film, the sheriff arrested the manager of the theatre for exhibiting an obscene film, and further, seized the film as evidence. The case was tried and the theatre manager convicted, however the Supreme Court reversed the decision. Chief Justice Burger concluded in this instance that the seizure without a warrant was unconstitutional.

Almost exactly a year later the Court returned to hear, in Jenkins v Georgia, an appeal of a conviction in March 1972 in Georgia for the exhibition of Carnal Knowledge (1971). The film, starring Jack Nicholson and Art Garfunkel, explored attitudes to sexuality through the unfolding stories of two 1950s college room-mates as they prepared for and lived through the upheavals of the 1960s. The result of the court appeal was a qualification of the Miller doctrine. The Oscar-nominated film, directed by Mike Nichols was seen to be quite different than the “hard core” pornography that has been associated with the Miller and Paris Adult Theatre cases. This in itself was important because the film’s prosecution suggested that early optimism within the MPAA that the June 1973 rulings would only target, what was from an industry perspective, the peripheral “adult” area of pornography, might be misplaced. As a result, the Supreme Court hearing on Carnal Knowledge brought many high profile protagonists in the censorship debate together. The appeal had been brought on the basis that the original conviction preceded the Miller decision. Louis Nizer, a Kennedy administration lawyer and one-time possible contender for the role of MPAA President, argued the case for the appeal, and a brief in support of the appeal was submitted by the National Association of Theatre Owners. Charles H. Keating Jr. submitted a brief urging the upholding of the original conviction. Justice Rehnquist delivered the opinion with which Chief Justice Burger concurred. Justice Rehnquist offered a re-interpretation of the shift away from a national

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113 ROADEN v. KENTUCKY, 413 U.S. 496 (1973).
community standard announced in the *Miller* case, and argued that “[w]hat Miller makes clear is that state juries need not be instructed to apply "national standards.'”\(^{114}\) He continued:

A State may choose to define an obscenity offense in terms of "contemporary community standards" as defined in Miller without further specification . . or it may choose to define the standards in more precise geographic terms. .

This open-ended conclusion reflected Rehnquist's concern about the difficulty of arriving at a national formulation of what was considered prurient. He was equally wary of a complete free-for-all and went on to say that juries did not have “unbridled discretion in determining what is "patently offensive."”

The Court’s conclusion was that *Carnal Knowledge* could not be shown to depict sexual conduct in a patently offensive way. Whilst good news for the producers, the ruling left important questions unresolved. Justice Brennan in a concurring opinion expressed the worry that, despite the reformation of the definition of obscenity that had been advanced in *Miller*, the Court had not found in the *Jenkins* case a way to “extricate [itself] from the mire of case-by-case determinations of obscenity.”

In June 1975, the Supreme Court concluded yet another case that highlighted the problems faced by the MPAA and NATO as a result of local censorship action. In this case, a drive-in manager in Florida had been convicted in March 1973 of causing a public nuisance by exhibiting films containing nudity which were visible from the public street. The MPAA filed a brief supporting the reversal of the conviction, which the Court duly delivered. The Court concluded that:

> The ordinance by discriminating among movies solely on the basis of content has the effect of deterring drive-in theaters from showing movies containing any nudity, however innocent or even educational, and such censorship of the content of otherwise protected speech cannot be justified on the basis of the limited privacy interest of persons on the public streets, who if offended by viewing the movies can readily avert their eyes.\(^{115}\)

Yet further evidence of this appetite for censorship emerged in *Vance v Universal Amusement*, a case that dated back to October 1973. The King Arts Theatre in Texas had been informed by its landlord that it would lose its lease because the County Attorney had notified the landlord that he planned to “obtain an injunction to abate the theatre as a public nuisance in order to prevent the future showing of allegedly obscene motion pictures.”\(^{116}\) The case rumbled its way through the District Court (1975) and the US Court of Appeals (1978) both of which concluded that it was an unreasonable prior restraint to close the theatre on the basis that it might exhibit unnamed alleged obscene films in the future. Despite a plea for reversal by the redoubtable Charles H. Keating Jr., the Supreme Court upheld the views of the lower courts in its decision, announced on March 18, 1980.

> Taken as a group, all of these cases, from *Miller* to *Vance* highlighted the ongoing pressure for censorship-related action in the wake of the introduction of the Code and Rating Program and underscored the national political shift in political attitudes towards the populist conservatism noted

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\(^{115}\) ERZNOZNIK v. CITY OF JACKSONVILLE, 422 U.S. 205 (1975).

\(^{116}\) VANCE v. UNIVERSAL AMUSEMENT CO., 445 U.S. 308 (1980).
earlier. The continuing pressure for censorship also resulted in numerous other instances where local ordinances were enacted to control obscenity in films, but where the legal challenges did not reach the Supreme Court. One notable example was a case brought in Ohio by Charles H. Keating Jr. against the exhibition of *Vixen!* (1969), an offering from industry bête noire Russ Meyer. During the Second World War, Meyer had learned his cinematic skills as a US Army photographer. He had his first commercial success with *The Immoral Mr Teas* (1959). This was the first of a series of erotic soft porn independent films that trail blazed the way for more explicit pornography that would follow in the early 1970s. *Vixen!*, a story about the sexual appetites of the wife of a Canadian aircraft pilot was a signature piece of work for Meyer and a clear target for those seeking bans on what they believed to be prurient in nature. Keating’s action to restrict distribution was successful.

There were even instances of bans where action had been taken based on local reinterpretation of the new MPAA policy. For example *Where Eagles Dare* (1969) was banned in 1970 in one county in North Carolina, as part of an initiative there to ban all films not rated as suitable for general audiences. In Kenosha, Wisconsin, an ordinance asserted that all young people under eighteen, even when accompanied by their parents, could not be admitted to any MPAA R or X-rated films- in this instance *Woodstock* (1969). Both initiatives, although eventually challenged and rejected in the lower courts, provided early markers for the tenuous hold that Valenti and the MPAA had on popular demand for control of cinema content.

The Supreme Court’s influence on the question of obscenity can thus be organised into two phases- the cases from *Roth* to *Redrup* during Earl Warren’s tenure as Chief Justice, which sought to extend First Amendment protections for cinema, and those that were heard while Warren Burger was Chief Justice, from Miller to Vance, which signalled a retrenchment. Under Chief Justice Warren, the Court had followed the liberalism and national political mood of the early 1960s and after 1969, under the new Chief Justice Burger, the Court likewise followed the national swing back to conservatism and continued to follow that swing towards the neo-conservative ideologies of privatisation and small government that became established under President Reagan. By June 1973, almost five full years after the introduction of the Program, not only was the pressure for censorship unabated, but as *Variety* had pointed out, the Court had invited a posse of “Mr. Cleans” to help Nixon’s silent majority to put their stamp on public morality.

One of the conundrums that film scholars face is to adequately explain how, given this national swing in political mood and judicial effort to extend the powers of local communities to censor films, a tranche of films emerged in the late 1960s and early 1970s, loosely referred to as the New Hollywood, that were seen to be liberal in outlook and a break with the past in terms of their style, treatment and industrial context. The answer to that puzzle is a complex one but unraveling it starts with the acknowledgement that whilst the formal start of the Program and the arrival of New Hollywood were not coincidental, neither were they directly linked. De-coupling New Hollywood from Valenti’s Program allows a much earlier date to be established for some aspects of the genre and equally offers a different perspective on the subsequent decline of New Hollywood, pointing to

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the much later date of 1975 as the key transition date for the industry with respect to filmography, the nature of censorship and industry organisation and development.

New Hollywood

New Hollywood and the Hollywood Renaissance are terms that appear widely in contemporary descriptions of the creative output of the US movie industry of the late 1960s and 1970s. New Hollywood in particular has acquired almost mythic status as a byword for cinematic creativity. Both terms have been used to describe films that emerged in the immediate wake of the introduction of the new Program, while New Hollywood has been also used to mark the post-1975 revival of blockbusters typified by *Jaws* (1975), directed by Steven Spielberg and *Star Wars* (1977), directed by George Lucas. Different writers however define the terms in different ways although there is some general agreement that something significant happened to on-screen US studio output during the late 1960s and throughout the 1970s.

On closer inspection even that high level assertion requires clarification. If the off-screen transition from the PCA to CARA had a definite sense of continuity and blurring of old and new, so too did the on-screen journey. Amid the social upheavals of the late 1960s the studios were certainly looking for new films to engage the tastes of the counter-culture youth audience, but they were still very much wedded to the more traditional fare, despite the economic failings of some of these big tent productions. In early 1968, with the PCA still reviewing scripts, *The Graduate* (1967) and *Bonnie and Clyde* (1967) had shared Oscar nominations with the musicals *Camelot* (1967) and *Doctor Doolittle* (1967). The Oscar nominations that covered the first full year of operation by CARA included *The Wild Bunch* (1969), *Midnight Cowboy* (1969), *Easy Rider* (1969) and *They Shoot Horses Don't They?* (1969) - films that came to symbolise the New Hollywood, or more precisely, the Hollywood Renaissance movement. It is therefore noteworthy that *The Wild Bunch*, *Midnight Cowboy* and *Easy Rider* had all been shot in the spring and summer of 1968. Whilst *The Wild Bunch* and *Easy Rider* became iconic representations of Hollywood's new found enthusiasm for explicit violence, *Midnight Cowboy* and *They Shoot Horses* were less extreme and in many respects, *They Shoot Horses*, with its languid depiction of Depression era dance marathons is the film that, of the group, looks most like a Production Code era film. In fact it was shot in early 1969. These films shared the nomination limelight with a raft of films released in 1969 that showed no real evidence of any significant effect of the new Program, including *Anne of the Thousand Days*, *The Prime of Miss Jean Brodie*, *Hello Dolly*, and *Paint Your Wagon*. The last mentioned film featured Clint Eastwood in a singing role, although it did not appear to damage his subsequent career.

Peter Biskind’s eulogy to New Hollywood in *Easy Riders Raging Bulls*, published in 1998, sets the scene for later writers, emphasising the way in which New Hollywood’s “film culture permeated

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American life in a way that it had never had before and never has since."\(^\text{120}\) Whilst an analysis of attendance figures tells a very different story—average weekly attendances of 80 million people in 1930 were over four times greater than in 1970—what Biskind was alluding to was the media interest in an emerging group of directors distinguished by their view of themselves as auteurs.\(^\text{121}\) Biskind described the emergence of two groups of directors that became the core of this movement.\(^\text{122}\) One group, born pre-Second World War included Peter Bogdanovich, Francis Coppola, Stanley Kubrick, Dennis Hopper, William Friedkin, Alan Pakula, Mike Nichols, Arthur Penn and Robert Altman. The second group, born during or after the war—the so-called film school movie brats—included Martin Scorsese, Steven Spielberg, George Lucas and Brian De Palma. Biskind argues that films like *The Graduate* (1967) and *The Wild Bunch* (1969), together with the New Hollywood output from these directors that followed in the 1970s, came to form a body of work that was remarkable not just because of the initial commercial success of these films but because of their enduring ability to unsettle viewers. New Hollywood, according to Biskind, marked a point at which both directors and audiences sought some social meaning in film beyond the economics of production or the passive absorption of mass entertainment.\(^\text{123}\)


The early 1960s had also seen a series of impressive and challenging films from, for example, Robert Rossen, Robert Mulligan, Sidney Lumet, Stanley Kramer and John Frankenheimer. Production Code heretic Otto Preminger, who had successfully confronted Joseph Breen over *The Moon is Blue* in 1953, (a commercial success despite the lack of a PCA seal) continued this confrontational approach in *Advise and Consent* (1962), a gripping portrayal of the risks of demagoguery and limits of political morality. Complimentary themes of corrupting ambition and the threat of fascism were explored in *The Best Man* and *Seven Days in May*, both released in 1964. Issues of racism and their effects on society were examined in *The Intruder* (1962), and in the award winning *To Kill a Mockingbird* (1962) as well as in Sidney Lumet’s *The Pawnbroker* (1964) and Stanley Kramer’s *Ship of Fools* (1965). Cold War politics were aired in *The Manchurian Candidate* (1962), *Fail-Safe* (1964) and *Dr. Strangelove* (1964). In addition to these, *The Lovers*


\(^{122}\) Biskind, *Easy Riders*, 15.

\(^{123}\) Ibid., 17.
(1958), *The Anatomy of a Murder* (1959), *Viva Maria* (1965) and *Whose Afraid of Virginia Woolf?* (1966) all brought breaks with convention as they successfully sought out adult audiences. What was apparent by the mid-1960s was that there was a market for adult-oriented films and a capability both amongst European and American-born directors to deliver them. What was also significant was that by 1967, the studios were becoming increasingly reliant on non-MPAA produced materials for use in their distribution businesses. That year only 43 out of 206 PCA approved films had been produced by a member of the MPAA.\(^{124}\) All of this suggests a progressive mixing of independent and studio output and a blending of styles that straddles 1968, with some of these features in place well before the Program and some becoming pronounced afterwards.

Biskind’s search for the New in New Hollywood has been picked up by other researchers. Geoff King has sought to highlight stylistic innovations in composition, continuity editing and narrative structure as well as a shift in scope and content of films as youth rebellion and the counter-culture began to influence screenplays. King also argues that the innovation apparent in the New Hollywood productions reflected the economic necessity of finding new ways of reaching audiences in the wake of the financial crisis that gripped the industry in the late 1960s.\(^{125}\)

Taking the question of style first, the jump-cuts in *Bonnie and Clyde* (1967) the freeze frame at the end of *Butch Cassidy and the Sundance Kid* (1969) and the rapid editing in *Mean Streets* (1973) all owed a debt to French New Wave cinema and all signalled a development in style from the mainstream studio output of only a few years earlier. However, to trace these developments directly back to the New Wave misses the emergence of some key stylistic developments within the US in the late 1950s and early 1960s. An important part of this change was technical. Cameras were becoming significantly lighter and therefore more mobile. Shoulder held 16mm cameras allowed much greater flexibility in the setting up of shots. Documentary filmmakers like Robert Drew and D.A. Pennebaker were early adopters of this approach, as seen for example in *Primary* (1960) a documentary about the run-off that year for the Democratic Party nomination for President between John F Kennedy and Hubert Humphrey. Filmmakers like John Cassavetes used similar film techniques in *Shadows* (1959). Looking beyond Cassavetes and another home grown innovator, Andy Warhol, Hollywood already boasted two of the great cinematic innovators of the era, Orson Welles and Alfred Hitchcock- directors who had inspired the writers at *Cahiers du cinéma*. In *Touch of Evil* (1958) Welles broke traditional conventions of on-screen space both with his disorienting use of wide angle lenses, as well as his use of an extended opening tracking shot. Two years later, Hitchcock dispensed with conventions of narrative progression by having his female lead in *Psycho*, played by Janet Leigh, killed before the midway point of the film. Elsewhere, American directors had also provided early markers for innovative camera work in for example Elia Kazan’s *On the Waterfront* (1953) and Irvin Kershner’s *Stakeout on Dope Street* (1958).

As regards scope and content, the closure of the PCA did gradually allow more graphic portrayals of violence- although as has been noted earlier, CARA’s attitudes to portrayals of sex,

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certainly in the first five years of operation were much closer to the PCA than is suggested by
King's argument. There is in any case an aesthetic judgement here. The blood may be more
apparent at the end of *Bonnie and Clyde* than a third of the way through *Psycho* (1960) but the
greater shock value of the latter- a PCA approved film- is undeniable. It is equally undeniable
however that a longer term effect of the Program, more apparent in the 1980s and thereafter, has
been a progressive increase in the amount of very explicit violence, notable for example in films
like *Dressed to Kill* (1980) and *Scarface* (1983). As with some stylistic changes this has in part
been due to developments in special effects technology, but it also reflected a greater post-
Program tolerance both of violence and moral ambiguity.

With regard to scope, King suggests that New Hollywood tapped into two distinct themes, the
counter-culture rebellion of the late 1960s and the darker mood of paranoia as Vietnam unravelled
and Watergate was visited on the nation. Films like *The Graduate* (1967) and *Easy Rider* (1969)
are often used as exemplars of the first trend of alienation and counter-culture. David Cochran has
highlighted the risk of overstating the liberal significance of these films. He notes for example that
Peter Fonda had been concerned about the misreading of *Easy Rider*. Despite the
foregrounding of amoral and non-traditional portrayals of sex and violence, which were tailored to
their intended audiences, the film was not so much a celebration of the counter-culture as a
recognition of its failure. The second distinctive scope development- the paranoia of the early
1970s- epitomised by, for example, *The Conversation* (1974) and *The Parallax View* (1974) does
however seem to stand scrutiny as a distinct post-Program, social realist shift that was targeting
specific younger college-educated audience segments. Whilst the full extent of the crisis
precipitated by Watergate would not have been apparent when these films were first scripted, the
evidence of government malfeasance exposed in June 1971 in the publication by the *New York
Times* of sections of a defence review known as the Pentagon Papers had caused a major public
outrage. The release of films that questioned the moral authority of the government and major
corporations certainly caught the national mood. What is important about this second phase of the
renaissance however is that it emerged some four to five years after the closure of the PCA. The
shift of scope noted by King seems to have as much to do with changes in wider political culture
and belief in government, than any specific consequence of the closing of the PCA.

The economic characteristics of New Hollywood mentioned by King are arguably more specific to
the era than either the stylistic or scope related aspects discussed above. The industry hit a
particular revenue crisis in 1968, due in part to a cycle of over-production and associated price
inflation caused by the entry of the broadcast television networks into film production, and in part,
to the box office failure of several of the most expensive productions of the era. New Hollywood’s
trademark successes were relatively low budget films and amid the financial difficulties that the
industry faced in the late 1960s and early 1970s, films like *The Graduate* and *Easy Rider*
demonstrated that a new youth demographic could be successfully targeted with innovative films.

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126 Vaughn, *Freedom and Entertainment*, 110.
However that was not the immediate lesson drawn as the industry prepared for the phasing out of the Production Code. The studios continued to push out high budget musicals that struggled to cover costs including Camelot (1967), Star! (1968), Funny Girl (1968) and Paint Your Wagon (1969). What these films indicated was a desire on the part of the studios to replicate previous successes— in these instances the inspiration being The Sound of Music (1965). The difficulty with the more off-beat New Hollywood successes was that their very quirkiness— the thing that made them attractive to audiences— also made them difficult to replicate. There were some efforts at replication, as for example with Francis Ford Coppola’s short-lived American Zoetrope. This Warner Brothers funded effort to produce films for the youth market proved to be a complete failure. For the most part, however the studios continued to undertake big budget, mainstream projects such as Love Story (1970) and Fiddler on the Roof and Bedknobs and Broomsticks, both released in 1971.

In his description of the New Hollywood era, Peter Krämer similarly highlights a range of stylistic, organisational, financial and social factors. Krämer locates New Hollywood between 1967 and 1975 and draws a distinction between the more explicit treatments of sex and violence of the emerging era and the post-1945 roadshow era, extending to the mid-1960s which included a number of showcase hits directed at a wide family audience, including The Greatest Show On Earth (1952), The Ten Commandments (1956), Ben-Hur (1959) and Cleopatra (1963). Overall, Krämer describes a transition from a series of screenplays depicting a wide historical provenance, self consciously grandstanded and directed at a wide family audience, to a more contemporary and aesthetically challenging set of films speculatively targeted at a predominantly male youth audience. He argues that this transition was driven by changes in studio personnel and ownership structures as well as audience predilections, and he suggests that the studios were responding to a pent up demand for increased realism and portrayals of sex and violence within a relatively small segment of the population. Like King he also highlights the particular financial difficulties faced by the studios in the late 1960s and their consequent interest in what looked like a new source of revenues. Krämer concludes that the Production Code was rendered redundant as a result both of a relaxation of pressure from the Catholic Church in the 1960s and the gradual phasing out of local censorship boards in the early 1960s, following extensions of First Amendment free speech protections in 1952. Krämer’s reference to 1952 is presumably to the Burstyn Supreme Court decision. As noted in chapter one, the case did extend First Amendment cover to films although it did not by itself lead to the phasing out of local censorship boards. It was Justice Brennan’s formulation in the Freedman decision in 1965, discussed earlier, that really sealed the fate of the local censorship boards. That issue aside, Krämer’s assessment of the pressure for censorship ignores the significance of the Dallas decision and the weight of evidence in the sheaf of cases from Miller to Vance, which demonstrated that, one way or another, local communities were

130 Ibid., 54.  
131 Ibid., 48.
determined to exert control on what got shown at their local movie theatres. Whatever else New Hollywood was about, it did not signal the end of censorship.

Looking more broadly at the organisational changes and corporatisation of Hollywood that Krämer alludes to, there had been progressive changes since the Paramount divorcement decision in 1948. Both the loss of guaranteed distribution and the arrival of television immediately undermined the profitability of a lot of the studios' output. Only three years later, Sam Goldwyn was asking “Why should people go out and see bad pictures when they can stay at home and see them for nothing?” In the 1950s a new model of film making emerged. Two lawyers, Arthur Krim and Robert Benjamin successfully re-launched the ailing United Artists in 1951. The introduction of salary deferments and the lack of studio fixed assets at UA helped the studio to evolve a low cost project based production model. Taken together with the kind of profit share in lieu of salary deals being pioneered by Lew Wasserman at MCA these changes helped define a new post-studio working model. In combination with this change in approach, new studio finance and leadership was acquired in the 1960s as the result of a series of takeovers. Following MCA’s acquisition of Universal in 1962, Paramount was purchased by Gulf and Western in 1966 and United Artists by Transamerica in 1967. Two further deals in 1969 saw Warners bought by Kinney and MGM by Kirk Kerkorian. In addition to continuing changes of senior studio personnel, there were further amalgamations, diversifications and sell-offs in the 1970s. Both Columbia and MGM sold their studio lots in the early part of the decade and new ventures like Lions Gate and Orion were also launched. Signalling future opportunities for studio diversification, Disney World with its Magic Kingdom theme park and associated resorts opened in Florida in 1971.

All of these changes were indicative of an ongoing crisis. The films of the New Hollywood era, as it turned out, offered but did not deliver an answer to the very specific crisis that the industry hit between 1968 and 1971. The first studio to recover from this slump was Paramount, aided by the profits from Love Story during 1971 and from The Godfather (1972) which was released in March of that year. The use of pre-release marketing including book sales of the associated novels by Erich Segal and Mario Puzo would become important marketing elements of the blockbuster revival later in the decade. The Godfather was directed by Coppola- a director who features on Biskind’s list of auteurs- but it emerged not as part of any Zoetrope related effort to tap into a youth market, but rather as an inspired piece of investment and production by Robert Evans, head of Paramount Pictures. As it turned out, the return to financial success, and the kind of big-audience films that Sam Goldwyn would certainly have approved of, did not come from the auteurist innovations of New Hollywood, but from the studios themselves.

Rather than seeing New Hollywood as Biskind, King and Krämer have argued, as something stylistically new and tightly related in time to the closure of the old Code, a better characterisation of New Hollywood is that it was in fact the final part of a transition that had flickered into life in the

132 Steven Bach, Final Cut. Dreams and Disaster in the Making of Heaven’s Gate (London and Boston: Faber and Faber, 1985), 46.
134 Lewis, Hollywood v Hard Core, 151-152.
mid-1950s and gathered pace throughout the 1960s. Only the increased prevalence of on-screen violence and more naturalistic dialogue in the post-1968 era qualifies this conclusion; resulting in the more gritty realism of films like *The French Connection*, *Klute*, and *Mean Streets*. The New Hollywood renaissance was not a beginning but the beginning of the end of a particular phase of movie making. It marked the end of a longer assimilation of new styles and breaks with the conventions of classical Hollywood that had run throughout the 1960s. It also marked the end of a long first phase of re-organisation that can be traced back to the *Paramount* decision. In terms of style and themes New Hollywood has much in common with the social realist trend seen during the 1960s. The key break point is, arguably not 1968, but 1975 at the point where the revived blockbuster phase of New Hollywood exemplified by *Jaws* (1975) and *Star Wars* (1977) took hold.

At this mid-decade point, a leadership change at CARA put a former public broadcaster Richard Heffner in charge. Under Heffner, the organisation dispensed with the Code part of its heritage and later, in 1977, revised its title, becoming the Classification and Rating Administration, also denoted as CARA. With Heffner in charge, the shadow of the PCA was finally dispelled. As described in chapter three, this new CARA immediately faced new pressures as developments in video and cable changed the nature of the censorship debate. This was the beginning of a new era both of narrowcasting and of big budget, mass audience blockbusters.

The conventional film studies narrative that social liberalism and reduced pressure for censorship in the 1960s coupled with economic necessities drove both the abandonment of the Production Code and a burst of creativity that resulted in emergence of a raft of fresh looking contemporary American movies confuses causation with correlation. Both King and Krämer overlook the continuities that tie the stylistic aspects and realism of New Hollywood to earlier innovations in the US industry. Even New Hollywood’s signature violence did not wait for the abandonment of the Production Code. *Bonnie and Clyde* was released in August 1967 and while *The Wild Bunch*, with its signature slow-motion shoot-out near the end of the film was released in the summer of 1969, that date is misleading. Writing and filming were underway in late 1967 and early 1968; the subsequent delay arising from the extended period- some six months- that director Sam Peckinpah took to edit the extensive footage he had shot.

The conventional narrative has induced a category error in relation to censorship; underwriting the industry’s own conceit that censorship had been consigned to a previous era. As a result, the significance of popular pressure for censorship in the 1970s and the commercial self-censorship encouraged by the Program have both been overlooked by many contemporary film scholars.

All of that said, there were some new features apparent in the renaissance which King, Krämer, Biskind and many others have identified. Although by no means widespread, a number of films of the era which combine sharp social and political critique with a sense of moral ambiguity did reach the screen after the closure of the PCA. These films shared connections with the pre-CARA realism of the 1960s, and shared scenes of vivid violence with the wider raft of New Hollywood films. What was distinctive however in films like *The Candidate* (1972), *Executive Action* (1973), *The Parallax View* (1974) and *Three Days of the Condor* (1975) was perhaps not the broader social and political questions posed by these films- a number of PCA films had attempted such feats- but, as
suggested earlier, that the answers were at best morally ambiguous. In *The Candidate*, Senate hopeful Bill McKay, played by Robert Redford begins by talking campaign issues but finishes by selling his own image and wondering, after his election, “What do we do now?” In *Executive Action* and *The Parallax View* the political and corporate assassination squads prowl the screenplays. Both films drew on public unease about the assassination of President Kennedy to drive home their messages about the lack of public accountability in government and in major corporations. In *Three Days of the Condor* a CIA agent, also played by Redford, attempts to expose to the *New York Times* the killing of his colleagues by other Agency operatives, however he and the audience are left wondering at the end of the film if the *Times* will actually print his disclosures.135

Paradoxically, this trend in social and political critique flourished in the early 1970s just at the point where it was also obvious that the New Hollywood renaissance had been swimming against the national political tide of Sun Belt conservatism. The trend in sharp political critiques in film did not disappear after the mid 1970s and their continued presence would appear to be an enduring legacy of the New Hollywood era. A number of politically explicit movies emerged in the 1980s and 1990s including three from Oliver Stone: *Salvador* (1986), *JFK* (1991) and *Nixon* (1995). Less overtly political but similarly questioning of social and political orthodoxies were films like Mike Nichols’s *Silkwood* (1983), James L. Brook’s *Broadcast News* (1987) and Sidney Lumet’s *Running on Empty* (1988). In his review of American political films Michael Coyne also notes a resurgence of political movies in the late 1990s including *Absolute Power* (1997), *Enemy of the State* (1998) and *Arlington Road* (1999).136 However in parallel with these developments a more saccharine political outlook was also visible in films like *Dave* (1993) and *The American President* (1995). With the exception of *JFK*, discussed in chapter four, the overall impact of the continuing presence of a small number of social and political critiques was certainly overshadowed by the fantasy blockbuster cycles of Spielberg and Lucas, including for example *Raiders of the Lost Ark* (1981), *Back to the Future* (1985) and *Jurassic Park* (1993). All three films generated a procession of sequels. Producers Don Simpson and Jerry Bruckheimer also brought a series of ideologically hegemonic spectacle-rich blockbusters to cinema screens during the same era including *Flashdance* (1983) *Beverly Hills Cop* (1984) and *Top Gun* (1986). The huge success of three major horror franchises during the 1980s including *Halloween*, *Friday the 13th* and *Nightmare on Elm Street* underlined the emerging trend towards spectacle.

Although not entirely a new innovation, as evidenced by Hitchcock, the idea of the auteur emerged during the New Hollywood era as an important new factor in Hollywood’s marketing of itself, and it was a trend that grew dramatically later in the 1970s.137 Yet the cult of the renaissance auteur, even in the shape of Coppola or Scorsese, was only the visible face of the changes in Hollywood. In the background, the buy-outs and re-structurings had brought about a wholesale

change in the senior production executives at the studios and it was people like Robert Evans that set the industry's agenda for the 1970s.\textsuperscript{138}

As Valenti himself had observed, the period into which the Program arrived was one of massive societal change- a period that reverberated with the “stirrings of insurrection at all levels of society.”\textsuperscript{139} It was also a period of enormous upheaval within the industry. The introduction of the Program is an important part of that story of industry change, and its positioning in many accounts as a pivot around which the industry turned in 1968 is also perhaps inevitable, if not entirely justified. It is a hypothetical point but the fact that the PCA managed to find space for films like \textit{Virginia Woolf?} and \textit{Bonnie and Clyde} might indicate that even in the absence of the Program, the other social, technical and economic cycles that were impacting the industry might well have ensured that the films of the early 1970s would in any case have provided a stylistic and thematic reference point in the history of the industry not so very different to the one attributed to the Program.

Whilst the argument outlined above seeks to question the newness of New Hollywood and play down the prominent position given to the Program in accounts of the period, one aspect of mainstream cinema was dramatically different in the wake of the Program and that was the portrayal of sex. The transition of personnel and culture from the PCA to CARA certainly moderated such portrayals in studio produced films, but the change in the theatres was much more dramatic as independent and European produced films fed the market for explicit on-screen sex.

\subsection*{Sex}

Consistent with the Valenti's original plans for a rating regime to guide parents, he had not included an adult category. Valenti had not originally trademarked the X designation. The X rating was not in Valenti's original plan but was insisted upon by Julian Rifkin then head of the National Association of Theatre Owners (NATO).\textsuperscript{140} Rifkin's concern was that a rating category that would exclude teenagers would help reduce both the risk of lawsuits from disgruntled parents and local attempts at censorship. The concern was well founded. As the new system got underway, the negative publicity attached particularly to pornography threatened to engulf the whole system. Initially supportive, the NCcomp and the United States Catholic Conference withdrew their support and co-operation from CARA following a 1970 report on the progress of the system. As they saw it, their aspirations for a cinema that would inspire and educate had foundered in the pursuit of sensation. As Rifkin had feared, lawsuits did follow.

One of the immediate effects of the disappearance of the Production Code was that foreign and X-rated films found wider audiences across the US as independent distributors built their market share. Soft porn “skin flicks” also began finding their way into significant numbers of cinemas, at

\begin{itemize}
\item \textsuperscript{138} Maltby, \textit{Hollywood Cinema}, 176.
\item \textsuperscript{139} Jack Valenti, \textit{This Time This Place. My Life in War, The White House and Hollywood} (New York: Harcourt Books, 2007), 302.
\item \textsuperscript{140} Skinner, \textit{The Cross and The Cinema}, 172.
\end{itemize}
Attempts to restrict viewing of films with such explicit sexual content had continued to find their way to the Supreme Court, both in the immediate run up to the opening of CARA and subsequently. In 1967 *Body of a Female* (1965), a US made tale of sexual jealousy surrounding the hire of a stripper, had been banned in Chicago. The banning was finally held unconstitutional by the Supreme Court in 1968 due to inadequate review processes in the Chicago ordinance. More controversially, a Swedish film, *I am Curious – Yellow* (1967) was the subject of seizure by US Customs, and following a court ordered release, became the subject of banning orders in many cities for its explicit depictions of sexual intercourse. When a case generated by the banning of the film in Maryland finally reached the Supreme Court in 1971, the Court split evenly with the default consequence that the Maryland ban was upheld. As noted earlier, Supreme Court efforts in the late 1950s and early 1960s to achieve a common national standard by which obscenity could be judged was being overtaken by local communities imposing local standards.

Low budget films that dealt explicitly with aspects of sexuality including *The Fox* (1967), *The Wicked Die Slow* (1968), *Alimony Lovers* (1969) and Andy Warhol's *Blue Movie* (1969) and many more encountered sporadic local bans across the country. All of this controversy was a mixed blessing for Valenti and the MPAA. The spread of exploitation film into mainstream cinemas was one consequence of the loosening of the hold of the PCA, and therefore one further consequence of a purposeful deregulation intended to usher in new ideas and approaches designed to assist the studios in their rediscovery of commercially successful movies. However the attendant complaints were unwelcome and posed difficulties particularly for NATO, whose members tended to be at the sharp end of local protest and consequent box office losses. Uncertainty over the use of the X rating contributed to that difficulty. In many cases the X rating identified an unrated film with explicit sexual content, as for example in *I am Curious*. In other cases the X reflected the studios’ desire to target an adult audience. In the case of *Midnight Cowboy* (1969), with its gritty tale of life on the social fringe of New York, United Artists had decided to self-certify the film as X, for exactly that purpose. Initial efforts by the MPAA to clarify the situation by shifting the age limit on restricted films from sixteen to seventeen only seemed to reinforce the perception that X meant “dirty movie.” This helped NATO members avoid local protest but also ensured that those with a “prurient interest” would know exactly where to look.

For many social conservatives this was a symptom of much wider and more serious problem. Charles H. Keating Jr., who would, in the 1980s, find notoriety and earn a term in prison for his involvement in the Lincoln Savings collapse, was, in the 1960s, an active anti-pornography advocate. In 1965, as head of the Cincinnati based Citizens for Decent Literature, he produced a short documentary on pornographic literature called *Perversion for Profit*. Four years later in 1969, he was appointed by the newly installed President Nixon to the President’s Commission on Obscenity and Pornography. The Commission, established under President Johnson, had failed to find any proven dangers in exposing juveniles to sexually explicit materials. The final Commission...
majority report was opposed by Keating, and rejected out of hand by President Nixon. The Commission’s failure to find proven adverse effects was in Nixon’s mind no reason to ignore the need to protect public morals. Nixon would in due course follow his convictions through to appointments in the Supreme Court, which, as described earlier, had a material impact on the way the Court dealt with the *Miller* case.

Valenti’s concern about the expansion of the porn industry into the mainstream was also being felt amongst the religious organisations whose support Valenti had so carefully solicited. The temporarily silenced Catholic Church had become increasingly unhappy with the new rating arrangements and in 1971, as noted earlier, the United States Catholic Conference withdrew support for CARA. The ratings developed by the Legion of Decency and the NCOMP were retained by the organisation and used in the 1970s by the US Catholic Conference as they sought to bring pressure to bear on the industry. Although the Church never worked its way back to the prominent position it had achieved through the efforts of the Legion of Decency, it remained part of a very vocal religious constituency. This was perhaps not surprising. Underpinning the politics of the Sun Belt was a revival in interest in religion. As Patrick Allitt has noted, mainstream religion had seen a period of re-assessment in the 1960s. The re-statement of principles by the Catholic Church in Vatican 2 sought a more relativistic perspective on Catholicism that would appeal to its increasingly suburban and college-educated flock. This applied equally to the Church position on movies. The name change from the Legion of Decency to the National Catholic Office for Motion Pictures (NCOMP) in 1965 reflected a desire to remain relevant to a fast shifting debate on what was acceptable on screen. The early 1960s also saw radical Protestant theologians like Paul Van Buren and Harvey Cox articulate a vision of secularized Christianity which did not recoil at modernity and technology but welcomed it. This was a significant shift. The Protestant churches had tended to keep their distance from national politics and from each other—starkly visible in the influence of the PCA. The new “death of God” paradigm, which was at odds both with the revisionist Catholicism and with fundamentalist Protestantism sought to link church teaching directly to issues of civil rights and relief of poverty. The movement declined almost as fast as it arose but not before re-stating and reinforcing the gap between liberal Protestantism and more fundamentalist evangelical threads of opinion that would find their voice and a political direction in the decade to follow. In post Second World War America, Judaism had also seen first a liberalisation as integration into American culture had been valued and then a re-strengthening of commitments in the wake of the civil rights movement and the Six-Day War in Israel.

For different reasons each of these main groupings emerged at the end of the 1960s with no less conviction that at the beginning of the decade. When the President’s Commission on Pornography

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reported in 1970 a minority report penned by Father Morton Hill, a Jesuit priest, branded the main findings as a “Magna Carta” for pornographers. Hill headed up a New York based group called Morality in Media Inc. that had formed in 1964 as a local campaign against pornography in schools. With Father Hill as president, Morality in Media immediately began campaigning. To Valenti’s dismay, Morality in Media found plenty of targets in the movie industry to aim at. Between 1970 and 1974 a number of pornographic films had found their way into mainstream cinema. *Deep Throat* (1972), *Last Tango in Paris* (1972), *The Devil in Miss Jones* (1973) and *Emmanuelle* (1974) charted these waters. On occasion, these films exhibited the kind of high quality production values that Valenti advocated in more mainstream cinema.

*Last Tango*, directed by Bernardo Bertolucci and starring Marlon Brando and Maria Schneider, made its first appearance at the New York Film Festival on October 14, 1972 and was seen to be breaking new ground in its presentation of sex. The film later received Oscar nominations for best actor and director. Instinctively, Valenti had sought to steer Hollywood away from significant involvement with this genre. In doing so he was also forced, of necessity, to discourage the studios from encroaching onto the adjacent territory of non-prurient adult-oriented content. The MPAA’s lack of control over the use of the X designation or any agreement to introduce an “adult only” rating—something that NATO were keen on in 1970—were seen to be insurmountable. From Valenti’s perspective, any effort to clarify this problem would have taken the MPAA into the midst of the contentious area of deciding what was obscene and what was not. As chapter three demonstrates, it was a problem that arose again under Heffner’s tenure and was only eventually, if partially, resolved in 1990 with the introduction of the NC-17 rating. In 1972, Valenti’s thinking was still very much along the lines that the system was fine as it was. What he really needed was some other way of insulating the MPAA from any political collateral damage as a result of the trend in adult cinema. Fortunately for Valenti, the Supreme Court intervention in the *Miller* case did rather more than that, effectively ending the brief dalliance of mainstream cinema with pornography.

Valenti’s desire for an end to censorship had been given voice in a rating Program that was incapable of putting clear distance between adult-oriented films and those films whose content was viewed by a significant minority as morally repugnant. The expansion of sex in mainstream cinema in the early 1970s threatened the new mode of self-regulation that the industry had established. Whilst there was no serious prospect of federal regulation in 1968, Valenti was aware of a degree of support for such a move. The intervention of the Supreme Court in the *Miller* case gave local communities what they most sought—a way of moderating any exposure of their children to any prurient materials on the movie screen. In so doing, the Court kept the focus of censorship as a local issue rather than one requiring federal regulation. For Valenti this meant that the MPAA would be able to retain the commercial control and self-regulation they had engineered. Staying away from adult ratings seemed a price worth paying. The practical problems that this would create for the Program quickly became obvious and will be explored in detail in chapter three. Individual film ratings and the question over the need for reform of the rating system would provide an ongoing

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source of disagreement between Valenti and Heffner after the latter was appointed as head of CARA in 1974.

The Program in context

In introducing the Code and Rating Program Valenti sought to hitch the studios to two forces moving in opposite directions. On the one hand, a liberal, metropolitan based, baby boom youth market, politicised by civil rights and Vietnam, were interested in anything new, and preferably salacious, that they could get their hands on. Moving with them was a group of directors interested in exploring these and other new artistic directions. On the other hand, Nixon’s Sun Belt based silent majority, ambivalent about civil rights and shocked by the amorality of campus rebellions wanted to take control of a very visible part of their culture, the movies. The 1968 *Dallas* Supreme Court decision gave them that power. The decision meant that the MPAA and NATO had a commercial imperative to deliver a mechanism that could be seen to meet that need.

The early operation of the Program whilst procedurally different than the PCA, showed some continuity of attitude and approach, assisted by the transfer of several staff members from one organisation to the other. The logic of the new ratings quickly meant that studios sought to shoehorn most of their products into the relatively narrow band of the PG rating. Whilst this represented a significant constraint on content, the new Program coincided with a brief expansion in metro areas of adult sex film venues. The protests and national debate that accompanied these developments resulted in many local attempts to censor films and reinforced studio desires to stay away from adult-oriented films. The intervention of the Supreme Court in the *Miller* case both addressed the concerns of social conservatives and reduced the profile of adult sex films as well as any risk of federal regulation of the movie industry. The new Program was billed as a change from the censorship of the PCA, yet there was evidence of regulative censorship within CARA, particularly under Stern’s leadership, and evidence of constitutive censorship as the studios quickly worked out what the most financially lucrative rating would be.

The Program did succeed in preventing multiple local rating regimes. It also ushered in a trend towards more explicit portrayals of violence in mainstream cinema. It has been credited with the development of new styles of film making and of a willingness to tackle contemporary social and political issues. Some of these styles were already in the making in the mid-1960s, while some of the new social and political treatments seemed genuinely new departures. However the Program failed to develop either a workable adult rating or significant market for adult-oriented films.

A major transition did take place in the mid-1970s. CARA dispensed with its Code and became the Classification and Rating Administration. The re-structured and re-financed studios began to stabilise and produce big audience blockbusters that were compatible with the rating constraint imposed by the PG rating. Major pressures began to develop on the ratings system as the marketplace of movie theatres and drive-ins was joined by rental videos and premium cable television channels. Pressure also built from within the industry as studios sought to crank up the spectacle and violence in their films to maintain the interest of teenagers, whilst still achieving a
rating that would allow all children to enter the cinema unaccompanied. As a key transitional year, 1975 appears more important than 1968 with its associations with changes at CARA, the beginnings of narrowcasting and the emergence of the fantasy blockbuster genre.

The following chapter will explore these developments looking at how CARA gradually responded to the pressures for change through the introduction of two new ratings.
Introduction

Richard Heffner, a public broadcaster and then academic consultant for the United States Information Agency (USIA), visited Salzburg in November 1973, to give a paper on behalf of the USIA on Soviet attitudes to satellite-to-home broadcasting. During his absence, his wife Elaine took a phone call from Jack Valenti at their New York home. Valenti was looking for someone to replace Aaron Stern as head of the Classification and Rating Administration (CARA). Upon his return to the US, Heffner was persuaded to visit Stern in Los Angeles. Heffner recalls that he met Stern at LAX. Rather than walk together the few yards from the arrival terminal to the revolving restaurant at the airport, Stern insisted on driving round to the restaurant. Heffner presumed that this was so that he could enjoy the ride in Stern’s white convertible Mercedes.\textsuperscript{151} If Stern had been seeking to give Heffner a taste of the lifestyle to come, it had the opposite effect, and the latter returned to New York City with no desire whatsoever to become involved in the movie industry.

Despite Heffner’s initial disinclination, Valenti persuaded him to return to LA and take a closer look. Heffner’s initial impression of CARA was that it was pre-occupied with sex and “nipple counting” although he was also greatly attracted to the majoritarian stance in CARA’s approach with regard to the questions of access to minors and censorship. The system was in effect saying “anything goes” provided it’s rated. Drawing on a theme in Alexis de Tocqueville’s \textit{Democracy in America}, Heffner saw a need for a system that “could prevent the will of the majority turning into the tyranny of the majority.”\textsuperscript{152} His fear was that any introduction of censorship controls in cinema would sooner or later mean censorship in the classroom. He subsequently agreed to take on the role of chair of CARA and began work on July 1, 1974. It was a position he would retain for exactly twenty years.

On the first day in his new role Heffner found himself in an office in Hollywood with a notepad, box of pencils and a quiet diary. He annotated the top of his pad with the words Daily Log. He had not previously kept daily logs for his work but in that moment he initiated both a detailed research archive and a long running worry for Valenti, who on a number of later occasions sought, unsuccessfully, to secure a non-disclosure agreement with Heffner. For Heffner, however, the log was an essential management tool to keep track of the changing positions of production executives as they sought to achieve the rating they believed they needed for a particular film. He also quickly realised the importance of the log as a reference point in his discussions with Valenti and made sure that Valenti knew about the log from the outset.

This chapter will track the key changes in the rating Program during Heffner’s tenure, including the introduction of the PG-13 rating in 1984 and the adult NC-17 rating in 1990. From early in his tenure Heffner had identified a need for reform of the original 1968 Program, but it was not a perspective shared by Valenti. As a result, the relationship between Valenti and Heffner, initially one of mutual respect, became coloured by the conflicts of perspective that their two roles required.

\textsuperscript{151} Richard D. Heffner, interview by author, New York City, NY, April 14, 2008.
Valenti, as President of the Motion Picture Association of America (MPAA) was both responsible for the Program and chief industry lobbyist. Heffner’s commitment to the principles spelt out in the original Program document often put him in conflict with producers who were seeking to shoehorn increasingly contentious content into certain commercially advantageous categories—typically PG, and just occasionally, R. On numerous occasions this led to Valenti seeking special treatment for particular films, and Heffner in his turn resisting any suggestion that such special pleading could carry any weight in the determination of a rating.

Heffner’s arrival at CARA marked a significant watershed for the development of the movie industry. The wave of experimentation in styles and treatments that had grown progressively in the social realist cinema of the 1960s and culminated in the artistic expressions of the Hollywood renaissance saw a continuance in, for example, the work of directors like Martin Scorsese, Stanley Kubrick, Barry Levinson, Oliver Stone, David Lynch and Ethan and Joel Coen. However, as noted in chapter two, the more contentious aesthetic of New Hollywood gave way, for the most part, to the less contentious fantasy worlds scoped out by Spielberg and Lucas and by the spectacle rich offerings of Don Simpson and Jerry Bruckheimer. At the same time, the financial instabilities and cycle of corporate takeovers of the 1960s had reached—if not a conclusion—then a hiatus of sorts. With a more secure financial base and the re-invention of the big audience blockbuster the industry was in a good position to exploit the emerging new media of video and cable. The de-regulatory inclinations of a movie actor who became President helped the industry to exploit these markets in the US and foster and eventually achieve a level of global domination not previously seen. During the Reagan era the industry was able to reacquire exhibition interests previously severed by Paramount in 1948, as well as make further extensions of ownership into television and cable, eventually morphing into the global entertainment conglomerates that operate today. Both the growth in new channels to market—known as narrowcasting—and the emergence of a global entertainment market put new pressures on CARA. Narrowcasting tended to weaken the overall efficacy of the system as cinemas lost their primacy as an access point for movies. Whilst broadcast television operated under licensing constraints, the emergence of both videos and cable television in the mid-1970s called into question exactly what function CARA was fulfilling. The pressure for content that would both engage teenagers and translate into different cultures and media encouraged a form of film making which had less interest in narrative complexity and more interest in pushing the boundaries for spectacle and violence. The industry became interested in the intertextuality of content, meaning the ability to use, for example, films as a source for new revenue streams in video games, publishing and merchandising. The result was that the PG and R ratings became pressure points as producers sought to expand the boundaries of explicit content permitted by these ratings.

In terms of public engagement with the scope and operation of the ratings Program, the MPAA sought to limit this to regular surveys about how useful parents were finding the ratings. Any efforts by state legislatures to increase the level of public engagement through local initiatives that might have imposed additional controls on the viewing of films were seen by the industry as censorship. Indeed many such efforts were heading in that direction but in forestalling these efforts the industry
chose self-interest over public accountability. In failing to engage effectively with the public on the issues that lay beyond the ratings, including worries about the effects of on-screen violence, the sensitivities of religious groups within a secular state and questions about social responsibility, the industry followed the mood music of the New Republican Majority. It privileged the choice of the consumer at the expense of the engagement of an informed citizenry. In the terms used by Fiss, the period can be characterised as liberty’s ascent at equality’s cost.  

PG-13 and supplementary rating information

As Heffner settled into his new role he quickly discovered some of the problems that were imbedded in the way the rating system was operating. The day-to-day operation of the Production Code had reflected the accumulation of a number of interpretations of the actual Code document. Thus the requirement in the Code that “the bedroom should always be treated with respect” had been translated into rules of thumb, for example requiring that actors not be seen nude in bed and that their feet should remain on the floor in romantic entanglements. The same ethos had passed into CARA. As noted in chapter two a number of rules of thumb were developed under Aaron Stern’s leadership related to the exposure of a nipple, the use of a knife and the sight of sexually suggestive rhythmic movements. Problematic as this was for Heffner, a further more deep-seated problem was that of the assumed compliance of CARA by studio executives to the wishes of Jack Valenti.

The modus operandi at CARA called for strict anonymity for those undertaking ratings; a requirement intended to provide insulation from any pressure to give a particular rating. If the studios were unhappy with a rating they could ask the Appeals Board, chaired by Valenti and attended in the main by industry representatives, for a second opinion. However on many occasions, these demarcations which were intended to ensure impartiality were breached. Valenti repeatedly contacted Heffner after the initial rating of a film in an attempt to bring about changes in advance of any appeal. Heffner was concerned that even the knowledge that Valenti was making the call encouraged the studios to believe that “the fix was in,” thereby encouraging heightened expectations that could not be met. In the case of the appeal over the initially R-rated *Rollerball* (1975), a United Artists production, both Valenti and studio head Arthur Krim became involved. Krim wanted a PG rating and estimated that the additional economic benefit of a PG would be $5 million. Two appeals were heard on July 10 and July 24, 1975, and in both cases the Appeals Board upheld CARA’s decision. In other appeals, the studios were able to exploit other forms of influence. Following the R rating for *A Perfect World* an Appeal Board upheld the R rating on November 2, 1993. Two days later, a further appeal was heard at which the director, Clint Eastwood, made a personal attendance. This did the trick. The rating was reduced to PG-13 and

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155 Ibid., 36.
156 Ibid., 68-76.
several Appeal Board members queued at the end of the proceedings for Eastwood's autograph.\textsuperscript{157} Heffner believed that such efforts at applying influence, either via Valenti or by other means, simply weakened the system. Despite the lower rating and the presence of two of Hollywood's most high profile stars- Eastwood and Kevin Costner- the film did not fare well at the US box office, taking only $31 million. The \textit{New York Times} pondered whether the poor audience response said more about Hollywood audiences than the film itself. Whilst Costner’s performance was well received by critics, his portrayal of a child abductor was a departure from his quintessential American on-screen persona, and was therefore a stark break with audience expectations of him.\textsuperscript{158}

In important respects Valenti found that the qualities that he had sought in Heffner also proved to be sources of frustration. Heffner’s earlier achievements firstly as producer and moderator of the \textit{Open Mind}- a television programme that is still in production in New York City- and secondly as the moving force in the establishment of an educational television station in New York City in 1962 (Channel 13), made him an attractive proposition for Valenti. In assessing Valenti’s motives, Heffner recently reflected that:

\begin{quote}
He liked the fact that I had a reputation as a solid citizen who was a fairly well known and well published academic with an on-going background as a public broadcaster in the Murrow tradition… Also, no explanations were needed for any commercial broadcasting connections…for I had none.

Did he think I would be "less dogmatic" than Aaron Stern? Yes, I’m certain that he did. Even the title of my program (THE OPEN MIND) led Jack to assume that would be the case…perhaps making for fewer conflicts with the industry. Of course, here, too, there was an internal contradiction. "Less dogmatic"?…Yes. More "open-minded"?…Yes. But therefore more rational, and less likely to be "persuaded" by Jack’s and the industry’s usual bullshit. Also, "less dogmatic" meant that I would not try to impress my own will upon the raters and therefore have a command decision available for manipulation by Jack and his masters! Every "plus" seems at times to be a "minus", too, in terms of understanding Jack’s motives...no one of which was ever altruistic or purely public interest-based, I assure you.\textsuperscript{159}
\end{quote}

To help ensure his independence, Heffner deliberately insulated himself from some of the pressures arising from his role by choosing not to move to Los Angeles. He spent Tuesday to Thursday each week in LA, and worked from his New York office at other times. This avoided what he saw as the real risk of becoming socially entangled and compromised.\textsuperscript{160}

One defining aspect of the two decades during which Heffner led CARA was his advocacy of change and refinement of the system. Whilst the original M rating had been changed to GP by Dougherty in January 1970 following confusion about what “mature” signified, and the GP then reversed to PG in February 1972, no other substantive changes had been introduced. The introduction of ratings between PG and R and the provision of information about why a film had received a rating were changes that Heffner had sought from the outset. In a pre-appointment meeting with Lew Wasserman in April of 1974, Heffner had learned that Wasserman was supportive of changes to the system including more ratings and supplementary information.\textsuperscript{161}

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Despite many proposals from Heffner, he would complete ten years of his tenure before the first substantive change— the introduction of PG 13— was successfully implemented in July 1984. In an inter-office memo dated March 11, 1976, Heffner wrote to Valenti, exploring the possibility of a new rating between PG and R which would “respond to universal parental understanding that 9-year-olds and 16-year-olds simply cannot be lumped together.” Heffner’s proposal was for a new restricted category that would allow un-accompanied access to fourteen year olds and above. Heffner had commissioned research by the MPAA on the impact of the proposal in October 1975. In an inter-office memo dated October 15, 1975 from Mike Linden to Heffner, Linden makes clear the underlying concern that Valenti and the studios shared about a restrictive rating between PG and R. That concern was essentially that further restriction of the type being proposed by Heffner would substantially reduce the teenage audience. Valenti’s counter proposal was that a non-restrictive PG-Mature rating could be introduced. By March 1977 the discussion between Valenti and Heffner had broadened and discussions were underway concerning two non-restrictive PG ratings and two restrictive R ratings. Heffner’s vision was for a gentle gradation between the pre-existing PG and R ratings.

Valenti’s reasons for resisting change were complex. Heffner later formed the view that these were in part due to Valenti’s adoption of a Lyndon Johnson maxim, “if it ain’t broke don’t fix it” as well as a fear that any change would mean an admission of previous failure. However in addition to these elements, Heffner concluded that Valenti was also mindful of the Advertising Publicity (AdPub) Committee headed up by Bethlyn Hand. The AdPub Committee were concerned that the provision of additional rating information might restrict their flexibility in putting together attractive trailers for films which had not yet been rated. The committee operated as a completely separate entity from CARA, reporting directly to Valenti. Established as part of the original Program in 1968, the committee was to be guided by a list of six Standards for Advertising. These standards sought to limit the misrepresentation of a film’s character and placed specific prohibitions on the “indecent or undue exposures of the human body” and any “demeaning” of religion, race or national origin. Also prohibited, were “salacious postures and embraces” and any “over-emphasis on sex, crime, violence and brutality.” In a striking admission given the Program’s denunciation of censorship as odious, the final advertising standard stipulated that “Censorship disputes shall not be exploited or capitalized upon.” Heffner surmised that an important source of AdPub’s independence was its leader’s inside knowledge of Valenti. Bethlyn Hand had joined the MPAA as Valenti’s executive assistant in 1966, a position she held for ten years before taking the lead role at the AdPub committee in 1976. Heffner believed that Hand’s work as Valenti’s assistant meant that she would have been familiar with Valenti’s involvement in the arrangement of meetings between members of Congress and some of Hollywood’s young female hopefuls; arrangements facilitated

by one of Valenti’s key industry contacts. Heffner concluded that Hand’s knowledge of these “meetings with starlets” would have inevitably given her some additional leverage in her dealings with Valenti about advertising.

Throughout the summer of 1977, Heffner maintained pressure on Valenti to make changes to the rating system. In an impassioned five page memo sent to Valenti on June 2, 1977, Heffner proposed a stock-take of his then three years at CARA seeking guidance from Valenti on whether he should continue as head of CARA. In the circumstance where the answer to that question was yes, Heffner reiterated four proposals. Firstly he wanted to change the civil service style long-term tenures of rating board members and replace them with a set of fixed term appointments, staggered to allow a continuing transfer of expertise. His second proposal concerned the provision of additional information for ratings to assist parents to make judgements about the content of films their children might see, while the third proposal concerned the addition of a restricted rating between PG and R. Finally, Heffner proposed that the Appeals Board, which at that point had 22 members- principally industry insiders plus the two religious members and a member of the American Humane Society-, should be extended to encompass representation from “religious groups, parent groups, women’s groups etc.” This memo was followed by further formal proposals on July 25, August 12, and August 23, 1977. The July 25 memo gives additional insight into why the topic of reform was figuring prominently in discussions at that point in time. During the summer of 1977 a House of Representatives Special Sub Committee on small business problems was deliberating on the ratings system and the question of whether the system treated the big studios in exactly the same way as small independent filmmakers. Heffner’s answer in front of the Committee to that charge on July 21 was unequivocal: “[t]here are no friends or foes, no favorites or unfavorites, when it comes to rating films.” What the July 25 memo makes clear is that Valenti’s worry was that Heffner would air his differences with Valenti over rating reform in front of the Committee. Originally, Valenti had not wanted Heffner to testify but when it emerged that the Committee would subpoena Heffner if necessary, Heffner said he was not prepared to wait to be subpoenaed. Valenti travelled with Heffner to the hearings and en route announced a $10,000 salary increase, an offer that Heffner took as an invitation not to be a hostile witness.

During 1978 and 1979, Heffner made numerous further proposals for the introduction of ratings information and the introduction of an additional rating. By the autumn of 1979, proposals for a three-month trial of additional rating information began to take shape. Again however, Heffner and Valenti disagreed on the detail. Valenti was keen to limit the additional information to single words, while Heffner wanted short phrases. Heffner reasoned that a single word like “violence” would be less useful to parents and potentially more harmful to a film than a phrase like “some mild Western action.” Some limited progress on the introduction of an additional rating also emerged in April.

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165 Heffner, RDH-POM, 1988, 45.
166 Heffner, interview by author, April 14, 2008.
168 Ibid., Attachment 77-20.
1980. Valenti appeared to have accepted the need for an additional restrictive rating but was proposing to call it PG-13. Heffner was keen to press ahead but was concerned that the use of the PG-13 prefix would inevitably produce confusion with the non-restrictive PG rating. Again however the proposal stalled.

Following the earlier discussions on rating information and additional ratings matters finally seemed to get underway in the spring of 1981. In March 1981, the MPAA commenced a nine month trial in Kansas and Western Missouri that would provide parents with accompanying explanations for PG, R and X ratings. Valenti acknowledged in *Variety* in August 1981 that initial public reaction was positive. Upon conclusion of the trial, a review was undertaken. An MPAA inter-office memo dated October 21, 1981, from Robert A Franklin, Director of Research at the MPAA, to Jack Valenti, concluded that whilst the marketing of the scheme had shown some weaknesses, “there is every reason to believe that the system would meet wide acceptance on a national basis.” By December 9, 1981, Valenti was preparing to announce the trial as a success and a draft press release was prepared. However within a few days the MPAA released a statement announcing the failure of the trial. It later emerged that the real issue for the industry was that parents were using the additional information to eliminate films they deemed unsuitable for their children. Valenti took further proposals for rating information to the AdPub Committee in February and October 1984 and on both occasions, the Committee successfully resisted the move. When the question of additional information re-surfaces in early 1985, MPAA researchers were asked to look at the issue again. The researchers met on January 15. Richard Del Belso, VP Marketing Research for Warners, summarised the key outcome from that meeting in a memo to Robert Franklin, dated January 18, 1985, stating that “continued research into ratings can only lead to a "no-win" situation at least from a business point-of-view.” Put simply, the industry did not want to ask questions about what parents wanted because the answers would not be good for business. In fact, supplementary ratings information was not finally introduced for R ratings until January 1991.

As with additional ratings information, the impetus for a new rating in the spring of 1981 also eventually came off the rails in confusion. On May 8, 1981, Heffner received a draft copy of a press release from Valenti which proposed several changes including a new M (mature) rating which would exclude children under 13 years old. The same memo included proposals for reducing the age limit on R to sixteen years and the replacement of X with a new Adult- A category. The PG rating given the same week to director Steven Spielberg’s *Raiders of the Lost Ark* (1981), ostensibly a homage to Saturday morning children’s action pictures had, in Heffner’s eyes, provided a timely reminder of the need for reform. *Variety* reported that the film had “some surprisingly explicit violent action and bloodletting for a PG-rated entry.” The circumstances of

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Variety, August 11, 1981.


*Variety* June 5, 1981.
Heffner’s discovery of the proposed M rating were indicative of the difficulties he was having in engaging with Valenti on the issue. Heffner’s oral history memoranda indicate that MPAA counsel Barbara Scott had coincidentally been in Valenti’s office the previous day and had heard Valenti dictate the press release which was intended for immediate distribution. Her intervention precipitated a delay as well as the discussion that followed. Responding on May 11, Heffner made some minor suggestions but was essentially in agreement with Valenti. One week later on May 18 Heffner, together with Barbara Scott and MPAA deputy general counsel William Nix, sent a more detailed response to Valenti’s proposal. They queried the use of M and proposed R-13 instead, both for consistency with the existing system and to avoid a return to the confusion over the meaning of ‘mature’ that Dougherty had dealt with in 1970. The trio also queried Valenti’s Adult proposal and suggested instead NA, signifying no admission to anyone under seventeen years old.

Unhappy with the connotation of R, Valenti counter-proposed, on May 22, a restricted PG-13 and a revised proposal on an adult category which he labelled NC, to denote no children under the age of seventeen admitted. On June 8, however Valenti indicated at a meeting in New York City he now favoured a non-restrictive PG-13 rating. In retrospect, the May 18 memo stands as a significant missed opportunity for Heffner. The issues had been debated at that point for some seven years and it seems that as a result of the May 18 memo, Valenti’s proposal to move forward with a substantive set of changes along the lines that Heffner had been asking for became mired in a layer of detail and refinement that proved fatal for the overall proposal. By way of underscoring the extent of that missed opportunity, Heffner attempted in a memo dated June 15 to re-ignite Valenti’s interest in the M proposal; however the moment had already passed. Indeed by November of 1981 in the midst of the soon to be aborted proposals on additional rating information, all mention of any changes to the ratings themselves had ceased. There matters rested until June 1984.

News of a new rating appeared on June 20, 1984 when the New York Times carried a report that the MPAA was about to introduce a new restrictive PG-13 rating. This report appeared to be based on an unpublished draft press release from Valenti dated June 7, 1984. However on the day following the New York Times story, a memo from Valenti to the MPAA chief executives confirmed that: “[t]he PG-13 category was strongly admonitory, but not restrictive.” This position was confirmed in a joint statement from Valenti and NATO president Joel Resnick released on Thursday June 28, 1984. Parents were advised to be “sternly cautious” in deciding attendance for children under 13, but in truth, what the studios now had was an unrestricted rating that could conveniently provide shelter for material that would have otherwise been restricted under an R rating. As a footnote to Valenti’s vacillations in relation to the unrestricted PG-13 rating, it is worth noting that he proposed to Heffner on June 21, 1984 that the new rating should be applied by CARA as if it were a restricted rating. This perverse proposal would have drawn films out of the R category and made them available to all, on the incorrect premise that PG-13 was restricted to older teenagers. Heffner refused.

178 Heffner, RDH-POM, 1984, 46.
The new rating was not welcomed by the leading church organisations. On July 3, 1984, the US Catholic Conference issued a press release under the name of William Ryan, which carried a quote from another un-named official of the USCC claiming that the newly announced PG-13 rating was a "transparent ploy to exploit the young for crass commercial purposes." Ten days later, William Fore of the National Council of the Churches of Christ wrote to Valenti pointing out that in early June 1984, the proposal under discussion had been for a "restrictive PG-13" rating, and that no other notifications of impending change had been received. Fore expressed the view that "the rating will be perceived by the public as self serving" and "that it may in fact become a device for weakening the ‘R’." These comments along with the evidence of the June 7 draft press release suggest that there was a sudden change of direction in mid June. Exactly what swayed Valenti in June 1984 to abandon plans for a restrictive rating is not clear. Valenti made none of his personal papers available to the public either during or after his departure from the MPAA in 2004. What is clear is that both with the PG-13 rating and the later NC-17 rating, introduced in 1990, Valenti’s efforts to carry the support of church groups had diminished compared to the efforts deployed in 1968 when the system was launched.

The one change in ratings that Valenti was keen to implement during Heffner’s tenure came in 1985 as a result of pressure from first lady Nancy Reagan on the issue of drugs. In 1985 her “Just Say No” campaign, a 1980 election campaign initiative, had achieved a high profile, and indeed was included in a 1985 Christmas wish list prepared by Mrs. Reagan. Apparently under pressure from her directly, Valenti proposed an automatic R rating for any depiction of drug use, with no appeal. Heffner dissuaded Valenti from this inflexible solution re-iterating that CARA’s approach had always been that the theme of a film- be it drugs, sex or violence- had never taken the film into a restricted category. The treatment always needed to be assessed. Valenti accepted this counsel. To help insulate Hollywood from criticism, Valenti together with Lew Wasserman established the Entertainment Industries Council (EIC). The stated purpose of the EIC was to co-ordinate representations of health and social issues on screen. At a dinner organised by Valenti on September 26, 1985 in Los Angeles, the EIC recognised Nancy Reagan with its first annual award for work against substance abuse. Valenti also announced, during his testimony at the Senate Permanent Subcommittee on Investigations in October 1985, the formation of the Creative Coalition Against Drug Use which would award laurels to movie and television producers “whose creative effort most advance the goal of reducing the use of drugs among the young of this country.” What the proposal lacked in substance it more than made up for in deft political footwork, securing ongoing rapport with the White House, whilst avoiding the restriction that Heffner had warned against.

Heffner may have prevailed on the issue of drugs, but the entire effort to bring about reform of the ratings system was however beginning to test his health and had become a focal point for a progressive deterioration in the relationship between himself and Valenti. In a July 1, 1981

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179 Heffner, RDH-POM, 1984, 44-45.
181 Variety, October 2, 1985, 4.
182 MPAA News Digest, October 29, 1985, Vol XL, No.43.
confidential memo, Valenti reminded Heffner that he had enjoyed independence to undertake his
duties but that he had also responsibilities not to talk to the press or to write books or articles about
his experiences upon leaving CARA. The issue of writing of books or articles had come up at
Heffner’s original appointment. Heffner’s oral history papers reveal that MPAA general counsel
Sidney Schreiber had asked Heffner to sign a non-disclosure agreement. Heffner had refused in
1974, and in replying to Valenti he now refused again. For the most part, Heffner did succeed in
avoiding press contact in the early years. In seeking to abide by Valenti’s wish, he felt the result
was that the studios were able to feed stories to Variety and the Hollywood Reporter about the
ratings system as well as particular disputes without sufficient challenge from CARA. The result
was that the reputation of CARA and the system tended to suffer. Only in the later years of
Heffner’s tenure, with his relationship with Valenti already on the wane, did he become a more
frequent contributor in both the Los Angeles Times and the New York Times.

For Heffner the push for reform in these early years of his tenure was against a background of
continuing changing social mores. In the immediate wake of the closure of the Production Code, for
example, tolerance for on-screen violence certainly increased. In so far as CARA sought to judge a
film’s overall context to help weigh the impact of any particular scene, part of that context was the
social and political zeitgeist of the New Republican Majority. As noted in chapter one, the New
Republican Majority was built on two mutually unstable elements, a social conservatism and a
business and economic liberalism. When applied to the film industry the social conservative
element tended to see Hollywood as a liberal degeneracy. This produced numerous instances of
censorship related action and public protests against certain films. Some of these have already
been discussed in chapter two. The other key ingredient, business liberalism, was actually pushing
the movie industry in another direction, inviting it to exploit multi-channel markets and to pursue an
unfettered growth strategy within the US and beyond. CARA found itself in the middle of these
opposing tendencies. The one influence calling for restraint in the interests of preserving traditional
family values, the other seeking freedom to entertain- to sell whatever anyone would pay for. This
second influence not only put pressure on CARA directly, in the form of calls for greater latitude in
the PG, R and (after 1984) PG-13 rating categories, but by embracing growth, de-regulation and
narrowcasting it tended to hasten the declining efficacy of the ratings system.

Social conservatism

As noted above, the New Republican Majority included both socially conservative and
economically liberal components. In the mid-1970s, despite the Republican coalition’s difficulties
over Watergate, social conservatives successfully applied restraining pressure on CARA and the
movie industry. The effects of the economic liberal tendency became most apparent after the
election of Ronald Reagan to the Presidency in 1980.

In the heyday of the Production Code, the influence of the Protestant churches over issuers of
cinematic content had been, at best, peripheral. Leadership had always been with the Catholic

Church. In the mid-1970s that picture began to change as a range of evangelical church leaders came to prominence. Key names included Pat Robertson, Jim Bakker, James Robinson and Jerry Falwell. Of these, Falwell's political interests were to prove particularly significant. A Baptist minister from Virginia, Falwell had set up a breakaway church in 1956 and had been an early adopter of televised sermons. Federal Communications Commission (FCC) rules that had previously ensured free public service time for religious broadcasts were relaxed in the 1970s, and Falwell and his co-evangelists began buying up airtime on Sunday mornings. Evangelical in their assertive appeal for donation-giving followers and fundamental in their adherence to the literal truth of the Bible, these groups were explicitly against abortion, homosexuality, sex education and pornography and summed up their opposition as one against “secular humanism.” The result of the FCC relaxation of ownership rules was a commercialisation of religion on television with ownership primarily in the hands of groups who were not only social conservative, but in the case of Falwell and Robertson, increasingly political conservative as well. Frances Fitzgerald, writing in 1981, painted a detailed contemporary picture of this 1970s politicisation of the evangelical movement.\(^\text{184}\)

She noted that in the 1960s fundamentalists had been one of the least politicised groups in the US, but by the mid-1970s, organised local groups had begun, for example, to challenge local secular school boards. Calls for the banning of sex education, and introduction of “scientific creationism” into school curricula, were accompanied by the establishment of Christian Academies and national campaigns against abortion, gay rights and the Equal Rights Amendment. Fitzgerald’s résumé of the scope of Falwell’s areas of concern illustrate how he would become a natural fit with the emerging New Republican Majority. Falwell saw the challenges facing the US as ranging from the rising divorce rate, the feminist movement, use of drugs, sex education, “loss” of the Panama Canal, IRS interference in Christian schools, homosexuality and the “abandonment” of Taiwan.\(^\text{185}\)

In the summer of 1979, the Moral Majority emerged, under the leadership of Jerry Falwell, as one of several groups that expressed the political ambitions of a group of Washington-based socially conservative political activists including Richard Viguerie and Paul Weyrich; loosely referred to as the New Right.\(^\text{186}\) The political mobilisation of groups like Moral Majority was an important component within the Presidential election campaign that year. Marshalling this constituency into the New Right was not without its difficulties. Although the absolutism of groups like Moral Majority was an attraction to followers, the leaders of these religious groups varied in their pragmatism and political guile. Falwell developed a reputation for being able to do business with people who might at first glance have appeared as opponents. Others were less flexible. The mass suicide of almost one thousand members of the People’s Temple Full Gospel Church in Guyana in 1977 was both a tragedy and a vivid illustration of the instability inherent in the constituency courted by the New Right.\(^\text{187}\)

\(^\text{185}\) Ibid., 64.
\(^\text{186}\) Ibid., 124.
As noted in earlier chapters, the ascendency of the New Republican Majority and the emergence of Protestant fundamentalism as a potent political force brought in their wake a continuing pressure for censorship and led to a series of high profile censorship cases which travelled all the way to the Supreme Court. Following the early decade disputes involving *Cindy and Donna* (1970), *Carnal Knowledge* (1971) and the landmark 1973 *Miller v California* decision, further disputes including *Erznoznik* (1975) and *Vance* (1980) highlighted the ongoing local demand for pre-licensing of exhibition. One of the most contentious issues during this period for CARA was the use of language in films. The Policy Review Committee, a group chaired by Valenti and tasked with setting policy for CARA, had established that a motion picture had to be rated R “if it uses – even only once- any one of the harsher sexually derived words, even as an expletive.”\(^\text{188}\) Heffner felt that the rule and the absence of a restricted rating below R combined in a problematic way. In the case of *All the President’s Men* (1976), Alan Pakula’s re-creation of the unravelling by two Washington Post journalists of the Watergate cover-up, CARA initially rated the film as R because of the appearance of “fuck” at several points in the dialogue. Heffner felt that the film had a wider social significance that justified it being made available to teenagers, and argued to the MPAA Appeals Board that an exception should be made for the film. The Appeals Board could, by two thirds majority, vote to overturn a rating. They accepted Heffner’s case and the film was re-rated and released as a PG. Heffner had persuaded the producers to remove some of the fictional swearing that had been added to Bernstein and Woodward’s book; however the film still broke new ground and in Heffner’s view lowered the bar on what was acceptable in a PG film.\(^\text{189}\) The language in *All the President’s Men* and the accommodation by the Appeals Board highlighted a broader trend towards more socially realistic dialogue as compared to the more formal and constructed lexicon found in Production Code era films as recently as the early 1960s. This emerging trend could be seen in for example *Who’s Afraid of Virginia Woolf?* (1966) but became much more clear in post-1968 films such as Robert Altman’s recreation of the Korean war in *MASH* (1970) and Martin Scorsese’s evocation of small time hustlers in New York’s *Mean Streets* (1973).

A consequential difficulty faced by CARA was highlighted by a letter received by Heffner in May 1977 from Martin Pinkstaff at Mid Continent Theatre. Pinkstaff was complaining about the “plethora of obscenities” in the dialogue of *The Boxer*, an Italian production, filmed in New Mexico in 1972 and released in the US in 1975. He argued that rating the film as a PG was a misapplication of the ratings that was creating a “credibility problem between parents and the entire film industry.” In particular he observed that “[p]arents can not police our theatres; we must; and if we don’t, we face a revolt – a revolt by parents and legislators.”\(^\text{190}\) To underline his point he reported that the exhibitors of North Dakota and Minnesota had recently fought off legislative efforts that would have made it “virtually impossible to show any pictures in either state except those rated G or PG.” Heffner took the complaint seriously, and alerted Valenti. He took it more seriously when he


discovered that the film had actually been rated R. The PG rating on the print had not been sanctioned by CARA.

This kind of abuse of the system was symptomatic of the pressure that was being placed on CARA, not by social conservatives but by the actions of those within the industry who saw the ratings system as little more than an obstacle to revenues. It was a persistent problem for CARA. R certificates were incorrectly applied, before exhibition, to an un-cut version of *The Texas Chain Saw Massacre* (1974) and to an X-rated version of *I Spit on Your Grave* (1978). In the latter case, CARA fought and won a lawsuit against the distributor Jerry Gross Organisation. On March 9, 1978, Heffner wrote to Valenti highlighting this increasing problem of distributors either changing ratings or inserting them on unrated films. In tackling this problem, Heffner always had to weigh up the potential negative impact of legal action on the public standing of the ratings system. On occasion, it even suited the studios and distributors to claim ratings they did not have or ask for a more restrictive rating. Universal advertised *The Deer Hunter* (1978) as an X certificate “due to the nature of this film”, when CARA had in fact rated the film as R.  

Thus as the decade of the 1970s drew to a close, the system was coming under pressure on a number of fronts. Church groups and evangelical Protestants were concerned about profanity and sexual innuendo in films. Parents were asking for additional information about film ratings. The gap between PG and R was proving too wide for CARA to operate coherently within; a problem only partially addressed by the introduction of PG-13 in 1984. Studios were seeking the widest possible audiences and were reluctant to accept R ratings when there was any prospect at all of achieving a non-restrictive rating. Distributors were occasionally re-applying their own ratings to un-cut versions of films. However while CARA and the exhibitors found themselves under pressure from grassroots conservatism within the New Republican Majority, the business focused alter ego of that same majority was, following the election of Ronald Reagan, beginning to help the movie industry to exploit the new revenue opportunities in video and cable. This was a development that, paradoxically, tended to make it more difficult to exercise any kind of government oversight or regulative restraint on film content of the kind desired by social conservatives.

### The Gipper- man of the decade

Ronald Reagan appeared on the front cover of *Time* magazine on January 5, 1981, billed as “man of the year.” Photographed in an open-necked denim shirt and blue jeans his image exuded that ‘down home’ folksy charm that was integral to his appeal to an America public who were, by then, strung out on the seemingly interminable trauma of the Iranian hostage crisis and who were also desperately in need of feeling good again. The “Gipper” epithet, a term used by Reagan, was a reference to a role he had played in 1940, in *Knute Rockne, All American*, loosely based on a true story of an American football star of the immediate post- First World War era. It was exactly this kind of hero that the American public sought in the election of 1980. In circumstances that would be echoed at the end of the second G.W. Bush presidential term, Americans faced economic...

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recession and rising gasoline prices. Despite these circumstances, President Carter’s popular standing had made a recovery as he sought the release of the American diplomats seized as part of the Iranian revolution in November 1979. However an attempt to rescue the hostages in April 1980 turned into a high profile failure. Carter’s public standing sank once again and Reagan was duly elected the following November. The inauguration on January 20, 1981 had been preceded by a weekend of galas and dinners as the New Republican Majority occupied Washington. The festivities cost a reported $8 million with several of the events televised to allow the country at large to participate in this jamboree. Attendees and viewers were offered a further, more nuanced reason for celebration that day as the Iranians inflicted a final twist of the screw they had turned on the Carter presidency by allowing the release of the hostages just minutes after Reagan took the oath of office at the Capitol building. In all ways, it seemed, this was a new beginning.

Reagan’s ascent to the White House had been a long one. Haynes Johnson traces the beginnings of the conservative revival to a televised speech given by Reagan during Barry Goldwater’s failed 1964 presidential bid. The 1964 election of Lyndon B. Johnson proved a low water mark for the Republican Party, as they lost the presidential election and control of both the Senate and the House, but Reagan’s speech had attracted the attention of a group of self-made California businessmen intent on a revival. By 1966 this re-building of a new Sun Belt conservatism was signalled with Reagan’s election as governor of California. The ensuing national political transformation away from the Republican party’s Rockefeller establishment came of age with the presidential election of Richard Nixon in 1968, and cemented its ascendancy twelve years later with the election of President Reagan.

The 1980 presidential election signalled the point at which the Sun Belt coalition of traditional conservatism, ex-Democrat economic liberals and New Right social conservatives could all focus on the core themes of Reagan’s agenda - the rollback of taxation, of government and of communism. Crucially, Reagan’s public persona ensured that the unpalatable consequences of the agenda seemed, “nonharsh.” The next eight years introduced Americans to the Laffer Curve, junk bonds and Oliver North. Subsequent Congressional investigations found evidence of corruption and political malfeasance, although little of the blame seemed to attach itself to the President.

The de-regulatory inclinations of the Reagan administration had an enormous impact on the movie industry, providing a key opportunity for the studios to expand their business interests. One illustration of the new market realities surfaced in 1988 amid reports that Paramount had shot two endings of Fatal Attraction (1987), directed by Adrian Lyne. In this Oscar nominated pre-AIDs moral homily, Michael Douglas pays the price for a one night stand as he confronts and eventually

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192 Time, January 19, 1981.
194 Ibid., 65-66.
196 Johnson, Sleepwalking Through History, 79.
197 Ibid., 301-371.
kills his psychotic bunny-boiling lover played by Glenn Close. However in a separate version of the ending shot with the sensibilities of a Japanese audience in mind, Close commits suicide by cutting her own throat and Douglas is arrested for her murder. In this version it falls to Douglas’s wife played by Anne Archer to find evidence that will free him.198

The wider circumstances of the re-shaping of the movie industry during the decade, with the emergence both of conglomerate studios and of new technologies offering new channels to market, highlighted the increasing difficulty faced by the MPAA and CARA as access to explicit materials proliferated. More generally, the politics of the Reagan era also provided a key test of Hollywood’s credentials, both as follower and occasional critical examiner of national political trends. The economy, malefiance in government agencies and the escapades of the CIA in Central America, all provided plenty of primary material that producers and directors interested in political critiques could draw upon. A few did, although as discussed in chapter two, the decade of the 1980s is probably better remembered for films like *Raiders of the Lost Ark* (1981), and *Top Gun* (1986) than it is for *Salvador* (1986) or *Broadcast News* (1987).

The crystallisation and global export of neo-liberal economic ideology through dedicated adherents like UK Prime Minister Margaret Thatcher, and via the shaping of policies on aid and development in the Third World by institutions like the World Bank, created a larger reality and set of opportunities for American multi-national corporations seeking global dominance.199 Hollywood had, even in the studio era, looked to overseas markets for additional revenues and to indigenous film industries for production tax breaks. It was therefore only natural that the studio-owning conglomerates would strengthen their global presence when the opportunity presented itself. The gradual emergence of conglomerate structures within the movie industry had been apparent since the restructuring deals of the 1960s. Indeed, change had been underway since the 1948 Paramount case forced the studios to look for ancillary markets, including television. However the 1980s mark the point where that search begins to see the emergence of truly global companies with their own production and distribution facilities including satellite, cable and television; attempting to target global de-regulated markets. The transition was signposted by a series of amalgamation deals or proposed deals during the decade of the 1980s involving MGM CEO Kirk Kerkorian. Colombia, Fox, UA, Disney and MGM were all variously involved in and affected by these schemes. There were also smaller indications of the world to come. In early September 1985, Rupert Murdoch stood before a US federal judge in New York City and took an oath of US citizenship.200 One consequence of his citizenship was the entitlement to proceed with the purchase for two billion dollars of Metromedia. In the same month Murdoch also became the sole owner of Twentieth Century Fox.201 Elsewhere, Disney announced in 1985 that it would combine its movie and television production arms. It was the first studio to do so.202 Significant as these developments were, they were all prologue for the deal of the decade: the announcement in

198 *Variety*, November 16, 1988, 10.
201 *Variety*, September 25, 1985, 3.
202 *Variety*, October 2, 1985, 5.
September 1989 of a merger between Time Inc. and Warner Communications Inc. The new Time-Warner corporation had emerged following a hostile bid for Time by Paramount Communications Inc. (PCI). Time-Warner's holdings at the point of the merger, estimated to be worth $25 billion, included film, television, cable, music recording, theme park and book and magazine publishing interests. Amongst the most bankable assets were *Superman* and *Batman*. The other protagonist in the takeover battle, PCI, had a similar profile of cross media and distribution holdings. In the same year Sony acquired Columbia Pictures and Columbia Tri-Star from Coca Cola. The size and potential market reach of these new organisations created its own logic of self restraint as film projects had to be playable in multiple markets and workable in different formats. This market logic built steadily during the 1980s. The major US releases of the decade all fitted the blockbuster mould of apolitical family fantasy entertainment, capable of re-use in different markets and different formats. In terms of US box office earnings, the top ten films for the 1980s included all three *Indiana Jones* releases, the two *Star Wars* releases made during that decade, plus *ET* (1982), *Back to the Future* (1985) and *Batman* (1989).

Aside from the merchandising spin-offs from all of these films, each franchise was also re-worked as a theme park attraction.

A further aspect of the industry consolidation in the 1980s is worthy of note. In November 1985, the Justice Department won a Supreme Court review of a 1983 Wisconsin Federal Court decision that had found four cinema chains in the Milwaukee area guilty of anti-trust violations. The four chains, UA Communications, Kohlberg, Marcus and Capitol Service, who together controlled ninety percent of the theatres in that region, were found guilty of "splitting." Essentially this process entailed theatre chains arranging film schedules so that no two chains would be offering the same film in the same neighbourhood at any one time. The case followed another success for the Justice department in Chicago, where General Cinema Corporation had pleaded guilty to charges of splitting.

The Milwaukee, Chicago and other anti-trust actions had dated back to April 1, 1978 when the Justice Department had issued a memo in the Federal District Court in Virginia, declaring splitting a breach of antitrust rules. The consequences for exhibitors were dramatic. Unable to control their local markets, many exhibition chains were sold in the following two years. The Justice Department chose not to intervene when it became apparent that the studios were taking a major role in acquiring these businesses. For conglomerate owners of the studios this was the final frontier. They were now acquiring a strong hold on direct distribution-something the studios had lost as a result of Justice Department action in 1948- in addition to the various ancillary outlets that were being developed through investments in tape, television, cable and satellite. That there was no serious objections raised within the Justice Department about this development of what would amount to a global entertainment cartel, says much about how far the ethos of the Reagan

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205 *Variety*, November 6, 1985, 3.
208 *Variety*, January 9, 1980, 82.
presidency had moved from the New Deal era concerns that had spurred the Justice department into action in the *Paramount* case. The authorities were content that there was competition in the marketplace – the fact that it was oligopolistic in nature apparently raised no concerns.

Two broadcasting related events towards the end of the 1980s also served to highlight the ways in which the New Republican Majority was changing the terms of the debate about free speech. Although neither event directly involved the MPAA they nevertheless affected the debate on censorship. The Fairness Doctrine was abolished by the FCC in August 1987. The doctrine, a long-standing television broadcasting policy, had been formulated in 1949, and was based on much earlier efforts to regulate radio. The doctrine upheld a restraint on the ability to editorialise and offer partisan commentary in the relatively scarce bandwidth available to radio and television broadcasters. Newspapers and their editors were not seen to be constrained in the same way, because of the wider range of print outlets available to the public. The doctrine was upheld by the Supreme Court in the *Red Lion Broadcasting* decision in 1969, but a later Court review in 1984 delivered by Justice Brennan expressed the concern that the requirement for strict editorial balance in any government funded or part funded programme ran the risk of allowing “government [to] control . . . the search for political truth.” Following further court review the FCC took the decision to abandon the doctrine in 1987. There were Congressional efforts to re-introduce the doctrine that same year – although these were vetoed by President Reagan. In taking this action the FCC relied in part on the Supreme Court’s 1986 decision in *Pacific Gas & Electric Co. v Public Utilities Commission*. In that decision the Court had concluded that the company (PGE) should not have to include in its mailing a message from the Utilities Commission that PGE did not agree with – even if that message was seen to be correcting a one-sided story provided by the company to its customers. In abandoning the Fairness Doctrine, the FCC followed similar reasoning, concluding that a network provider should not be forced to carry a programme it disagreed with – even if that programme served to provide an overall balance of opinion on the network. This issue of the First Amendment rights of private companies arose again in the 1994 *Turner* Supreme Court case, as discussed in chapter four. In both the FCC action and the later *Turner* case, what was at issue was the degree to which government had or should have a regulatory oversight of the activities of media and entertainment companies. Both cases illustrated how the predominant regulatory and judicial view had shifted away from the more public interventionist stance of the 1960s where greater weight had been given to a restraint of individual freedoms in the public interest, to a position where the boundary around the government’s authority had been drawn much more tightly. The action of the FCC in abandoning the Fairness Doctrine was in marked contrast to the interventionist stance the agency had taken just over a decade earlier. In 1975 it had intervened to impose minimum standards following complaints about language used in a radio programme

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212 Ibid., 5.
featuring comedian George Carlin, broadcast on a New York radio station in October 1973.\textsuperscript{213} Whilst viewed by many at the time as censorious, the FCC eventually received support for its decision from the Supreme Court.\textsuperscript{214}

The progressive separation of media interest from public oversight was also illustrated in changes to religious broadcasting in the 1980s. In August 1988, \textit{Variety} reported that CBS planned to phase out “For Our Times” by the end of the year.\textsuperscript{215} The show was the last remaining continuously scheduled religious programme on network television. The decision underlined the transition that had taken place in the previous ten years as de-regulation had ushered in a commercialisation of religious broadcasting, pioneered by Pat Robertson and Jerry Falwell. This shift was integral to the political radicalisation of American Protestantism. However it also served to emphasise, if emphasis was needed, that by the end of the 1980s the proposition that the State had a role in ensuring some kind of overall balance in a marketplace of ideas- something it had done with television in the mid-1960s using the Corporation for Public Broadcasting- was now an idea with little support or application.

\textbf{Narrowcasting}

As the entertainment industry formulated its global ambitions amid the de-regulatory fervour of the Reagan era, the tools at hand for that task were proliferating, driven by changes in living and leisure patterns as well as technical development. Shopping malls, a postwar reinvention of the department store, began, in the mid-1970s, to offer multi-screen cinemas as part of the all enveloping shopping experience. Total numbers of indoor screens grew steadily in the US between 1970 and 1979 from 10,000 to 13,400.\textsuperscript{216} For those for whom shopping was not a preferred pastime, options for movie viewing within the home also began to change dramatically. In 1975 Home Box Office launched a nationwide satellite service, which the recently formed cable TV companies were able to draw on. This, in combination with the launch of home video recorders in 1975, began a process of home viewing on demand that would soon become integral to distribution revenues. The full impact of video was not immediately felt, nor recognised by the MPAA. With support throughout from Valenti and Wasserman, Universal City Studios and Walt Disney Productions sought to block, through legal constraint, the sale of Sony’s betamax videocassette recorders (VCRs) on the basis that selling these machines would be an infringement of copyright. The payment of a royalty fee at the point of sale was proposed by the industry as compensation. Of particular concern were machines with tuners- i.e. machines not just capable of playing pre-recorded tapes but machines capable of recording live television broadcasts for later viewing. Commenced in 1976 in California, the case against Sony was decided in October 1979 when the

\begin{itemize}
  \item FCC v. PACIFICA FOUNDATION, 438 U.S. 726 (1978).
  \item \textit{Variety}, August 17, 1988, 33.
\end{itemize}
District Court found in favour of Sony.\textsuperscript{217} However, the decision was reversed in the Appeals Court in 1981 and it was not until 1984 when the case came before the Supreme Court that the discussion was finally closed in Sony’s favour. Justice Stevens delivered the opinion on January 17, 1984. On the question of whether recording a programme for later viewing, or “time shifting” was a breach of copyright he concluded that:

\begin{quote}
there is no likelihood that time-shifting would cause nonminimal harm to the potential market for, or the value of, respondents’ copyrighted works.\textsuperscript{218}
\end{quote}

Whilst Valenti was concerned with the supposed commercial threat from video, Heffner had believed for some time that the real danger lay in the possibility that technologies like video, cable and satellite which circumvented the ratings system risked undermining public support for the principle of ratings. In an article published in the \textit{New York Times} in 1980, Heffner spelt out what he believed to be the further implication of that development:

\begin{quote}
The new home communications industry is on a collision course with the manners and morals Americans have traditionally accepted as appropriate in their homes. When they collide there is reason to fear a reaction destructive of freedom in every medium and in every area of creative expression. We cannot accept that risk.\textsuperscript{219}
\end{quote}

Heffner’s thinking was that those involved in narrowcasting would not be subject to the same sense of self-restraint that had guided network television clear of highly contentious content. He reasoned that the American psyche coped with the incompatibilities of family values and liberal entertainment because the presence of an industry control mechanism in the form of CARA, coupled with the necessity of coming to a theatre to see a movie, ensured a separation between worldly pursuits and the sanctity of the home. Delivery of this material direct to the home via tape and pay cable services would risk increased scrutiny and pressure for controls:

\begin{quote}
[w]e run the risk that angry Americans will devise formulas of protest and techniques of self-protection that could prove over-reactive and dangerously hostile to free expression and free choice for all.\textsuperscript{220}
\end{quote}

Heffner did not initially advocate the application of the movie ratings system to the new channels but he did believe that some kind of self-regulatory effort to provide more information about programming content was needed.

For those who were advocating restraint- or censorship- there was already corroborating evidence available. The Surgeon General’s Scientific Advisory Committee on Television and Social Behaviour had published a report in 1972 suggesting links between exposure to violence on screen and subsequent violent behaviour. Ten years later the National Institute for Mental Health published further corroborating evidence of a linkage. Against this background, Heffner was faced with a series of challenges from filmmakers who were offering increasingly explicit scenes of violence. Brian De Palma’s \textit{Dressed to Kill} (1980) contained graphic scenes of murder and was initially rated X and then edited to an R. The US Catholic Conference had published a Film and

\textsuperscript{217} \textit{Variety}, October 3, 1979, 1.
\textsuperscript{218} SONY CORP. v. UNIVERSAL CITY STUDIOS, INC., 464 U.S. 417 (1984).
\textsuperscript{220} Ibid.
Broadcasting Review in August of 1980 in which the film was rated as condemned.\textsuperscript{221} The MPAA also received criticism for giving R ratings to portrayals of violence against women in films like \textit{I Spit on Your Grave} (1978) and \textit{Friday 13}\textsuperscript{th} (1980).\textsuperscript{222} Adding to the difficulties of Heffner and CARA was further evidence in 1980 of independents distributing horror films such as \textit{Dawn of the Dead} (1978) without an MPAA rating.\textsuperscript{223} In looking for a solution to the specific issue of unrated video cassettes Valenti was pre-disposed to having video dealers develop their own system of rating. However in August 1987, Heffner proposed and Valenti accepted that the adoption of the MPAA system made most sense. This proposal was formally accepted by the Video Software dealers Association in October 1987.\textsuperscript{224}

Given the constraints in the rating system, the MPAA found itself in a dilemma as to how best to deal with controversial film making that was also proving to be good box office business. \textit{Variety} estimated that box office revenues from horror and sci-fi had by 1980 reached approximately 35% of total revenues.\textsuperscript{225} Despite this, the industry could be in no doubt of the difficulties that they were stoking. News coverage of violence against women was particularly prominent in 1980 following the conviction that year of serial killer Ted Bundy for the murder of at least thirty women. Pornography was alleged to have played a factor in Bundy’s actions and Bundy later claimed, in a pre-execution television interview in Florida in 1989, that pornography had contributed to his disposition.\textsuperscript{226} The release of \textit{Dressed to Kill} marked a key stage in the mobilisation of the feminist movement against the depiction of such violence in film. Campaign momentum had been building since the release in 1976 of \textit{Snuff} in which an actress had allegedly been filmed actually being killed during a murder scene.\textsuperscript{227} Following the July release of \textit{Dressed to Kill}, feminist protesters found themselves in the invidious position of apparently endorsing censorship while contributing to the commercial success of the film through the press coverage of the controversy. The credibility of the protestors was further undermined by the critical acclaim the film received. Pauline Kael, for example, wrote effusively about De Palma and the film, noting that “[i]n his hands, the thriller form is capable of expressing almost everything- comedy, satire, sex, fantasies, primal emotions.”\textsuperscript{228}

Whilst feminists quickly learned the negative lessons associated with protest, a division opened and widened throughout the 1980s between those like Catherine MacKinnon who sought to legislate against pornography and those who saw the wider risk of censorship invited by such legislation as too great a price to pay.\textsuperscript{229}

In retrospect Heffner may have under-estimated the tolerance of Americans for explicit content being fed directly into their homes but he was correct about the direction the industry was heading in. By the close of 1984, an estimated fifteen million households already had purchased VCRs. By

\begin{footnotesize}
\textsuperscript{221} \textit{Variety}, August 6, 1980, 6.
\textsuperscript{222} \textit{Variety}, November 12, 1980, 6.
\textsuperscript{223} \textit{Variety}, September 10, 1980, 7.
\textsuperscript{225} \textit{Variety}, November 19, 1980, 5.
\textsuperscript{226} \textit{New Yorker}, February 27,1989, 23-24.
\textsuperscript{228} \textit{New Yorker}, August 4,1980, 68-71.
\textsuperscript{229} Lyons, The New Censors, 80.
\end{footnotesize}

the close of the decade that number had risen to over sixty-two million. Paralleling this growth was the retail of pre-recorded video tapes. From an estimated base of three million sales in 1980 that annual total had risen to almost 204 million tapes in 1989.\(^{230}\) Given the controversies in the public arena surrounding films like *Dressed to Kill*, it is perhaps surprising that a significant proportion of these pre-recorded tapes were hard core pornography. For the segment of the movie industry that worked in porn, retailing of videos was a much less troublesome business than the foray into art house cinemas in the early 1970s had been. In January 1990, *Variety* reported that adult video sales had recovered following the high profile attempts at law enforcement in the wake of the Meese Commission. In 1989 some $395 million of hard core adult video material had been sold, amounting to 20% of total sales.\(^{231}\) Four years later similar trends were reported in the sales of erotic pornographic CD ROM computer games.\(^{232}\) Cable television, likewise, which had seen gradual developments during the 1970s, saw rapid growth during the 1980s. In 1980 some seventeen million homes had basic cable. By 1989, that number had risen to over 52 million homes. Over twenty-seven million of these were pay cable subscribers, predominantly buying a range of premium adult materials.\(^{233}\)

Despite the emergence of an increasingly differentiated entertainment market in the US, the success of a first run wide audience cinematic release remained as important to the studios as in any earlier era. A successful new release could still mean substantial revenues. What was also becoming clear was that the publicity and press coverage associated with a cinema release were important ingredients in the pump priming required in other markets, whether that was sales of video copies of the films or toys and other merchandise associated with the film. For important commercial reasons, the emergence of narrowcasting had the duel negative effect of challenging the efficacy of the overall rating system, because of the availability of new points of access to explicit content, whilst putting pressure on the rating categories themselves as the studios sought increased spectacle and violence in the wide audience categories of PG and in due course PG-13. Allied to this development, the studios also found that there was a video and in due course DVD market for “director’s cut” versions of their mainstream films. Un-stated in the sales pitch was the message that audiences could have what they had been denied by CARA in the theatrical release. All of these developments focused attention on the rating decisions taken by CARA and as a consequence, day-to-day disputes at CARA were prone to become very heated.

**Ratings disputes**

Whilst strategic reform was a central part of Heffner’s agenda, he found that the day to day work of dealing with the studios threw up its own challenges and when bigger proposals for change seemed to stall there was little time for reflection. The dispute over *Cruising* (1980) provides a

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\(^{231}\) *Variety*, January 17, 1990, 1.


particularly good example of the ways in which disagreements about the rating system within the industry created a negative public image of CARA and the system. The film’s screenplay concerned the police hunt for a serial killer in New York City’s gay underworld. During the preparatory stages in early 1979, Heffner had been contacted on a number of occasions for guidance on how a film with a homosexual theme and violence would be rated. Heffner had explained that the theme alone would not in any instance produce an automatic restricted rating. What mattered was the treatment. He was also asked if a degree of violence could lead to an X certificate. Here the answer was yes. In a response to director William Friedkin, Heffner wrote, on May 17, that as regards a rating the only thing that he could be sure of was that the language in the screenplay would result in an R rating. Heffner cautioned Friedkin that whilst, with reference to homosexual activity, the screenplay indicated that “[n]one of this sexual activity can be clearly seen”, the consequences for the final rating could only be assessed after shooting was completed.234

In a portent of the rating difficulties to come, the production team faced protests from gay rights groups as soon as filming got under way. New York City’s Mayor Koch refused an appeal by several groups to withdraw support from the city for the filming in July 1979. Attempts by protesters to disrupt the filming in Greenwich Village continued in the late summer of that year, until the conclusion of shooting in September.235

The film was first shown to CARA on December 7, 1979 and was rated X. In the same month producer Jerry Weintraub asked Aaron Stern to advise the production team on the likely rating for the film. This intervention caused complications for Heffner and highlighted a greater truth about the ratings system. Heffner confided to Valenti in a memo dated December 31, 1979, that:

I hope that the CRUISing business works out. But it would be folly for us to trade off (with an R) the trouble we have now for what parental reaction would be later on to less than X for CRUISing as we have most recently seen it.236

Heffner noted in the next paragraph that Stern had, whilst head of CARA, emphasised sex to the near exclusion of violence as a rating concern, and added:

Despite our more realistic approach to parental attitudes towards violence, we still suffer from being identified with Aaron’s carelessness about mayhem and murder dating back years ago. We still have to answer for the R - - rather than X - - Aaron assigned to CHAINSAW MASSACRE!237

Whether the more liberal approach to on-screen violence during Stern’s tenure had been due to Stern alone, or Stern’s misreading of parental attitudes or possibly Stern’s accurate reading of the mood at that time, was in the final analysis immaterial. By 1980 attitudes had definitely shifted. Stern’s advice to Friedkin that the murder sequence at the beginning of the film was an R may have been correct in the early 1970s, but in Heffner’s view it was wholly mistaken in 1980. The only effect of Stern’s input was to encourage the director to resist requests for further editing. Heffner

237 Ibid.
also expressed his concern about the way in which Valenti had been drawn into the discussions about the appropriate rating for the film:

Similarly, participation in this whole business on your part -- however well meant -- is a signal to Friedkin and Weintraub that “something will be done that will change the Rating Board’s mind” -- something, that is, other than a modification of the film.

This was a recurrent theme in exchanges between Heffner and Valenti. CARA was supposed to have day-to-day operational independence from the three organisations which jointly set policy - the MPAA, the National Association of Theatre Owners (NATO) and the International Film Importers and Distributors Association (IFIDA). Heffner’s primary concern, as noted earlier, was that interventions like those related to Rollerball (1975) and now in the case of Cruising, gave the impression to the studio heads that “the fix was in” and that they should hold out for the rating they wanted. Similar concerns also surfaced in relation to the ratings for Deadly Friend (1986), Eye of the Tiger (1986) and White of the Eye (1987). The suggestion that CARA could be pressured also encouraged leaks to the trade press, where the flames of controversy could be fanned, as happened with Angel Heart (1987) and Sliver (1993). In the case of Sliver, efforts to milk the rating controversy and the links with Basic Instinct (1992) -- both written by Joe Eszterhas and both starring Sharon Stone -- all failed to garner the box office attention sought by the studio, Paramount. Variety in due course, described the film as “all flash and no sizzle.”

Valenti had indeed become involved in the Cruising dispute and it was at his urging that Heffner agreed to meet Friedkin and Weintraub in Los Angeles for further discussions about the rating. This meeting took place on January 3, 1980. For Weintraub, an X rating would mean reduced distribution and profits. After initial threats at the meeting by Friedkin to sue CARA, an agreement was reached to re-edit the film to R. However on February 14, 1980, Heffner saw the finished film in New York City and realised that the film had not been edited as agreed on January 3. The version that was just about to go into circulation was in effect an un-rated film masquerading as an R.

It was at this point that the unfolding saga about Cruising passed beyond the jostling of commercial self-interest that Van Schmus had identified as a de facto standard feature of the operation of the new rating system. What followed, in two phases- internal wrangling followed by a court case - confirmed in Heffner’s mind the possibility that the entire system could be brought down by the venality that permeated the industry.

Following discussion with the Rating Board about the discovery that the film was now in circulation with an incorrect rating, Heffner wrote to Valenti on February 27 to protest about the breach of faith. Whilst a strict application of CARA’s rules would have required a viewing of the completed print prior to release, the Board had on occasion, usually in the interests of helping film makers meet tight deadlines, accepted the word of the film maker as their bond. In all but one previous instance, promised changes had been made to the final print. The MPAA General Counsel, Barbara Scott, indicated to Heffner, on the same day, that CARA could be seen to be at

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fault for having departed from its own rule. Heffner now sought counsel from the Policy Review Committee, chaired by Valenti, on whether CARA should continue to operate a flexible interpretation of the rules, and whether it should make video recordings of contentious footage discussed during the rating process; to be held by CARA as a disincentive to malpractice.

In a separate memo to Valenti, also sent on the same day, Heffner, on CARA’s behalf, took the unusual step of calling for the R rating to be revoked. Heffner made clear to Valenti that he felt there had been a gross breach of trust by the producer and director. He wrote that:

In the instance of CRUISING, it seems clear to us that changes were made in editing the film’s sexual and violent content after representations had been made to the Rating Board. . .just as we depend on exhibitors [on their integrity and honesty], we must--without becoming an enforcement agency--be able to assume that what participating producers and directors represent to us as what theatrical audiences will see is actually what they do see. We believe this was not the case with CRUISING.

On February 28, MPAA counsel Barbara Scott informed Heffner that Weintraub was unhappy with CARA’s proposed revocation. That evening, Heffner received a call from Valenti during which Valenti played a recording of a conversation between himself and Weintraub that had taken place earlier that same evening. Heffner’s notes record that Weintraub said he would: “blow this fucking son-of-a-bitch right out of the water.” Valenti interpreted this as meaning a lawsuit. On the following day, Heffner wrote again to Valenti, seeking his support in resolving the escalating disagreement:

My colleagues and I, Jack, are outsiders, and what has happened in the last few days has been to make it seem otherwise. I am not a censor or a czar! I don’t want to be. The Board and I must just do our thing. . .and then turn to you for resolution of the industry’s problem in dealing with this matter.

Although troubled by the risks that both he and the ratings system appeared to be running, Heffner continued to press his case with Valenti for revocation of the R rating for Cruising. In a memo dated April 21, 1980, he pointed out that whilst the film makers had indicated that they would act to avoid revocation by making the necessary changes to the print in circulation, no such changes had yet been made. In conclusion, Heffner, wrote, “[t]herefore, we urge you, in the strongest terms, not to accept any further delay in demonstrating that the most important of CARA’s rules and procedures may not be violated with impunity.” However, Valenti was reluctant to act and a further memo from Heffner to him on April 24 indicated that Valenti even questioned whether the ongoing dispute with the filmmaker was indeed having a negative impact on the public standing of the Rating Board.

Meanwhile the film was not performing that well with the critics. Following a downbeat assessment of the film published by Variety on December 31, Frank Rich wrote in Time magazine, just as the film was being released, that “[t]he real problem with Cruising is Friedkin’s inability to

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242 Ibid.
243 Heffner, RDH-POM, 1979-80, Attachment 80-10.
deliver what should have been a brilliant thriller about sex and death." Audiences appeared to agree and the film did not do well during its US theatrical run, earning a relatively low $20 million. By June 1980 Valenti was looking for a means by which to draw the controversy to a close. He opined in a *Variety* article that he did not think that the dispute had adversely affected the credibility of the system. He acknowledged that there had been an “honest disagreement” between the filmmakers and the Rating Board. He confirmed that Friedkin had agreed to make the necessary changes after the Rating Board had identified a problem with the print in circulation and indicated that had Friedkin not complied, the Board would have asked for a revocation—something they had in fact asked for on February 27. However, while Valenti sought to draw a line under the controversy in *Variety*, the *Los Angeles Times* carried a report on the same day that poured petrol on the flames. Weintraub and Friedkin were reported to have charged the rating system with an “ongoing campaign of harassment.” Far from reaching a conclusion, the dispute had already taken a new, and from Heffner’s perspective, very unsavoury turn. College Theatre filed a suit in the US District Court, Southern District of California, on June 16, 1980. College had blind-bid *Cruising* as an R-rated film and subsequently sued the studio, United Artists, for not delivering the R. Blind bidding referred to the practice of theatres forward booking a film from a studio often before shooting had been completed. The suit also alleged that William Friedkin and Jerry Weintraub plus editor Bud Smith and Lorimar Films had conspired to release the X-rated print of the film as an R. CARA was also cited in a separate count in the suit for failing to properly check the final print. The suit against CARA included punitive damages of $1 million. The case was handled by MPAA counsel Louis Nizer who was acting both for CARA and Friedkin and Weintraub. Nizer was in fact a partner at the New York law firm of Phillips, Nizer, Benjamin, Krim and Ballon—the firm that had re-floated United Artists in 1951—so he was effectively defending his own firm’s interests as well as representing those of the named defendants. Nizer advised Valenti that the claim against CARA would fail if it was based on a challenge to the judgement of the Rating Board: The only chance the jury has, to put it in jury terms, is a claim that “there was dirty work at the crossroads, and that an “X” picture has been palmed off as an “R” picture to the detriment of the plaintiff.”  

Nizer’s view was that Heffner’s insistence that the cuts suggested by the Rating Board had not been made, played directly into the hands of the plaintiff, and that a better formulation of the issue was that “an innocent error was made in communication” between the Rating Board and the studio representatives. Heffner’s response, supported by counsel Barbara Scott, was to call for the action against CARA to be struck from the suit and leave the plaintiff to pursue the action against Friedkin and Weintraub. Nizer was in the impossible position of attempting to represent the collective interests of the MPAA against an exhibitor, when what lay at the heart of the case was a fundamental disagreement between two parts of the MPAA—the studio and CARA. Heffner was not
prepared to see CARA’s reputation sacrificed to help hide a breach of trust on the part of the filmmakers. These issues were aired at a meeting on July 22, 1980, involving Heffner, Nizer plus Barbara Scott and Nizer’s fellow partner Jerry Phillips. At that meeting Nizer invited Heffner to falsely depose that the film had originally been rated R. As Heffner recently recalled, in a line borrowed from Theodore Roosevelt, “I don’t now and didn’t then believe in being involved in criminal practice!” Heffner’s refusal meant that an out of court settlement with College Theatre became the only option for the MPAA.

From Valenti’s perspective, the Cruising dispute was not just about studio profits. Weintraub was a key industry figure who was in a position to commit artists and other industry resources to political fundraisers and gatherings. Valenti called on these services on numerous occasions as favours for friends and to oil political wheels in Washington. CARA did not itself have the power to revoke the R certificate and Valenti did not ultimately accede to Heffner’s requests. The film was eventually re-edited for its R certificate, but only after its first theatrical run had been completed. Notwithstanding Valenti’s public comments in Variety, noted earlier, the dispute over Cruising was undoubtedly a source of considerable discomfort for him and it brought substantial negative press coverage of the ratings system.

One final footnote to the Cruising debate was the fact that College Theatre had blind-bid the film. Blind bidding was a key source of disputes between the MPAA and NATO during the late 1970s and early 1980s. Whilst block booking, the practice of distributors licensing one feature to an exhibitor on condition that the exhibitor also accept another was made illegal by the 1948 Paramount decision, the Supreme Court concluded that a Justice Department proposal for open competitive bidding by exhibitors would prove unworkable. Justice Douglas had reasoned that whilst the Justice Department proposal would eliminate the private arrangements that tended to discriminate against small independent exhibitors, it would in practice be very difficult to compare bids. There would be no easy way to decide between, for example, the relative merits of flat fee and percentage bids and the result would inevitably be disagreements leading to involvement by the courts in detailed day-to-day business management decisions. This conclusion, arrived at with some reservation by Justice Douglas, therefore left the door open for other bidding procedures including blind bids. In 1978, a NATO representative in Toledo Ohio lobbied the local legislature on the issue and succeeded in getting legislation passed which outlawed the practice of blind bidding. On July 2, 1979, a case supported by the MPAA was launched in the US District Court to challenge the legislation. The disagreement, which Valenti later described as, “a grubby sordid squalid quarrel” was not quickly resolved and as the decade ended other states were implementing similar legislation. By October 1979, a total of sixteen States had instituted anti blind bidding legislation.

Despite legal challenges from the MPAA, NATO retained some momentum on the issue. In 1985, a

250 Richard D. Heffner, email to author, August 31, 2008.
252 Variety, July 4, 1979, 5.
Federal judge in Philadelphia upheld the legality of Pennsylvania’s anti-blind bidding legislation.\textsuperscript{254} By Christmas 1985 the MPAA and NATO had fought each other to a standstill on the issue. At that point 24 states had already passed anti-blind bidding legislation. The MPAA had had some success, as for example in efforts to dissuade the legislature in Minnesota from taking action, however the issue was clearly becoming a distraction from the real threats to the industry, including the growth in the video market.\textsuperscript{255} On Christmas Day 1985, \textit{Variety} published a report entitled “Moratorium Reached on Blind Bidding War.”\textsuperscript{256} The report announced that NATO had agreed to freeze its campaign against blind bidding while the MPAA agreed to stop efforts to seek repeal of the legislation. Underlining the need for co-operation in the face of declining box office receipts, the two industry bodies agreed to set up a joint Distributor / Exhibitor Council. The outbreak of peace was however short lived. By March 1986, the NATO board had adopted a resolution calling for action to prevent distributors from owning cinemas- a move possibly prompted by MCA’s efforts to acquire Cineplex.\textsuperscript{257} NATO, which had harboured concerns about lack of political leverage, found itself on the wrong side of the Reagan era de-regulatory momentum discussed earlier. It was powerless to prevent either the acquisitions or the subsequent loss of leverage in the blind bidding dispute.

The key elements of the Cruising dispute- studio pressure, intervention by Valenti, ad hominem attacks on members of CARA- were repeated on many occasions. In April 1982, a series of viewings of \textit{Poltergeist} looked set to produce an R rating. Valenti became involved and asked Heffner to look again and to talk to director Steven Spielberg. After the Spielberg meeting on April 25, further calls to CARA were made by the studio the following week seeking to influence CARA. An appeal was heard on April 30 and the R rating was reduced to PG. In the case of \textit{Scarface} (1983) the film was rated X on five separate occasions in late October and early November 1983. Valenti contacted Heffner on October 16, to emphasise how important it was for Universal to get an R for the movie. As with the appeal for \textit{Blade Runner} (1982), the studio produced two psychiatrists during the \textit{Scarface} appeals who argued that the on-screen violence in the film was cathartic, allowing audiences to get it out of their systems.\textsuperscript{258} The Appeals Board was eventually persuaded and the film was given an R rating. One further symptom of the increasing pressures on the rating process was the introduction by CARA in 1986 of verification screenings to confirm that the print to be shown at an appeal was indeed the same one that CARA had rated. Heffner sought to avoid open disputes with studio representatives over suspected malfeasance but took evasive action where he thought necessary. This was the case with Twentieth Century Fox (TCF) where a dispute over what was said during the rating discussion for \textit{Revenge of the Nerds II} (1987) led to a decision by CARA to tape all future discussions with TCF. Language and drug scenes had led CARA to initially indicate that the film would be an R. Two days later, on Saturday July 4, 1987 at 1.45 in the morning, Valenti called Heffner to press for a PG-13. Heffner refused. Later that morning a TCF

\begin{itemize}
\item \textsuperscript{254} \textit{Variety}, August 7, 1985, 4.
\item \textsuperscript{255} \textit{Variety}, April 16, 1980, 3.
\item \textsuperscript{256} \textit{Variety}, December 25, 1985, 3.
\item \textsuperscript{257} \textit{Variety}, March 19, 1986, 3.
\item \textsuperscript{258} Heffner, \textit{RDH-POM}, 1983, 4-24.
\end{itemize}
executive, Gary Gerlick, spoke to Heffner and claimed that his assistant had listened in on the telephone conversation in which the CARA rater Lola Mintz had promised a PG-13 if the language was amended. By mid morning Valenti told Heffner that TCF had produced signed affidavits listing three people who had listened in on the call with the CARA rater- none of whom were the assistant mentioned earlier. In any case, Valenti added, the trailers had already been produced showing the film as a PG-13. Heffner bowed to the inevitable, in part to protect his staff member, but pointed out to Valenti that the film contained the kind of material that Valenti and Mrs Reagan had been seeking to keep in the R category.\textsuperscript{259}

The cumulative effect was one of attrition both on the system and on Heffner himself, as studio executives flouted the core principle of voluntarism- responsible restraint - in the pursuit of profit.

\textbf{NC-17}

Heffner had worked hard to achieve the first major rating reform in 1984. In his own assessment, progress on reform had been slow and personally wearing. His relationship with Valenti became less easy in the latter part of that decade. Further reform did come with the revisions to language and drug rules, the introduction of the NC-17 rating and the provision of rating information, but arguments with Valenti both on the operation of the system and on personnel issues began to predominate.

By 1990 the studio practice of simultaneously complaining about the constraints of the ratings system whilst exploiting those constraints for commercial advantage, was becoming commonplace. Early in the year, \textit{Variety} reported that making an initial announcement that a film was an X certificate and then trimming it back to an R was evolving as a general industry marketing strategy.\textsuperscript{260} \textit{Wild Orchid} (1990), an erotic drama starring Mickey Rourke, followed this path. It had been given an X certificate due to a “torrid closing love scene” but eventually achieved an R.\textsuperscript{261}

A number of films with challenging sexual or violent content paved the way for a difficult year for CARA, leading eventually to the addition of the new rating. In \textit{The Cook, The Thief, His Wife and Her Lover} (1990), a Peter Greenaway directed film with British cast, CARA also awarded an X certificate. The film, which told a somewhat ponderous story of a man being ultimately confronted with his own violence (by way of being forced to eat his murder victim), contained scenes of both violence and sexual intercourse. The rating decision was ignored by the producers, Miramax, and the film was released unrated. Another Miramax production, Pedro Almodóvar’s \textit{Tie Me Up! Tie Me Down!} (1990), followed a similar route, and provided ample illustration of the kind of cynicism that the March 28 \textit{Variety} article had been alluding to. Despite the film’s somewhat whimsical depiction of a kidnapper and his female victim, it was initially rated X due to the sexual content in two scenes.\textsuperscript{262} In a break in the normal process this decision was communicated to Miramax before Heffner, as head of CARA, had reviewed the film. Miramax then indicated that they wanted to keep

\textsuperscript{260} \textit{Variety}, March 28, 1990, 1.
\textsuperscript{261} \textit{Variety}, March 21, 1990, 2.
\textsuperscript{262} Heffner, \textit{RDH-OH}, Volume 8, Session 26, 17 October, 1997, 1622.
the X rating and would only arrange for a further screening once the rating was confirmed. Heffner agreed. On reviewing the film his conclusion was that it was an R. However Miramax now had an X and they proceeded to appeal the decision. The original rating decision was subsequently upheld by the Appeals Board in April. The Rating Appeals Board was evenly split on whether the X rating should be maintained. The Board rules required a two thirds majority to reverse a decision and the X rating was therefore left in place. Miramax then released the film unrated and filed a suit in the New York City’s Supreme Court (Manhattan). The case was filed on June 5, 1990 and decided on July 19 the same year, against Miramax. Judge Charles E Ramos Jr. gave the decision.

The *Tie Me Up!* case was significant in so far as it provided a rare opportunity to test the constitutional position of the ratings system. Valenti consistently argued that abandoning the self-imposed ratings system administered by CARA would inevitably lead to state censorship. Despite the limits of the petition before the court, Judge Ramos’s judgment aired the key issues surrounding the operation of the ratings system and their constitutional implications. On the specific charge, Judge Ramos concluded that the MPAA had not acted arbitrarily or capriciously in awarding the film an X certificate given that the petitioners had acknowledged that the film contained language and sexually explicit scenes that parents might not want their children to be exposed to. He also concluded that the petitioners had failed to show evidence of clear and intentional discrimination by the MPAA through the awarding of an R rating to other films with similarly explicit material, and that the charge that the MPAA might thus be discriminating against foreign films and independent distributors did not even warrant an evidentiary hearing. Had Judge Ramos stopped there the MPAA might have retired well satisfied that the ratings system had been vindicated. The judgment continued:

> However since [the MPAA’s] rating system’s categories have been fashioned by the motion picture industry to create an illusion of concern for children, imposing censorship, yet all the while facilitating the marketing of violent and exploitative films with an industry seal of approval, [the MPAA] should strongly consider revising its rating system so that films are rated for the benefit of children with standards that have a rational and professional basis.  

Judge Ramos wondered why a system that was ostensibly designed to protect children had no professional help on child protection issues. He concluded that the system was “an effective form of censorship”, driven from within the industry, that produced “average fare” and operated arbitrary standards that could not be shown to be achieving what they claimed. These conclusions represented far-reaching challenges to the MPAA’s position on censorship and the need for the ratings system. From the inception of the ratings system, Valenti’s faith in its capabilities had been solid. Valenti had written in a 1969 *Washington Post* article that the ratings system did not ban or censor films. In similar vein, writing in 1973 in the wake of Chief Justice Burger’s decision in the *Miller v California* Supreme Court case, Valenti had opined that:

> The Rating Board does not command (nor could it if it tried) any filmmaker to edit one millimetre of film. But the filmmaker, in order to get a less severe rating, so that his film

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might play to a larger audience, including children, may voluntarily choose to revise his film. 265

In the same article, Valenti went on to argue that the rating system was preventing state and local interventions. Despite the criticism caused by *Indiana Jones and the Temple of Doom* (1984) and the subsequent introduction of the PG-13 rating that year, Valenti’s faith had not wavered, but by the late summer of 1990, with pressure from individual studios as well as the criticism from Judge Ramos, there was a risk that the whole system would collapse. Valenti immediately rejected the findings of the New York court and reiterated his long standing views on the threat of censorship, but the case encouraged further challenges to ratings and protest from within the industry. In the summer of 1990 several industry leaders had also indicated their support for a reform of the rating system. Producer Mark Lipsky launched a campaign supported by a number of prominent directors including Bernardo Bertolucci, Francis Ford Coppola, Barry Levinson, Spike Lee and Sydney Pollack. 266 Discussions between this group and Valenti continued through the late summer. 267

One key aspect of the reform debate was the question whether an Adult rating should be introduced, a solution advocated by the National Society of Film Critics. 268 It was an idea supported by NATO but opposed by Valenti. Heffner was in support of a change but was concerned that the proposal to introduce an Adult rating would take CARA into difficult terrain where it would be making judgements not about what was or was not suitable for minors, but what qualified as legitimate “adult” entertainment, and what was presumably gratuitous in some way and therefore deserving of an X.

The pressure to make changes increased when in August 1990 it was reported in *Variety* that the *New York Times* had agreed to carry an advert for a self applied A (adult) rating for *Life is Cheap. . but Toilet Paper is Expensive*, an off-beat black comedy which had previously been assigned an X certificate by CARA. 269 This move seemed to effectively signal a change in policy as regards advertising for X-rated films. The whole premise of the rating system, as revealed by Valenti in his December 9, 1973 *New York Times* article, was that content would be controlled by commercial self-interest. A key self-imposed enabler for that mechanism was the refusal of major newspapers to carry adverts for X-rated films. If producers could self-rate adult material and successfully advertise, then the MPAA would be sidelined leading inevitably to what Valenti feared would be state intervention. His fears did not appear groundless. *Henry and June* (1990) was based on the diary of Anais Nin, depicting the ménage à trios involving Henry Miller, his wife June and Anais Nin, and contained graphic sex scenes. Following the award of an X certificate for the film, Universal had indicated that it too would support reform of the ratings system. 270 In the interlude between the initial rating and the planned appeal, *Variety* reported that a theatre in Dedham Massachusetts, a suburb of Boston, had cancelled their planned screening of the film under threat of losing their

266 *Variety*, August 1, 1990, 5.
On September 27, 1990 Valenti bowed to the inevitable and the MPAA announced that they would introduce a new trademarked rating, NC-17, which when applied would prohibit entry to anyone under seventeen. This limit was revised without public announcement by the MPAA and NATO in 1996 to read “no-one seventeen or under to be admitted.” As part of the 1990 announcement, the MPAA confirmed that they would now provide additional guidance about R-rated films that could be incorporated into newspaper film reviews and advertising materials, and made available to box office personnel with the intent of assisting parents. One weakness of this initiative was that advertising copy did not have to include the wordings, a weakness that the Federal Trade Commission observed in 2000. The timing of the MPAA announcement preempted the CARA appeal for Henry and June and the film became the first to be given an NC-17 rating.

Whilst the introduction of NC-17 gave the studios a rating that wasn’t immediately associated in the public mind with pornography, as the X rating had become, it could not overcome the fundamental economic calculation that had driven the studios to force increasingly adult content into PG and PG-13 ratings. Major revenue success still depended on access to teenage audiences. Indeed many mall cinemas were prevented by lease changes from exhibiting NC-17 films. As a consequence very few films were given NC-17 ratings and disputes continued. In the case of Whore (1991), directed by Ken Russell and originally rated as NC-17, the appeal which had been scheduled for June 5, 1991 was cancelled by the producers and re-set for September 6. In the interim, the producers sought to publically portray the film as an honest appraisal of prostitution and compared the rating with that given to the highly glossed treatment of the same subject in Pretty Woman (1990) which had been rated R. This point was brought out by Russell in an open letter to the Hollywood Reporter published on September 4, two days before the appeal. The NC-17 rating was upheld.

Valenti’s continued involvement in the detail of particular ratings discussions was illustrated by the efforts by Michael Douglas to obtain an R rating for Basic Instinct (1992). The producers made repeated approaches to CARA to check if their revisions would achieve an R. Heffner had instituted a rule that after three attempts a film would be put to the back of the rating queue. This was to prevent the Rating Board being worn down by multiple exposures of the same film over a span of a few days. Valenti intervened and pleaded for Heffner to relax the rule. Heffner eventually agreed, and the film achieved an R. The decision had knock-on consequences for the system as a whole, in the case of The Lover (1992), the producers successfully appealed their NC-17 rating by seeking comparison with Basic Instinct.

273 Variety, October 1, 1990, 3.
275 Vaughn, Freedom and Entertainment, 205-209.
276 Heffner, RDH-POM, 1992, 27.
The appeal decision in *The Lover* was an excellent example of how the industry was moulding the ratings to accommodate increasingly explicit content, leading to an overall weakening of the system. As was the case with the introduction of PG-13, the Catholic Church was unhappy both with the new rating and the complete lack of consultation from the MPAA. The Most Reverend Edward J O’Donnell wrote to Valenti on behalf of the United States Catholic Conference on October 4, saying that the NC-17 rating was “an attempt to create an impression of “artistic” legitimacy for movies that resort to explicit sex, sadistic violence and indecent language, in order to get them into general theatrical release.” The position of the churches was that the X certificate had functioned as a gate and that NC-17 was softer in tone and the result would be that more explicit content would find its way into mainstream cinema. Interestingly, several of the studio heads had taken a similar view. Both Joe Roth (Twentieth Century Fox) and Terry Semel (Warner) had opposed the NC-17 change on the basis that directors understood the pariah status of an X and would work to avoid it, whereas an NC-17 might seem more acceptable. The new certificate would, they reasoned, make it harder for the studios to control their directorial talent. In a limited attempt to recover some lost ground with the religious community, Valenti responded to O’Donnell on October 10, by re-iterating that as of January 1991, R ratings would be accompanied with some explanatory wordings. This practice was eventually extended to PG and PG-13 in July 1992 and to NC-17 in May 1994.

The instance of *The Lover* suggests however that the Church had less to fear from the new rating than from the industry’s persistent drive to widen the boundaries for the R and PG-13 rating. Contractual restraints and economic self-interest ensured that Hollywood’s directors did not get out of control. It is revealing to note that as of December 2010 only 211 films have been rated NC-17 since the introduction of the rating. This includes 36 films produced before 1990 and submitted for re-rating, plus a number of made-for-television productions. This represents around 0.007 percent of the approximate total of 25,000 films rated within the G, PG, PG-13 and R categories since 1968. The new rating remained as un-attractive to mainstream film producers as the old X rating. As the evidence in CARA’s internal Rating Directory suggests, the studios appear to have reached a point where almost all content can be accommodated without recourse to an adult rating.

**Heffner’s final years at CARA**

The continuing difference in overall approach between Valenti’s desire to accommodate commercial interests and Heffner’s insistence on honouring the community commitment in CARA’s code was highlighted in a significant disagreement in early 1991 about rules on language and drug use in film. Valenti was concerned that the rules were proving too restrictive to filmmakers and moved to quietly abandon the rating rules. Valenti had sought to claim that there were no rules, despite the fact that a document listing the rules had been read into the public record in the 1990

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279 Internet Movie Database and Motion Picture Rating Directory, July 1, 2006 (Encino CA: Classification and Rating Administration).
Miramax case heard before the New York Supreme Court. At that point, the rules included the language rule which had been instituted on August 22, 1984 by the Policy Review Committee, requiring a PG-13 for the single use of a harsher sexually derived word in the script. Two such uses would produce an R and a single use in a sexual context would also produce an R rating. In April 1986, the rule was amended to require a unanimous decision by the Appeals Board before a rating decision based on the rule could be overturned-revised to a three quarter majority in June 1987. The disagreement between Valenti and Heffner had been precipitated by a request for clarification of the rules from Chuck Goldwater, then chair of NATO’s CARA Committee, at a meeting on January 29, 1991 with Valenti and Heffner. Valenti wrote to Heffner on February 21, 1991 stating that there were no longer any hard and fast rules and that there would be no publicity associated with this change. Heffner was happy to have the rules removed but felt that the MPAA should make a public announcement, and he appealed to the Policy Review Committee on February 26, arguing that CARA’s position depended on its continued openness. Valenti relented. He wrote again to Heffner on February 28, confirming that there was, after all, no change to the pre-existing position as regards rules. Heffner’s conclusion was that Valenti had acted initially after coming under pressure from the studio heads to deliver fewer R ratings.

Following the dispute about rating rules, Heffner formed the view that Valenti began easing him out. In truth, there was already evidence of this. In June 1988, a proposed salary increase for Heffner had been conditional on signing a non-disclosure clause. Heffner refused. In 1989, Heffner’s company car had been withdrawn and Valenti had moved to exclude Heffner from attending the MPAA/NATO Policy Review Committee. In May 1991 Heffner was again offered a new contract, with a 1993 leaving date. Once again a “gag” clause was proposed and refused. Heffner’s proposed leaving date was however extended by twelve months to June 30, 1994. In a final acrimonious twist, Heffner’s papers reveal that Valenti raised the possibility on June 28, 1993 of a further twelve month extension. A subsequent proposal on July 14 proposed instead a six month extension. Both offers appear to have been withdrawn, leading to a very heated series of memos between the two protagonists in August of that year.

The written record suggests that some of the sparks from that disagreement found further fuel in October 1993 over the choice of Heffner’s successor. Valenti’s initial choice had been Kathy Zebrowski Heller. She had been Special Counsel for Congressional Relations for the MPAA, and had worked under Valenti. Heffner objected to her proposed appointment in a memo to Valenti dated October 29, 1993, on the grounds that CARA appointees were not to have industry connections. Valenti’s written response to Heffner on the Heller issue, on November 19, 1993 no doubt reflected some of the underlying tensions between him and Heffner at that point when he wrote that “[t]his rating system was born before you arrived, and it will live after you are gone, live

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in honor and honesty, which are the garments I put on this system, not you, and which I am determined to preserve in spite of anyone and everyone, including you." Valenti went on to say that Heller was now a part-time member of CARA. Heffner wrote again on November 24, re-iterating his concerns. Valenti next wrote to Nancy Nolan at the National Association of Theatre Owners (NATO) on December 20, 1993 saying that he and Heffner had agreed Heller’s appointment as a part-time rater at CARA. Heffner wrote on January 12, 1994 once again outlining his objections and disputing that there was any agreement on Heller’s appointment. He repeated his objections on April 19.

Heffner however, was already re-directing his resistance. He wrote to Jim Wall on April 13, 1994 providing detailed guidance on the qualifications that should be sought in a new chair of CARA. The six-page letter was in the form of a response to questions supposedly put by Wall, but actually framed by Heffner. It included the suggestion that a future chair should have direct contact with the press when issues arose. The April 13 letter resulted in a letter to Valenti dated May 18, 1994 from the Catholic Chancellery in Kansas, the Office of the Bishop, signed by the most reverend Raymond Boland. In that communication, Boland raised concerns about how the appointment of an ex-industry person would look and he indicated that, as chairman of the committee which represents the bishops, he would find it hard to speak in support of the appointment. Valenti reluctantly relented and Heffner was replaced in July 1994, not by Heller, but by California attorney Richard Mosk. The willingness of Church representatives to become involved in the dispute over Heffner’s replacement certainly reflected Heffner’s own good relationship with Wall. However, it seems likely that the response from the Church representatives was due, in part at least, to the lack of engagement they had experienced from Valenti during the introduction of the PG-13 and NC-17 ratings.

Despite the disagreement over the appointment of Kathy Heller, Valenti was later able to rely on some support from church representatives when he needed it. On February 27, 1997, the Senate Committee on Commerce Science and Transportation took evidence in its review of the operation of television ratings introduced by Jack Valenti just two months earlier, a subject discussed in chapter four. Bishop Thomas J Costello gave evidence on behalf of the National Conference of Catholic Bishops. Costello offered support for Valenti and his team’s efforts and opined that the industry should remember that it operated in the public interest not solely commercial interests and that religious bodies needed to be active in helping parents understand the new media.

In his oral history, Richard Heffner commented in 1996 that, in retrospect, his view was that both the Church representatives and the chieftains had been correct about the impact of the NC-17 change. The X rating had functioned as a gate. The NC-17 rating provided a softer tone which, in combination with the new distribution channels that had become available, meant that more explicit materials came into mainstream circulation. On a broader point, Heffner also concluded that the

287 CCST, 287.
developments in narrowcasting in the 1980s and the gradual extensions in the PG-13 and R boundaries had weakened the voluntarism that he had been so attracted to in the spring of 1974.

On June 30, 1994, Heffner finally stood down as head of CARA, to be replaced by Richard Mosk, a lawyer who had served as a member of staff on the Warren Commission and later as a member of the Christopher Commission (1991) that investigated the police beating of Rodney King in Los Angeles. Like Heffner, Mosk was thus an industry outsider. His approach was however somewhat different from that of Heffner. He saw Valenti as his client and was less inclined to confrontation with Valenti than Heffner had been. Heffner went so far as to warn against this tendency in a New Yorker article drafted by Tom Vinciguerra titled “Who Speaks for CARA.” The article noted that Mosk had made no comment on the controversies surrounding Natural Born Killers (1994) and Clerks (1994), and closed with a quote from Heffner in which he expressed the hope that Mosk would “not be silenced by edicts or egos.” Aside from this concern aired in the article, Heffner also believed that Mosk’s association with industry representatives through his legal practice in Los Angeles would compromise his independence. For this reason Heffner believed that the appointment was a mistake. Vinciguerra’s piece was scheduled for publication on September 26, 1994 but was never published. Heffner suspected that Valenti had called in a favour from the magazine’s editor Tina Brown.

Following Heffner’s departure, Valenti focused more efforts on the Motion Picture Export Association (MPEA), which dealt with the MPAA’s overseas interests including the important issues of copyright and illegal copying. This was not altogether new territory for Valenti. Through his relationship with Lyndon Johnson- he had served as special assistant to President Johnson- Valenti had secured a place on the President’s Business Advisory Panel on Foreign Trade. This gave him a strong platform both to further MPEA interests and to neutralise any initiatives from within government that threatened the studios. In 1980 he opposed moves by the Justice Department to remove overseas exemptions on anti-trust requirements bestowed on the industry as a result of the 1912 Webb-Pomerene Act. In the same month, Variety reported that the MPAA had contributed equipment and assistance to the FBI in support of an operation against film piracy and distribution of pornography. In September 1985, Valenti took the opportunity of an appearance at the Montreal Film Festival to voice his support for free trade and his opposition to legislation that would place restrictions on the entry into Canada of US made movies and television programmes.

However Valenti was to have one final opportunity to champion the Program that he had heralded in 1968. One of the consequences of the narrowcasting revolution and the proliferation of television channels was that it was television rather than the cinema that was most readily cited by politicians and advocacy groups seeking some explanation for and response to the regular excesses of violence reported in the media. As a result, pressure for some kind of rating system for

289 Heffner, RDH-POM, 1994, 11.
290 Variety, February 27, 1980, 3.
broadcast television became an irresistible force— a development that will be discussed in chapter four.

The race to the bottom

Heffner’s disagreements with Valenti over rating reform highlighted a key difficulty for voluntarism. The system was, as Valenti had pointed out from the outset, driven by commercial self-interest. In seeking to be free from government oversight the Program offered the prospect of freedom of expression; but having been left in charge of the chickens, the industry fox found it impossible not to exploit the new system. As the old Production Code ethos faded from CARA’s working culture in the mid-1970s, the last vestiges of regulative censorship were replaced by the de facto constitutive censorship arising from the need to make films that would sell to a mass teenage audience. As the tastes of that audience gradually shifted towards increased realism, the studios responded by offering increasingly explicit and spectacular content within the non-adult rating categories available to them. If from time to time, the system threw up a socially or politically important film then some credit could be claimed, but it was never a practical objective of the system. Heffner saw reforms such as the PG-13 rating as a way of dealing with these pressures as well as helping the system deliver what it had promised to do for American parents. His role in the reform of the ratings system appears an inconvenient aspect of the official industry history of the Program. The details of the evolution of the Program that were available on the MPAA and CARA web sites prior to 2010 made no mention of his name despite the length of his tenure and the fact that all of the significant changes were implemented during his watch. Following the recent revisions to both websites, that omission remains. The continuing failure by the MPAA to acknowledge Heffner’s contribution is lamentable.

The post-1975 era was important for the industry not just in terms of reform but in terms of the changed national political mood and the proliferation of new channels to market. Reagan-era commitment to deregulation created the opportunity for unfettered corporate growth and the arrival of video, satellite and eventually the internet, provided the means. In the ten years after 1975 the industry took on the shape of the global entertainment industry that we know today. Fears within the industry that the Bush (senior) presidency would adopt a less laissez-faire approach to regulation than the Reagan administration had pursued were not entirely without foundation. The passing by Congress in 1992 of the Cable Television Consumer Protection and Competition Act invited the FCC to regulate subscriptions and allow broadcasters to opt for free re-transmission on local cable channels. This re-transmission provision re-introduced the “must carry rules” that had been in place during the 1970s, and provoked a long legal battle involving Ted Turner that went all the way to the Supreme Court. Whilst Turner eventually lost his case, as discussed in chapter four, and whilst the new inclination towards regulation may have dampened profits in the cable industry, this was not a wholesale return to the centralised monitoring and control seen in television in the 1960s, nor did it prove to herald any concerted efforts to impose regulation on the MPAA. As newly

293 Variety, November 16, 1988, 43.
elected President George H. Bush prepared to take office, Valenti gave no hint of any concern when he gave an assessment of the first twenty years of the Program. He crowed that “[w]hat makes those who created and sustain this rating system so proud is that in the twenty years of its life, the one asset which has never been soiled is its integrity.” Had Richard Heffner been asked to comment he may well have demurred and reminded Valenti of the compromises, as he saw them, over films like *Cruising* (1980), *Scarface* (1983) and *Basic Instinct* (1992). From the industry’s perspective however, Valenti’s optimism was probably justified. The MPAA had successfully navigated around the Senate, the Meese Commission and Nancy Reagan and positioned the industry to operate in a globalised entertainment market - a market that was of course largely beyond the reach of US regulators.

Valenti’s retirement from the MPAA in 2004 and his replacement with former Secretary of Agriculture Dan Glickman drew a formal line under the tensions about ratings that were particularly visible in the 1980s and early 1990s. The integrated entertainment conglomerates of the current decade address the broad adult entertainment market through premium television channels such as HBO and Showtime, leaving mainstream cinema to concentrate on the teenage territory of PG and PG-13 with an occasional foray into the border territory of R-rated material.

In the 1915 *Mutual Film Corporation* Supreme Court decision, Justice McKenna observed that:

> the exhibition of moving pictures is a business, pure and simple, originated and conducted for profit, like other spectacles, not to be regarded, nor intended to be regarded . . as part of the press of the country, or as organs of public opinion.  

That judgment cost the industry free speech protection under the First Amendment until the restoration of those rights in the *Burstyn* Supreme Court decision in 1952. A key question to be examined in the next chapter is whether, the movie industry has, if not de jure then de facto, arrived at a similar position today to that described by Justice McKenna- a business of spectacle, not to be regarded as an organ of public opinion. Has the industry’s “race to the bottom” in terms of the provision of spectacle to consumers confirmed what Justice McKenna inferred almost a century ago, that the movie industry has no serious inclination towards or role in building an informed citizenry?

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295 MUTUAL FILM CORP. v. INDUSTRIAL COMMISSION OF OHIO, 236 U.S. 230 (1915).
Introduction

Following Richard Heffner’s retirement from the Classification and Ratings Administration (CARA) on June 30, 1994, his role was taken up by Richard Mosk, a California lawyer who had previously served on the Warren Commission. Mosk’s appointment as Chair of CARA came only after a bruising disagreement between Heffner and Valenti about the suitability of Kathy Heller who had been Valenti’s preferred candidate. Following opposition from national Church organisations to Heller on the grounds of her previous industry connections—opposition engineered by Heffner—Bill Kartozian, then president of the National Association of Theatre Owners (NATO), put Mosk’s name forward as a possible alternative solution. He and Mosk had been classmates at Harvard Law School. According to Heffner’s record of the period, Mosk acceded to a request from Valenti not to contact Heffner before the appointment. The correspondence exchanged between Valenti and Heffner in the closing months of Heffner’s tenure stands as testament to an increasingly fractured working relationship and Valenti may have judged that any possibility for a clean start would have been impaired by contact between Mosk and Heffner. Mosk however did contact Heffner several times in the months after his appointment to discuss, for example, aspects of CARA’s financial arrangements including the use of CARA’s revenues, collected from rating charges, to fund Jack Valenti’s non-CARA related activities.²⁹⁶

Mosk benefited greatly from the support of Joan Graves who took on the role of Vice Chairman of CARA when he was appointed in 1994. Graves had joined CARA in July 1988 following a previous career working in real estate and as a stockbroker. She became chief administrator in September 1989, organising the day-to-day running of the office. Heffner, throughout his tenure at CARA, had split his time between New York and Los Angeles and he was, as a consequence, particularly reliant on Graves’s support in running the Los Angeles office. Indeed he had been similarly reliant on Albert Van Schmus in earlier years. Following the changes in 1994, Graves was subsequently appointed as Co-Chair, a move announced in a press release dated March 25, 1997, and she eventually replaced Mosk as Chair of CARA in 2000.²⁹⁷ She remains as Chair of CARA today.

At a personal level, the transition from Heffner to Mosk and eventually to Graves signalled a shift in CARA’s orientation to its role. As noted in chapter three, Mosk saw Valenti, in lawyerly terms, as his client and he was less inclined to engage in the kinds of confrontations over the operation of the Program that had become a fixture in the Heffner-Valenti relationship. Whilst not a lawyer, Graves also sought a more conciliatory approach with Valenti. That task was made easier both because of the cumulative weakening of voluntarism and by the related changes in the entertainment marketplace. During his tenure, Heffner’s defence of voluntarism had slowed but not stopped the pressures for greater levels of explicit content in mainstream cinema. As the debates over films like *All the Presidents Men* (1976) and *Basic Instinct* (1992) illustrated, the bar for what would be tolerated in mainstream cinema was being steadily lowered. In tandem with this trend, the entertainment marketplace was itself maturing into the ideal envisaged by neo-liberal academic

advocates of free market enterprise such as Fredrich Hayek and Milton Friedman. As options for access to cinematic content expanded from theatres to cable, video and, in due course, via the internet, public discourse about cinematic standards became defocused, and indeed in the mid-1990s shifted to embrace a debate about standards in television. The de-pressuring of the personal dynamic that had been at the heart of the Program during Heffner’s tenure was perfectly in tune with these wider shifts in the industry and in society. As Valenti became the client for his own Program, the privileging by the studio owning conglomerates of the consumer at the expense of the citizen reached its zenith.

This privileging of the film watching consumer extended beyond the denial of any wider public interest in the cultural impact of cinema. In the 1990s evidence emerged that the aesthetics of cinema were themselves being changed in a way that seemed to suggest that even the attempt to critique the entertainment marketplace was itself becoming a commodity. In his exploration of postmodern cinema, M. Keith Booker begins with an outline of the key tenets of postmodernism, noting how theorists like Fredric Jameson have written about how the pace of change in western capitalist societies has given rise to a crisis of belief and an apparent lack of over-arching organising narratives, both at a societal and a personal level. Booker adds that Jameson’s unique contribution to this discussion concerns the idea that postmodernism is itself the “cultural logic” of global capitalism. With respect to art, including film, Booker argues that the breakdown of organising narratives may be expressed through products that are playful or even vapid- indicating a lack of faith in the viability of any cultural messages. Multiple styles and genres may appear within a single product reflecting both playfulness and the artistic difficulty of establishing a strong personal style. Booker makes two related observations about cinema in the postmodern era which are particularly relevant in the wider debate about the marketplace of ideas. Firstly he queries to what extent films which mirror the purported breakdown in organising narratives can offer any effective critique of the cultural logic of global consumer capitalism. In the example of Mulholland Drive (2002) the combination of a realist first phase and an allegorical ending may allude to the fragmentary nature of postmodern society but this construction offers no real critique of consumer capitalism. Related to this, Booker speculates that audiences may perceive the political critiques in films like Natural Born Killers (1994), Fight Club (1999) and Requiem for a Dream (2000) to be “cool” in a way that turns even political critique into a non-threatening consumable. This has profound consequences for our developing understanding of what constitutes censorship in contemporary cinema, and highlights the importance of viewing censorship not just as a set of discrete actions that allow or disallow certain scenes to appear in certain media, but as a more systemic effect on the marketplace of ideas. However, even if postmodern cinematic chic has indeed become a commodity, that in itself is not a failing. In cinema, as for example in journalism, the ability to critique society rests primarily on commercial viability. Supporters of free speech protections under the First Amendment, including Justice Brennan, have never sought to dismantle

299 Ibid., 29.
300 Ibid., 46.
the free market, only to correct the undue influence of either government or corporations. From that perspective, there is no reason to suppose that the cult status of *Natural Born Killers* makes it a less effective form of political critique than documentaries like Michael Moore’s *Fahrenheit 9/11* (2004) or Al Gore’s *An Inconvenient Truth* (2006). What should concern us however is the way in which the distribution of all of these films in the wider marketplace tends to limit both their exposure and their capacity to be heard within the marketplace of ideas. In the example of *Fahrenheit 9/11*, Miramax backed the film only to find that Disney— their parent corporation— blocked distribution in the US.\(^{301}\)

This chapter begins by acknowledging what has been achieved in terms of Hollywood’s contribution to the marketplace of ideas. Defenders of the Program can point to a strong catalogue of social and political critiques that appear to demonstrate that the Program has delivered the artistic freedom it promised, and that censorship of cinema is indeed a historical artefact. After noting some deficiencies in this argument, the chapter then takes the post-1994 operation of the Program as a starting point from which to build a more detailed picture of the operation of the global entertainment complex and its impact on cinematic content. Evidence of specific acts of corporate censorship that confirm the economic utility of censorship will be considered, as will evidence that points to more politically motivated interventions.

Jack Valenti did not retire from his position as President of the MPAA until 2004 and the period after Heffner’s departure offered one final opportunity for Valenti to celebrate the ratings system he had introduced in 1968. That opportunity came in the form of the introduction, in 1997, of a ratings system for broadcast television that was closely modelled on the Program. This alignment was not just an act of administrative convenience. It signalled the fact that by 1997, the three original terrestrial broadcasters were themselves part of the same entertainment complex that controlled the studios.

As Heffner, and, in due course, Valenti retired from the MPAA, their very particular struggle over the operation of the ratings system itself became a historical artefact, as progressive waves of new technology including video and cable and web streaming reduced the profile of the public arena that cinema had at one time occupied. This shift effectively took much of the heat out of any debate either about particular ratings for films or the effective operation and purpose of the system. Premium television channels most notably Home Box Office with programmes like *The Wire* (2002-2008) and *Boardwalk Empire* (2009) have stepped into the vacant “adult” programming space that the studios have traditionally avoided. Heffner, upon reviewing his time at CARA concluded that his earlier position of “anything goes” so long as it was rated no longer made sense in the era of narrowcasting. Instead he came to see that there might indeed be a case for the setting of some limits on content for movies. The studios have not reached the same conclusion. As was demonstrated with the release of the *The Dark Knight* (2008), Hollywood continues to seek to push the rating boundaries by offering increasingly adult-oriented content within non-adult ratings.\(^{302}\) The critical and popular reception of that film suggests that the studios are winning the argument. The


\(^{302}\) *New Yorker*, July 21, 2008, 92-93.
Chapter 4: Corporate control, post 1994.

only cloud on Hollywood’s horizon would appear to be the presence of a socially conservative and 
interventionist bench at the Supreme Court, under Chief Justice Roberts. Whilst the possibility of a 
case that might seek to test the ratings process may appear slight, the task of predicting low 
likelihood / high impact events is never easy- as the banking sector can testify- and the Court’s 
orientation represents a tangible, if unacknowledged, risk for the Program.

Creative freedom

The journey from Sam Peckinpah’s bloody and chaotic bank robbery shoot-out at the beginning 
of The Wild Bunch (1969) to James Cameron’s eco-war on the distant planetary colony of Pandora 
shot in 3D in Avatar (2009), by way of Last Tango in Paris, Friday the 13th, Jurassic Park, Saw, 
Harry Potter, Star Wars, Lord of the Rings and much else besides, is one that resonates with 
creativity. That the industry has exercised creative freedom in the manufacture of entertainment 
and pursuit of profit is not in doubt. What is in question however is whether the cultural effects of 
this enterprise are entirely benign and in particular whether the needs of the entertainment 
marketplace have dictated a certain conservatism in Hollywood’s handling of topical political and 
social issues.

One way of dispensing with any suggestion that Hollywood is responsible for a distortion in the 
marketplace of ideas is to point to its post-1968 catalogue of social and political critiques. If the 
past is the best predictor of the present, and indeed the future, how well has the Program actually 
fared in delivering its first objective of expanding creative freedom? 303 In their comprehensive 
survey of political film making, Terry Christensen and Peter Hass highlight how Hollywood has 
produced a wide range of films with political themes and messages. 304 A number of these films are 
discussed in more detail in chapter two. Using a model which assesses films along two 
dimensions, political intent and political content, Christensen and Hass describe four categories of 
film ranging from the low content / low intent “socially reflective” films with no obvious political 
messages- essentially the largest category in Hollywood’s catalogue- to the high content / high 
intent category of explicitly political film. Christensen and Hass note how the 1970s and early 
1980s were a generally fertile period for political films in the US. As well as being successful at the 
box office, films such as The Candidate (1972) and All the President’s Men (1976) used a 
distinctive realist documentary style to communicate their messages. Whilst The China Syndrome 
(1979) and Silkwood (1983) did not employ a cinéma vérité style, both nonetheless struck a realist 
tone in their narratives and cinematography that foregrounded concerns about nuclear power. In 
the case of The China Syndrome the realism and subsequent political impact was heightened 
immeasurably by a coincidence of timing. The film was released in the US on March 16, 1979. Just 
twelve days later, the civil nuclear facility at Three Mile Island near Harrisburg PA experienced a 
partial core meltdown- the most serious accident in the history of the US civil nuclear power

303 Motion Picture Association of America, The Motion Picture Code and Rating Program. A 
304 Terry Christensen and Peter J. Haas, Projecting Politics. Political Messages in American Films 
programme. The film provided a ready-made reference point for media coverage of the near-
disaster at Three Mile Island, and it subsequently earned $51 million at the US box office, placing it
near the top of the list of best performing films that year.

Hollywood’s willingness to challenge can also be found in the less realist aesthetics of
postmodern film making. Booker notes, for example, that despite the stylistic weaknesses he
associates with postmodern film it is still possible to use this style of film making to offer political
comment. Booker highlights *Natural Born Killers* (1994) and *Wag the Dog* (1997) as examples
of more surreal, but nevertheless, highly effective political critiques.

Despite this evidence of achievement, both Christensen and Haas and Booker raise questions
about the effectiveness and even the relevance of these political critiques. From different
perspectives these writers arrive at a common conclusion- that the conditions of the global
entertainment marketplace with investors seeking economic returns and consumers seeking
entertainment (with or without postmodern chic) result in an inevitable toning down of content. As
Robert Sklar points out, those marketplace conditions had been integral to the revival of
Hollywood’s finances in the mid-1970s. The financial success of *Jaws* (1975) and the fantasy
cycles that followed, with their saturation television advertising, wide simultaneous release and
souvenir merchandising were predicated on an appeal to a wide audience in a way that left little
room for politically contentious materials. Richard Maltby also sounds a similar note of caution in
his examination of Hollywood’s handling of political issues when he concludes that “Hollywood’s
politics are so equivocal” because of the need to maximise audiences through the offering of film
texts that are capable of being read by different consumers in different ways.

However, there is also some evidence that the market is not the only relevant consideration when
assessing the ideological subtext of Hollywood’s output. In his study of 1980s political films,
Stephen Prince argues that an assessment of the key films of the era needs to be undertaken
against the backdrop of the cultural and political shifts of the decade- shifts away from the social
liberalism of the 1960s and towards an antipathy to government at home and an increased desire
to project US political and, where needed, military power abroad. Prince concludes that many
mainstream films dealing with issues like the revival of the Cold War and Vietnam as well as a
group of science fiction films dealing more obliquely with social issues all fail to offer a significant
and *Top Gun* (1986) and re-workings of Vietnam such as *Rambo First Blood* (1983) and *Missing in
Action* (1984), as well as dystopic science fiction productions like *Blade Runner* (1982) all fail in this
respect. Prince concludes that, of the films surveyed, only the cycle of films looking at the
engagement of the US in the politics of Latin America in films like *Missing* (1982) and *Salvador*
(1986) seem to offer any genuinely alternative political perspectives. Any systematic distortion in

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305 Booker, Postmodern Hollywood, xiv.
308 Stephen Prince, *Visions of Empire. Political Imagery in Contemporary American Film* (New
the marketplace of ideas may therefore be commercially driven but mediated by the prevailing political orthodoxies.

With that caution in mind, it is interesting to consider how Hollywood has handled probably the most politically contentious political event of the last ten years- the 'war on terror'- a phrase that President George W. Bush introduced into the political lexicon in his address to Congress in the immediate wake of the 9/11 attacks.\textsuperscript{309}

Prior to 2007, Hollywood’s response to the conflicts in Iraq and Afghanistan has been decidedly cautious. The Gulf War provided a backdrop for \textit{Courage Under Fire} (1996) and \textit{Three Kings} (1999) but even in these films the wider political significance of the war is not directly addressed and functions as little more than a backdrop for the plots. In the former, questions of politics are largely ignored and the focus is the courage or otherwise of a helicopter pilot played by Meg Ryan. In the latter, despite, the cavalier name-checking of political issues, it is the near incoherence of the plot detailing the recovery of gold allegedly stolen by Saddam Hussein that shines through.

Vietnam was revisited in \textit{We Were Soldiers} (2002) in a re-affirmation of the nobility of the American soldiers in that war, and in \textit{Path to War} (2002), which focused on the inability of the Johnson administration to extricate itself from the conflict. The nobility and romance of conflict was re-affirmed in \textit{Troy} (2004), \textit{Kingdom of Heaven} (2005) and \textit{300} (2006). Clint Eastwood’s \textit{Flags of our Fathers} (2006) and \textit{Letters from Iwo Jima} (2006) struck a very different note by both reminding Americans of their ultimate reference point for a just war and providing a much less romantic look at the realities of conflict for both sides. \textit{Jarhead} (2005) took a not dissimilar look back at the first Gulf War. This tension between romance and realism in the portrayal of issues arising from the current conflict can be seen in a range of recent productions. In \textit{The Kingdom} (2007) a group of FBI agents are sent to Saudi Arabia to help resolve an investigation into a terrorist incident that killed an American citizen. The film exudes conceit. In the introductory sequence the film provides an over-simplified and misleading montage covering the history and politics of Saudi Arabia in which year zero is when oil was discovered. In contrast to the gung-ho attitude of the FBI agents in \textit{The Kingdom}, the story in \textit{Rendition} (2007) directed by Gavin Hood revolves around a much more measured representation of the CIA. \textit{Rendition} follows events as a US citizen of Egyptian descent is arrested on arrival at Washington’s Dulles airport and is then spirited to a facility in the Middle East for the purposes of interrogation, employing the kind of interrogation techniques championed by the US Attorney General in 2002.\textsuperscript{310} The film reflects the real post 9/11 tensions between those in the administration who felt that they had to play tough in the war on terror, and those in the intelligence community who from practical experience judged that torture was an unproductive and unreliable source of intelligence. Unlike \textit{The Kingdom}, with its self-congratulatory closing scenes of mission accomplished, aspects of the dénouement in \textit{Rendition} were much darker, highlighting questions about the abandonment of principles in the midst of conflict. That said, even \textit{Rendition} provided a rose-tinted perspective in-so-far as the issue of rendition was raised in the context of an American citizen who is wrongly arrested and tortured and ultimately freed by the just intervention

\textsuperscript{310} \textit{New Yorker}, February 14 & 21, 2005, 106-123.
of another American. The storyline effectively ignored the continuing incarceration of suspects without due process. Ticket sales within the US of some $47 million for *The Kingdom* were considerably higher than the $9 million generated by *Rendition*. On first inspection it would seem that the stylised romantic nobility of American action in *The Kingdom* paid considerably better than even the very tentative realism of *Rendition*.

The fact that many more people were interested in seeing *The Kingdom* and were, to a greater or lesser extent, influenced by the film’s perspective on the war on terror may amount to a minor tweak to, or imperfection in, the informational marketplace, but we might reasonably conclude that it is no more significant than that. Similarly, the rose tinting of the issue of rendition in Hood’s film may not be of critical importance. Cinema plays a part in building the wider informational marketplace, but there are other sources of information on rendition and the war on terror. That is after all how the informational marketplace is supposed to work- different ideas and perspectives competing for attention. However, the wider question we have to confront is how many of these minor tweaks- distortions in the informational marketplace- do we need to find before we are minded to begin joining up the dots and concluding that there is something going on here that we need to pay closer attention to? The current perspective from within CARA provides an ideal starting point to look at the operation of the industry for evidence of this kind of more systematic distortion.

**CARA under Joan Graves**

The Classification and Rating Administration operates from offices near Sherman Oaks in Los Angeles. The organisation consists of ten raters and three senior raters plus the Chair. A minimum of five raters watch every film and occasionally all raters will see a film. The three year terms introduced by Heffner to achieve a regular turnover of staff have been relaxed a little, with seven years now the norm. Graves shares Heffner’s concern that raters should not see the job as one for life. Many of the raters do not remain for seven years, often finding that the reality of watching films of variable quality every day is less glamorous or enjoyable than it might have seemed on first inspection. The limited tenure makes recruitment of raters difficult. Teachers are one group whose working arrangements seem to allow them to cope better with the demands of limited tenure and, according to Graves, they are usually good candidates. 311 The current group of raters are drawn from the Los Angeles area as well as from across the country including the Midwest, Chicago, the South and Hawaii.

Graves observes that the general trend in film making in the US is towards spectacle and away from relationship films:

> American films do seem to be more focused on spectacle however there are *relationship movies that do get attention*, for example *Crazy Heart*. Such relationship films tend not to do well at the box office in part because relatively little money is spent on promotion.

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This type of film relies on people seeking out reviews and then finding the film. Industry effort does not appear to be directed at building new audiences for this type of film.\textsuperscript{312}

That preference for spectacle and related targeting of teenage audiences brings particular challenges for CARA. The main challenge for raters, according to Graves, is in the boundary between R and PG-13 where filmmakers seek to include references to sexuality, but also wish to achieve the lower rating.

One perhaps surprising area of continuity with CARA’s earliest incarnation is the occasional pre-reading of scripts. Whilst CARA will not guarantee a rating based on a reading, it will offer advice to the filmmaker on potential areas of contention. This is particularly noticeable where studios have established a franchise and already have an audience demographic that they want to reach. Thus in the case of the Twilight franchise, the producers have been clear from the outset that the treatment must achieve a PG-13 rating. Whilst this facility is generally available to filmmakers, it is used in only a few occasions each year. Graves comments that:

\begin{quote}
A lot of people don’t take advantage of this facility. Fewer than 5\% of rated films in the last year would have first appeared to CARA as a script.\textsuperscript{313}
\end{quote}

A less surprising piece of continuity with one of CARA’s overall objectives—one enhanced by the changes introduced by Richard Heffner—is that it remains committed to providing pertinent information about film content to parents. One key method of keeping abreast of parental attitudes is via focus groups. These are conducted anonymously for CARA on a national basis by an external agency. The results indicate that representations of sexuality are the primary national concern, although there are significant regional differences that are revealed both in the surveys and in complaints received by CARA. Overall, the feedback indicates that people in the south of the country are more concerned about language, especially any reference to god or goddam, while their counterparts who live in the large urban centres on both coasts are more concerned about violence. In the Midwest, concerns about representations of sex predominate. One general finding is that parents believe that Hollywood pre-sexualises their children and exposes them too early to adult behaviour and misbehaviour. CARA’s own experience with films on the PG-13 / R boundary would seem to confirm that finding.

In addition to checking on parental assessments of CARA’s performance through the feedback gleaned from surveys and complaints, Graves also maintains proactive contact with parents and lobby groups by regularly undertaking speaking engagements, for example with Parent Teacher Association (PTA) groups, and by providing press responses to lobbyists. This represents a significant shift from Heffner’s tenure, when Valenti was insistent that his was the only public voice of the Program. The most prominent lobby group at present are the ‘smoking lobby’ led by campaigners like Professor Stanley Glantz. They have called for all films with any depictions of smoking to be rated R. In May 2007, CARA did make a rule change to say that they would in future weigh all smoking as a factor in a rating, and not just under-age smoking as had previously been the case. One important element in this debate is the portrayal by the smoking lobby of PG and
PG-13 films as kids-oriented. CARA’s response to this argument is that the non-restrictive ratings in the system are not age-based but content-based. Given that the system is explicitly designed to help parents manage the viewing of their children this does not seem a particularly robust defence. CARA further contends that seventy-five percent of all films with depictions of smoking are, in any case, already rated R for other reasons. In assessing the impact of the recent rule change, Graves’s conclusion is that a film like Good Night and Good Luck (2005), a PG-rated film which had a lot of smoking depicted as part of the representation of the period and of broadcaster Ed Murrow’s smoking habit, would remain PG; although the descriptor which accompanies the film rating would in the event of a re-rating most likely be amended to include a specific reference to smoking content. Aside from the smoking lobby, CARA continues to get regular approaches from religious groups seeking bans on certain on-screen representations. Graves believes that they fully understand that this is not CARA’s remit, but the approaches generate press coverage. In view of the stated objective of CARA to assist parents, it is perhaps not surprising that whilst the organisation receives representations on certain topics from religious and other lobby groups, it is parents and their pre-occupations that tend to dominate.

One of the issues raised by parents and lobby groups that CARA has least influence over is television ratings. These were introduced into broadcast television in 1997 by Jack Valenti at the point when Graves became Co-Chair of CARA. Whilst the rating designators adopted for broadcast television were similar to those used by CARA there has never been any attempt to maintain a strict equivalence between the two sets of ratings. Television company ratings vary widely and CARA’s research indicates that parents are frustrated by this aspect of the system. CARA’s focus group data also suggests that in some instances parents are not clear about CARA’s remit and as a consequence can hold them responsible for materials shown on television. Graves’s assessment is that the targeting of more adult-oriented films to children in television advertising has been and remains the most significant threat to the industry’s regulatory independence.

The issue attained national prominence in the wake of a Federal Trade Commission (FTC) report into self regulation in the motion picture, music and electronic game industries in September 2000. The Commission’s work had been triggered in part by the public debate about the effects of media violence on teenager attitudes and behaviour, following the shootings at Columbine High School in April 1999. The Commission reviewed 44 movies rated R for violence and found 35 had been targeted at the under-seventeen age group. Similarly 9 of the 20 PG-13 movies reviewed were found to have been targeted at children aged eleven and under. The concern of the Commission was not with the ratings but the way the industry was using the ratings. The Commission found that exhibitors typically ran trailers in front of films whose ratings were lower than the trailed film. As a result, younger children were being exposed to more explicit content in a way that their parents could not reasonably predict or control. The Commission also found that

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315 Graves, interview by author, January 19, 2010.
teaser trailers that were supposed to be cleared for all audiences would be running in cinemas and on television before the final film had been rated. Tellingly in its descriptions of the movie ratings system the Commission provided no recent examples of films rated NC-17. CARA received no serious criticism from the FTC; however the Advertising Committee, which also reported to Jack Valenti, was implicated by the Commission’s findings. After the FTC report was published, Valenti directed the MPAA to take a number of initiatives to prevent inappropriate advertising. Whilst Valenti was able to bring about a reduction in R-rated advertising on television, the industry has responded with the same self-interest that Heffner blamed for undermining the movie ratings process during his tenure. Graves notes that one consequence of the increased restrictions on R-rated advertising has been a shift by studios to look for PG-13 ratings rather than R but often for the same kind of material. In continuing efforts to manage negative public perceptions, the current MPAA Advertising Department are moving away from ‘all audience’ trailers for R-rated movies and are now moving towards targeting advertising for appropriate audiences. In a significant shift from the previous practice during Heffner’s tenure, the Advertising Department regularly approach CARA asking about the content of particular movies.

The current public confusion over CARA’s remit in relation to television ratings, as revealed in CARA’s surveys, may in part be due to the use of similar nomenclature in both systems. However, it may in part be an expression of anxiety not just about the variability in ratings but about the de facto difficulties of regulation within the home. It is the case that, as described in the next section, the television industry’s approach to regulation has always been somewhat piecemeal as it sought to respond to the changes brought about both by the movie ratings Program as well as the effects of narrowcasting and the de-regulation that took hold in the 1980s and 1990s. The introduction of the ratings to broadcast television in 1997- a process steered by Valenti- represented a further piecemeal response deliberately designed to provide the minimum by way of regulation that the industry judged would be required to mollify public criticism. The fact that Valenti initially misjudged his response to the political mood was, at least in part, due to the presence of a deep schism in American society that on the one hand embraced President Reagan’s promise to get government off the backs of the people whilst simultaneously criticising political inaction on declining standards in movies and on television.

**Ratings for broadcast television**

During the 1960s, the main television networks had started to purchase and broadcast Hollywood movies. These productions, made under the auspices of the Production Code, posed few questions of taste or appropriateness for network television audiences. After 1968 that situation changed, and television faced a problem that movie exhibition did not. CARA could, in principle, rely on local movie exhibitors to enforce the age related rating restrictions associated with a particular film at the box office. In the absence of such a control, network television companies solved their problem by what was, in effect, censorship. This was achieved through standards laid down by internal Broadcast Standards and Practices (BS&P) departments- functions developed in the wake of the
quiz show scandals of the late 1950s. The networks had evolved an operating model that chased large viewing numbers and associated advertising revenues, based on what one NBC executive had described as the “least objectionable program” principle.\textsuperscript{317} With regard to the broadcasting of films, this principle demanded an avoidance of contentious materials. The networks already had full editorial control over made-for-TV features, an evolving programming trend in the late 1960s and early 1970s. Concurrently, and alongside more conventional materials, Hollywood was producing some new and controversial materials that would later be referred to as the New Hollywood. The television networks were sensitive to the difficulties that these more graphic depictions of sex and violence might have on their audiences and their revenues. ABC, for example, had given an undertaking in 1969 to Senator Pastore at a Senate hearing on the effects of television violence, not to broadcast R-rated movies, a position reiterated as part of a policy statement on the Family Viewing Hour issued on January 8, 1975.\textsuperscript{318} Between 1971 and 1979, ABC’s BS&P department, in collaboration with the distributors, re-edited fifty-eight films before re-submitting these to CARA for re-rating.\textsuperscript{319}

The Pastore commitment had resulted in the evolution of a process known within CARA as the PG letter process that allowed ABC and, as a consequence, other networks, to obtain family oriented versions of films. Under pre-existing CARA rules, studios could re-submit an edited film for rating, and, after having withdrawn the original film from exhibition for ninety days, could then release the new version with the new rating. In the PG letter process, the film was edited and submitted for rating. CARA would then write and confirm that if this version were to be formally submitted it would achieve a new rating. The distributor could then use the letter in negotiations with television broadcasters who in turn could re-assure advertisers and affiliated stations about the suitability of the film.

However changes in social tastes as well as developments in technology and distribution meant that the PG letter process would soon be obsolete. In July 1979, director Woody Allen refused requests from ABC for edits to \textit{Annie Hall} (1977) in order to remove numerous sexual references in the script. Allen had, unusually, retained contractual rights to any re-editing for television broadcasts of the film. ABC opted to air the film un-cut with suitable advisory announcements. Public reaction was generally favourable. Curiously ABC received 155 complaints, many of which were from viewers who were unhappy about ABC’s editing of the film- despite having seen the un-edited and CARA-rated version of the film.\textsuperscript{320}

By 1980 it was, in any case, apparent that the exclusivity of network broadcasting as a route to market was in terminal decline as video tape and cable began to emerge. Earlier fears of government intervention had prompted an effort at self-regulation in 1975, but this eventually came to nothing. The era of narrowcasting had arrived, bringing additional viewing choices and effectively

\textsuperscript{318} Alfred R. Schneider, \textit{The Gatekeeper. My Thirty Years as a TV Censor} (Syracuse NY: Syracuse University Press, 2001), 106. 
\textsuperscript{319} Schneider, \textit{The Gatekeeper}, 53. 
\textsuperscript{320} Alfred R. Schneider, telephone interview by author, October 16, 2008.
ending the network television oligopoly. The Federal Communications Commission (FCC) retained some oversight of the broadcast networks, but cable and satellite were not subject to the same regulation, a fact that concerned the Meese Commission in its 1986 report on pornography.\footnote{McManus, intro., Final Report of the Attorney General’s Commission on Pornography (Nashville: Rutledge Hill Press, 1986), 103-104.} Thus despite the political pressures towards greater supervision in the mid-1970s, the television industry found itself in the 1980s in keeping with the times, largely free to set its own standards in an environment where it could also cater more towards niche audiences. At the same time, CARA began to find evidence that cable companies were broadcasting R-rated movies but using the X or unrated tapes.\footnote{Heffner, RDH-POM, 1984, 101.} Cable companies became acutely aware of the adverse public reaction that might accompany even an honest mistake and took steps to protect their image. HBO, Showtime and Cinemax all introduced their own content based rating systems during the mid-1980s.

By the mid-1990s, on the back of public criticism, Congressional concern about violence on television had built steadily. In October 1993, Attorney General Janet Reno appeared before the Senate Commerce Committee and called upon television industry executives to take action on the levels of violence being portrayed on television.\footnote{New York Times, October 22, 1993.} Continued political pressure culminated in the 1996 Telecommunications Act.\footnote{The Telecommunications Act of 1996, Pub. L.A. No. 104-104, 110 Stat. 56 (1996).} The Act called for the availability of technology that would allow parents to block television programmes, based on the implementation of a rating process. The ratings would be directed at “sexual violent or other indecent material” but the rating of political or religious content was explicitly excluded. An Advisory Committee was established and charged with identifying how a new rating system could be achieved. The Act stipulated that the FCC would implement its own ratings system should the industry fail to deliver within one year. On February 29, 1996 Jack Valenti agreed to lead the Advisory Committee. In December of that year, Valenti announced that new television ratings with close associations to CARA’s existing ratings would be in operation from January 1, 1997. Crucially, and inevitably, given the overall volumes of material, the television ratings would be self-applied without the kind of independent oversight provided by CARA for exhibited movies. This position marked a shift away from Valenti’s earlier position that self-applied ratings in video games and television would be un-workable. The new ratings, to be known as the TV Parental Guidelines system, included two children-specific categories, TV-Y (suitable for all) and TV-Y7 (for age 7 and above), plus a set of general ratings including TV-G, TV-PG, TV-14 (children under 14 should not watch unattended) and TV-M (mature material unsuitable for under 17 year olds.) As with movie ratings, Valenti argued that providing any additional information would be unworkable, and indeed that any demand for additional information would be challenged in court as an infringement of the television networks’ First Amendment rights. The proposals were however seen by Congress to be too simplistic and lacked the granularity that viewers wanted. Valenti’s contention that a more complex system would be unworkable appeared to be undermined by the operation of a ten category system by HBO. Writing in \textit{The New York Times} on the day before Valenti’s announcement, Frank Rich observed that the TV marketplace
was essentially driven by adults and their tastes. Unless adults were prepared to do something about their viewing habits then there was no prospect for their children to grow up in a healthier electronic environment.\footnote{New York Times, December 18, 1996.} What Valenti and the television industry appeared to fear was that more rating detail would drive consumers away from their televisions in search of that healthier environment. Thus, as was the case with the MPAA’s experiment with movie ratings information in 1981, the television industry’s preference was towards providing not more, but less information. At hearings before the Senate Committee on Commerce, Science and Transportation on February 27, 1997, Valenti was again challenged on his proposal by Committee chair Senator John McCain.\footnote{Television Ratings System, Hearings Before The Committee on Commerce, Science and Transportation, US Senate, 105 Congress, First Session. Feb 27, 1997, 98-107.} Valenti initially remained opposed, but by October 1997, further designations were added to the system to signify levels of violence, sexual activity and language.

The Act had envisaged that these ratings would be an essential enabler for parents to use their programmable V-chip, a device that would filter the programming available to their children. Co-incidentally, the February 1997 Senate Commerce Committee hearing was the first to be broadcast live on the internet. The V-chip had not yet arrived and already a new technology easily capable of circumventing it was gaining wide adoption.

The enhanced Parental Guidelines system with markers for violence, sex and language is used today by broadcast television and basic cable channels. Films and other programming content transmitted on these networks are edited to standards set by the individual company and a Parental Guidelines rating is then self-applied. This inevitably produces a significant variability in standards. Graves notes for example that crime scenes in programmes like CSI achieve lower ratings than the same scene would generate if rated by CARA.\footnote{Graves, interview by author, January 19, 2010.} Premium cable companies like Showtime and HBO use the original CARA ratings today for any material that was rated by CARA, adding to the cumulative variability in standards, as perceived by some parents.

One interesting footnote to the 1997 Commerce Committee proceedings was the appearance of Matthew Blank, Chair and CEO of Showtime. In addition to confirming that Showtime was already applying the MPAA’s system of ratings for transmitted films, he went on to say that “[w]e do not exhibit any program we believe to be outside socially accepted standards of entertainment, any picture rated NC-17 by the MPAA, or any unrated picture that we believe would qualify for that rating.”\footnote{Television Ratings, Committee on Commerce, Science and Transportation, 151.} Blank’s testimony provided a further indication of the general industry wariness of the NC-17 rating, and the consequent pressure on the R and PG-13 categories.

The industry reticence expressed by Blank at the Senate Committee concerning any association with the NC-17 rating was already evident before 1997. In the 1990 Miramax ruling, a case brought in the New York Supreme Court, Judge Ramos had, as discussed in chapter three, concluded that the rating system amounted to a form of censorship. The decision contributed to the pressure for a change in the ratings system during the summer of 1990. The subsequent introduction of the NC-17 rating later that year was an effort to re-claim some territory for adult-oriented material that the
industry could make use of. However as protracted arguments over the ratings for *Basic Instinct* (1992) and *Natural Born Killers* (1994) demonstrated, the commercial model that had emerged in the industry, with directors contracted to produce films that could achieve an R or a lower rating, drove filmmakers to push the boundaries for R and PG-13 to allow more explicit content. In addition to this commercially motivated avoidance content rated NC-17, with its knock-on effects on the efficacy of the ratings system, there was also some emerging evidence of more explicit censorship of movie content by the corporate owners of film studios. To understand the nature of that censorship we must also understand something of the current pre-occupations and intellectual inheritance of the corporations that populate the entertainment industry.

**Industrial censorship**

In December 2009, Comcast announced that, subject to regulatory approval, it had completed a deal that would allow it to take ownership of NBC Universal from General Electric (GE). NBC Universal was itself formed in 2004 when GE bought Universal Entertainments, including Universal Studios, from Vivendi. The new deal made Universal the most traded of the major studios in recent years. Following Lew Wasserman’s sale of the studio to Matsushita in 1990, Universal Studios has seen ownership passed to Seagram, Vivendi and General Electric before the proposed move to Comcast. As the NBC Universal nametag indicated, Comcast was not just gaining a studio but a television network. General Electric had gained control of NBC in 1985, a year that also saw the acquisition of ABC by Capital Cities a conglomerate with television and newspaper holdings which was in turn bought in 1995 by Disney. A year after the NBC and ABC buy-outs, the third national television broadcaster CBS was the subject of an internal boardroom coup in which Larry Tisch emerged as the new CEO. In due course, Paramount’s parent company Viacom acquired CBS in 1994. The buy-outs of the original big three television broadcasters and their subsequent merger with studio interests represent a key development in the entertainment industry. Alongside the technical innovations that ushered in video, cable and satellite, these mergers provided the key ingredients for the emergence of a global entertainment complex.

The Comcast purchase, which retains GE as a minority shareholder, is the latest in a string of deals where senior executives in the major conglomerates who control much of the entertainment space in western culture seek to build new synergies and shareholder value by acquiring, disassembling and re-building the lego bricks of our entertainment infrastructure- movie studios, television networks, music, video games, magazines, books, on-line publishing and film-related merchandising including theme parks. Underneath these headline shifts, myriad changes will be experienced by the workforces of these organisations as work is shifted between continents, with some jobs lost and others created. The unravelling of the $350 billion merger of AOL and Time Warner, a deal first announced in January 2000, not only highlighted a self-absorbed hubris within

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the participating management groups of both companies, but resulted in substantial material costs in terms of job losses and pension funding for the employees who bore the brunt of the failure.331

The fluidity that is required for these multi-national organisations to quickly make these changes is achieved through the free movement of capital, market deregulation and free trade. Together, these elements are at the core of neo-liberalism. As noted in chapter three the shift towards conglomerate patterns of ownership had begun before the 1980s, but the de-regulatory inclinations of the two Reagan terms undoubtedly helped clear the path for acquisitions during the 1980s and 1990s that led to the emergence of the large conglomerates that deliver much of the entertainment on offer today. However to understand the priorities of these entertainment conglomerates we need to look at the intellectual as well as the political underpinnings of their growth.

The rise of Sun Belt conservatism, discussed in chapter two, proved to be a pivotal political force in American politics, but it brought with it a powerful intellectual force. Will Hutton argues that the Keynesian economic principles that had been the hallmark of post Second World War US economic policy had, during the immediate postwar era, created a popular association between federal government and growth.332 In the late 1960s, the economic strains of Vietnam, the Great Society and financial pressure on the dollar as a result of its fixed link to the price of gold- an inheritance of the Bretton Woods agreement- not only provoked a political crisis for the Johnson administration but opened the door for a systematic academic rebuttal of Keynesian philosophy.

Arguments put forward by Fredrich Hayek about the threat posed to wealth creation by state intervention had been largely ignored in the 1950s but they found a new audience in the late 1960s supported by academics like Leo Strauss and Milton Friedman, both based at the University of Chicago. While Strauss propounded a philosophy of the virtuous citizen characterised by self-help and personal responsibility and nourished by a commitment to religion and nationalism, Friedman articulated an economic model that identified state spending as the main driver of inflation. He saw the free market as self-regulating and believed that it was government intervention that damaged capitalism. These were the essential elements in the new conservative toolbox deployed by Reagan, re-visited by Newt Gingrich and revived more recently by President George W. Bush. However some of these same enablers also allowed a transformation in the organisation of American business. In the 1950s the Ford Motor Corporation was seen as a standard of large scale factory production. Working within a national framework of state economic management this model of production had made the United States the most wealthy nation in the world. As political liberalism faltered in the late 1960s so too did the Fordist model of production. In its place a new model of “late capitalism” emerged which took advantage of the infrastructure of capital markets and de-regulated labour markets to undertake production in low cost locations around the world.333

As a consequence, argues Naomi Klein, corporations began in the 1980s to focus less on their

manufacturing core and more on their marketing and branding.\textsuperscript{334} The new entertainment conglomerates followed the same path. Whilst the marketing of stars to help sell their lifestyles as well as the movies had emerged early in the studio era, what changed in the 1980s was the ambition of the enterprise. Paul Grainge notes for example how from the late 1970s the Hollywood sign became a controlled space and key tool in the marketing of Los Angeles as the home of ‘tinseltown’, despite the fact that many aspects of the film production process were already being undertaken outside the US.\textsuperscript{335} Branding performs a dual function, according to Grainge, allowing corporations to build "international consumption communities" whilst at the same time responding “flexibly to cultural preferences and local differences.” The nature of that consumption has changed dramatically in the last twenty years, and it continues to change as merchandising has become an important part of entertainment industry revenues. Cumulative US box office revenues for the complete Star Wars franchise, including re-releases, are estimated to be $2.5 billion, on a total production budget of $406 million.\textsuperscript{336} Total worldwide merchandising revenues for the franchise were estimated in 2005 to be $20 billion.\textsuperscript{337} In support of this merchandising, Lucasfilm also operates an in-house fan relations department which co-ordinates conferences, exhibitions and other fan events where Lucasfilm products, including DVDs, video games and television shows are made available.\textsuperscript{338} Indeed Lucasfilm has also participated in the Cartoon Network’s spoofing of Star Wars in an episode of its Robot Chicken production.\textsuperscript{339}

In addition to pursuing its own branding, Hollywood has provided an important site for the projection of brand identities by conglomerates operating in other sectors. Whilst possibilities for product placement and promotion of lifestyle choices have existed since the studio era, the scale and scope of such promotions have grown dramatically since the 1980s. Grainge notes for example how placement strategies have ranged from the self-conscious merchandising seen in Jurassic Park (1993) to commercial placement deals such as the $20 million fee paid by BMW for its appearance in Golden Eye (1995) to the more esoteric blending of entertainment and advertising witnessed in Baz Luhrmann’s No. 5 The Film (2004).\textsuperscript{340} Whilst, as Grainge observes, the success of these placements cannot always be guaranteed, their financial scale and consequent impact on movie financing is undeniable. Almost of necessity, the cumulative result has been a mesh of collaborations, agreements and licensing deals that has linked the global entertainment industry’s interests to those of other corporations who likewise have sought to build global communities of consumption for their products.

A key consequence of a coalescence of commercial interests both within the entertainment industry and across other sectors was the pressure to avoid adverse customer campaigns or other media controversies in cinematic output. As the financial stakes increased, the pressure to avoid

\textsuperscript{334} Naomi Klein, No Logo (London: Flamingo, 2001), 6-8.
\textsuperscript{336} Internet Movie Database at www.us.imdb.com/ (accessed December 1, 2010.)
\textsuperscript{337} Grainge, Brand Hollywood, 8.
serious political or social controversy and cater for wide audiences has also increased. As narrowcasting took hold and new channels to market began to appear, similar pressures were brought to bear in those new markets where a wide audience was being sought. The trailblazer in this respect was the video rental industry.

Blockbuster opened its first store in 1985 in Dallas TX. Wayne Huizenga who had bought into Blockbuster in February 1987 established from the outset that the company would not stock X-rated films. Following rapid growth, the company spent ten years from 1994, as part of Viacom, the same company that owned Paramount Pictures. It would seem little more than common sense that Paramount and more particularly Viacom would have been concerned to ensure that the output from the studio could be sold in its video rental stores. In her analysis of the growth of corporate brands Naomi Klein describes this effect as “synergy-censorship.”

The privileging of family entertainment over more contentious material was reinforced in 1997 when Blockbuster’s new chief executive John Antioco signed revenue sharing agreements with the major Hollywood studios. Instead of buying tapes from the studios at $65 and then retaining all of the rental, Blockbuster would now pay only $4 per tape but would return 30%-40% of the revenues to the studio. If it was not apparent to everyone beforehand, this development formalised, in commercial agreements, Hollywood’s interest in ensuring that large proportions of its output were suitable not just for general exhibition at cinemas but also for family viewing at home. This was not just synergy-censorship within a vertically integrated company- but at the level of the industry.

Other retailers including Wal-Mart have followed similar family-friendly policies to avoid any unfavourable consumer reaction to their retail operations. Whilst the Blockbuster revenue share deal in 1997 certainly provided an entry level example of how commercial interests could systematically skew the overall range of content available to the public, it is by no means the most troubling aspect of this tendency. A PBS report on Wal-Mart in 2004 surveyed several stores in the northeast of the country and found that films like Bowling for Columbine (2002) in which director Michael Moore had criticised Wal-Mart’s policy on handgun ammunition, and Natural Born Killers (1994), Oliver Stone’s treatise on media violence, were not available for sale as a result of local management decisions.

Beyond the generic commercial pressures that skew the availability of content there is clear evidence that the Program’s stated commitment to defend artistic freedom has been compromised on many occasions as a result of the interventions of senior executives within the entertainment industry. The motivations appear to be a mix of commercial advantage and personal taste; however the lack of public scrutiny leaves open the possibility that on occasion, the interventions can be more politically motivated. Such actions produce very specific distortions to the marketplace of ideas.

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341 Klein, No Logo, 170.
One of the most high profile reports of corporate interference in the artistic process concerned David Cronenberg’s *Crash* (1996). The film was aired at Cannes in May 1996 where it was nominated for a Golden Palm award and eventually emerged the winner of the Special Jury prize. Following this high profile event, Cronenberg’s exploration of sexual fetishism amongst a group of car crash victims, adapted from J.G. Ballard’s controversial novel, was scheduled for release in the US in October 1996. This planned release was then postponed at short notice by the film’s US distributor, Fine Line, a division of New Line; itself a company that had been acquired by Ted Turner’s Turner Broadcasting organisation in 1993. The film was however released in Canada in October 1996 and a month later in the UK. The US release did not eventually come until March 1997. The delay was directly attributable to Ted Turner, then vice chairman at Time-Warner. Quoted in *Entertainment Weekly*, Cronenberg said that Turner “did what amounts to behind-the-scenes censorship of my movie.”\(^{344}\) Cronenberg’s reading of the situation was that the delay was a direct counter to Fine Line’s original marketing plan to capitalise on the publicity generated at Cannes. A delay to the release would ensure that this positive effect would be lost. Turner later confirmed, in response to a question at a Museum of Television and Radio luncheon in New York on November 4, 1996, that he had indeed “yanked it off the schedule.” In amplifying his concern with the film he added: “It bothered me…. The people with warped minds are gonna like it, though….. Imagine the first teenager who decides to have sex while driving a hundred miles an hour, and probably the movie will get ‘em to do that.”\(^{345}\)

Turner’s intervention in the US release of *Crash* was not an isolated incident and appeared to be an expression of a more general personal distaste for explicit sex and violence. In the same *Entertainment Weekly* article, it was claimed that Turner had, after an initial screening, intervened in April 1996 to have a TNT production of *Bastard Out of Carolina*, Anjelica Huston’s directorial debut, dropped by TNT. At issue were scenes of molestation and child abuse, and a particularly vivid rape scene involving a twelve-year-old girl. The film was based on a book by the same title written in 1992 by Dorothy Allison. The book, which was the author’s first novel, had been a finalist at the National Book awards in 1992. The decision to drop *Bastard Out of Carolina* after first sponsoring it, revealed a complex mix of political, economic and aesthetic considerations on the part of Turner. He had told the Museum of Television and Radio luncheon that “[t]he test of a program in my mind is, is this a program that you would be proud and happy to have your children sit and watch, and is it a program that if your mother and father saw it and knew that you were responsible for putting it on the air, would they be proud of you?” TNT’s status as a Time-Warner asset and its position as a standard cable provider that targeted a family audience and made its revenues from advertising to that audience might have dictated some caution along the lines of the test that Turner subsequently applied. Clearly, however, TNT’s commissioning of the Dorothy Allison story indicated a more ambitious agenda on its part. Turner’s test left little room for content only suitable for adults and he was prepared to make a decision that chimed with his personal instincts and commercial self interest, rather than indulge the station or indeed its audience in the


\(^{345}\) Ibid.
airing of a topical, if difficult, adult-oriented subject. Following TNT’s cancellation, the film was eventually aired by a competitor of TNT- Showtime- the premium cable channel owned by Summer Redstones’s Viacom.

Turner’s interventions in the instances of Crash and Bastard out of Carolina certainly looked to some observers like the kind of interference that could be described as censorship. In the case of Crash there was already an approved route to protect teenagers in the way that Turner had sought. The film had been rated NC-17, a rating which by 1996 excluded everyone under eighteen years old. The rating, as it turned out both failed to ease Turner’s concerns and actually made it more difficult for Cronenberg to find an alternative distributor. The most obvious alternative according to Cronenberg would have been Miramax, but by 1996 they were owned by Disney and subject to a corporate policy to avoid distribution of NC-17 films.346

If there was some scope for excusing Turner’s actions in the cases noted above, on the basis of personal taste and perhaps a sense of public responsibility, no such defence seemed possible in the instance of Turner’s intervention in the case of another TNT production, Strange Justice. Both the trade press and mainstream press sought to call Turner to account. In a Variety story published on November 8, 1996 and later verified by The New York Times, it was claimed that Turner had delayed the release of Strange Justice because of concerns that the programme might antagonize Supreme Court Justice Clarence Thomas in the run up to the court’s ruling on a case that was of particular interest to Turner.347 The case in question was Turner Broadcasting System v FCC.348 The programme was based on the bestselling book Strange Justice: The Selling of Clarence Thomas, by Jane Mayer and Jill Abramson, about the Senate confirmation hearings prior to Thomas’s appointment to the Supreme Court. Those confirmation hearings in September 1991 had been catapulted into the national consciousness by the appearance of Anita Hill, a young lawyer who had previously worked for Thomas. In front of the confirmation committee on October 11, she alleged that Thomas had made numerous sexual comments and overtures to her. The allegations were denied and Thomas’s nomination was eventually confirmed in the Senate on October 15, 1991. That however still left two weeks before the formal taking of the oath of office planned for November 1, and in the meantime investigative journalists were chasing stories of possible similar allegations from other women. Un-nerved by the prospect of their appointment becoming mired in more allegations of misconduct, White House officials arranged for the bringing forward of the swearing-in for Thomas. This was conducted out of public view on October 23- the first time in 50 years that such an event had been conducted in private.349

At issue in the Turner case was a “must carry” rule in the 1992 Cable Act requiring cable operators to devote a certain amount of space for local broadcasters. Turner and other cable operators had sought to overturn this provision on the grounds that a rule that effectively told the operators to carry certain materials was an infringement of their First Amendment rights to free

348 TURNER BROADCASTING SYSTEM, INC. v. FCC, 000 U.S. U10372 (1994).
speech. The legislative intent had been to ensure that broadcast television was not entirely driven out of business, thereby avoiding any consequent risk of a total loss of television service for the forty percent of homes without cable. By the conclusion of the case, the Court had not been persuaded by arguments about the need for diversity of programming or diversity of viewpoints.

This position highlighted the change in the Court’s position since the Warren Court of the 1950s and 1960s. In the 1969 Red Lion case the issue at hand concerned a broadcast by WGCB, a Pennsylvania radio station owned by the Red Lion Broadcasting Company. On November 27, 1964 WGCB broadcast as part of its “Christian Crusade” series a fifteen minute critique of Fred J. Cook, the author of a book titled Goldwater – An Extremist on the Right. As part of the critique it was alleged that Cook had worked for a Communist affiliated publication and defended an alleged cold war spy. Cook concluded that he had been personally attacked in the broadcast and demanded a free right of reply on air. Red Lion refused this request. Under its Fairness Doctrine the Federal Communications Commission (FCC) had enforced a long standing requirement that broadcasters covering public issues should include fair coverage of both sides of an issue. When the case reached the Supreme Court the central question was whether the FCC had exceeded its authority. The Court decided that the FCC had acted legally and Justice White added that “[i]t is the purpose of the First Amendment to preserve an uninhibited market-place of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the government itself or a private licensee.” Whilst this ruling secured the immediate position of the Fairness Doctrine it proved to be a doctrine that found itself out of step with the changed political outlook of the 1980s. As noted in chapter three, the FCC eventually abandoned the Fairness Doctrine in August 1987. The FCC was, as Owen Fiss has argued, not so much pursuing a partisan political agenda but rather was following the logic of a number of cases that came before the Supreme Court in the 1970s and 1980s. Following the FCC decision, Congress had sought to re-introduce the Fairness Doctrine but the move had been vetoed by the president. What gave the Turner Supreme Court case such prominence in the debate about free speech was that under the guise of the 1992 Cable Act, Congress had asserted a principle that reflected similar values to those underscoring the Fairness Doctrine.

The Supreme Court’s initial deliberation on the issue was published on April 29, 1993. In this first encounter, the Turner legal team misjudged their approach by seeking an injunction that would have effectively overridden the congressionally approved legislation, pending a full hearing before the Court. Chief Justice Rehnquist was clearly unimpressed noting that the applicants had cited no cases “in which such extraordinary relief has been granted.” In the ruling, the Chief Justice re-stated Justice White’s formulation in the Red Lion judgment that the purpose of the First Amendment was to “preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market” and summed the issue as hinging on whether cable broadcasters were more akin to newspapers or broadcasters. If it was the

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351 Ibid.
352 Fiss, Irony of Free Speech, 58-69.
latter, then the limitations on channels would mean that the government had a legitimate role in regulation to ensure fair coverage.

The full case was argued before the court on January 12, 1994 and decided on June 27 the same year. The judgment was a complex mix of arguments which moved away from the formulation provided earlier by the Chief Justice. One group of justices led by Justice Kennedy took the view that the “must carry” provisions did not amount to a regulation of content but were intended to ensure that consumers who did not have access to cable television did not lose all television services. A second group which included Clarence Thomas saw the regulation as controlling content and concluded that this represented a direct threat to First Amendment freedoms. This group led by Justice O’Connor essentially rejected any wider public interest defence for the “must carry” rules such as maintaining a diversity of viewpoints or educational benefits, thereby following one line of reasoning in Chief Justice Rehnquist’s 1993 decision but reaching the opposite conclusion. Central to this group’s dissention was the assertion that “it is government power, rather than private power, that is the main threat to free expression.” With neither group able to command a majority of the justices the case was remanded for further investigation by a lower court. The case was re-argued in 1996 and finally decided in 1997 when by a five-to-four majority, the Supreme Court reluctantly accepted the government’s case and granted a limited application of the “must carry” rule. The Court recorded that in the intervening three years the evidence suggested that ninety-five percent of cable operators had, for example through the use of spare capacity, met the new standard without dropping any of their pre-existing content. When the dust had settled, the charge against the Court was that it had exhibited a profound distrust of government, privileging liberty at the expense of equality. The charge against Turner was that not only had he sought to further his company’s business interests through the use of a claim for First Amendment protection, but he had done so by an act of censorship.

In its November 13, 1996 report of the action taken by TNT to delay Strange Justice, the New York Times highlighted the wider censorship related issues of competition and free reporting raised by the case. All of the cable companies had a vested interest in the outcome of the court case, leaving no obvious alternative outlet for the producers of Strange Justice. On the question of reporting, not only was Turner in a position to intervene at TNT, but he was also in a position of influence at one of the country’s premier news channels, CNN. The Times article concluded that the corporate ties that linked TNT and CNN would probably make any investigation by CNN of the saga very unlikely. The article also hinted at a broader democratic risk if conglomerates seek to ensure that the output from their entertainment divisions do not provoke unwelcome regulatory decisions in Congress or the Supreme Court. Turner’s intervention seemed to fit that characterisation exactly.

The New York Times had in fact aired a story with many similar themes almost exactly one year previously. In an editorial, the paper lamented the decision by CBS to spike a November 12, 1995

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354 TURNER BROADCASTING SYSTEM, INC. v. FCC, 000 U.S. U10372 (1994).
story prepared by its flagship news programme 60 Minutes, concerning tobacco company Brown and Williamson’s use of a cancer-causing additive in pipe tobacco. The decision had ostensibly been made to avoid a possible lawsuit against CBS—although none had been threatened. At issue for the Times was the question whether the decision had been influenced by the fact that the Chief Executive Officer of CBS, Larry Tisch, and several of his board colleagues were on the brink of making significant personal fortunes as a result of the sale of CBS to Westinghouse. The suggestion that the news values of the station that had once hosted Ed Murrow had been sacrificed for personal gain may not have implicated Hollywood but it raised exactly the same issues about corporate influence of the marketplace of ideas that were encountered later in the Turner case.

The proposition that the conglomerate interests that control Hollywood will happily jettison art or principle in pursuit of box office dollars continues to have some currency. In August 1999, Entertainment Weekly reported that Stanley Kubrick’s Eyes Wide Shut (1999) had been digitally altered to achieve an R rating. Digital cut-outs had been super-imposed in a sixty-five second orgy sequence. The article quoted Terry Semel, co-chairman of Warners as saying that Warners were not in the NC-17 business. This comment certainly reflected the more general avoidance within the industry of the NC-17 rating, noted earlier in the discussion about television. The New York Film Critics Circle criticised CARA saying that they had “become a punitive and restrictive force, effectively trampling the freedom of American filmmakers.” This of course was nonsense. As Jon Lewis has argued, the question of how the US version of the film was rated was not the whole story. Warners were, and remain, in the NC-17 business. The un-censored version of Eyes Wide Shut was released in Europe and the same print was subsequently released on DVD. Warners were merely acknowledging that different markets have different tolerances and that any concerns directed at preserving Kubrick’s artistic integrity, of the kind raised by the New York Film Critics and their colleagues in Los Angeles, were secondary to Warners’ wider commercial calculation. If the freedom of American filmmakers was being trampled on it was the studio that was doing it.

In the case of The Golden Compass (2007), based on Philip Pullman’s novel Northern Lights, the director Chris Weitz confirmed to Entertainment Weekly that elements of the novel had been toned down to avoid upsetting religious groups in the US. Pullman’s book, along with the two accompanying volumes of the His Dark Materials trilogy, straddles our own and other parallel worlds as it describes a conflict that is portrayed as one between knowledge and freedom on the one hand and subjugation by an overbearing religious authority on the other. By the time Weitz became involved in discussions to film part one of His Dark Materials, there was already ample evidence of the potential difficulties faced by the studio. One contributor to the Catholic Herald in 1999 had opined, in a piece about a proposal to ban Harry Potter books in South Carolina, that “if

one was going to start banning books, there are numerous candidates that seem to me to be far more worthy of the bonfire than Harry. ... One such is the trilogy by Philip Pullman, entitled *His Dark Materials.* The quote was widely reported at the time although the *Catholic Herald* later attempted to re-frame the controversy by first making light of the remark in a December 26, 2003 article and later describing it as a “longstanding misinterpretation” in a January 21, 2005 article. The original article however makes clear where the perceived threat from Pullman’s work lay:

> By co-opting Catholic terminology and playing with Judaeo-Christian theological concepts, Pullman is effectively removing, among a mass audience of a highly impressionable age, some of the building blocks for future evangelisation.

Following Pullman’s initial refusal to become involved in scripting, and a rejected script from Tom Stoppard, producer Deborah Forte asked Chris Weitz to write and direct the film and work began in 2004. According to the *Entertainment Weekly* report, Weitz made a very clear-cut career and commercial decision to play down the religious references in the film as they would antagonise religious groups. Weitz was quoted as saying: “If we said ‘church’ and put them as the enemy, it would be unnecessarily insulting to religious people.”

In acting as they did, both Weitz and the film’s producers were acknowledging the potential negative impact of this pressure and were clearly mindful of the commercial possibilities of a trilogy, predicated on the success (meaning absence of controversy) of the first film. Reaction to the film within the religious community was generally negative. The New York-based Catholic League for Religious and Civil Rights issued a special report in 2007 asking parents to keep their children away from the film on the grounds that it was bait for sales of the books. A further warning was given in *Movieguide,* a publication of the Christian Film and Television Commission which gave the film its lowest rating—Abhorrent. An alternative perspective was initially offered by the US Conference of Catholic Bishops (USCCB) who did not see the film as a serious threat. The film had been reviewed for the Bishops by Harry Forbes, director of the USCCB’s Office for Film and Broadcasting, and member of the MPAA Rating Appeals Board, who recommended that “[r]ather than banning the movie or books, parents might instead take the opportunity to talk through any thorny philosophical issues with their teens.”

The Office for Film and Broadcasting had awarded the film an A-II, appropriate for adults and adolescents. However that initial positive conclusion was withdrawn from circulation on the orders of the Bishops. A similar change of heart had accompanied *Brokeback Mountain* (2005) when the Bishops’ initial L (limited adult audience) rating was later changed to O (morally offensive). In both cases the Bishops were responding to critical responses from the wider church community. As it turned out the efforts on the part of the filmmakers to sanitise the *The Golden Compass* for a Christian audience did not bear fruit. On a

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362 Ibid.
363 Jensen, “What’s God Got To Do With It?”
production budget estimated at $118 million, the film only returned around $70 million at the US box office. In seeking to appease US-based religious sensitivities the film’s creators removed an important aspect of Pullman’s story, one that arguably gives it much of its particular emotional grip for Pullman’s fans: a group one might have supposed the filmmakers would have wanted to bring into theatres. Weitz lamented in the *Entertainment Weekly* interview that “You want as wide an audience as possible. . . . In a way, one wishes that was why people went to movies, to get ideas. But they really go to be entertained.” In defence of Weitz, he was candid about the way in which economic considerations were driving the production, and audiences were able to draw their own conclusions about the treatment and indeed whether this might amount to some kind of censorship.

A rather different charge of censorship was made against the industry by filmmaker Kirby Dick in his 2006 documentary, *This Film is Not Yet Rated; a film* first aired at the Sundance Film Festival in January 2006. In contrast to the case by case indications of commercial self-interest that appeared to underpin the decisions discussed earlier involving Turner and Weitz, Dick alleged a more systematic bias within CARA itself. In addition to noting how control of the industry is concentrated in the hands of a few multi-national corporations, Dick’s documentary sought to challenge the secrecy that still surrounded the workings of CARA and the Rating Appeals Board, and presented evidence suggesting that comparable depictions of straight and gay sex attracted different ratings, with the latter attracting more NC-17 ratings. For example, portrayals of gay sex in *Boys Don’t Cry* (1999) and *But I’m a Cheerleader* (1999) resulted in NC-17 ratings while portrayals of straight sex in *American Pie* (1999) and *American Beauty* (1999) resulted in R ratings. The documentary also focused on the membership of the Rating Appeals Board, highlighting the very strong influence of the theatre chains, and the presence of Jim Wall from the National Council of Churches and Harry Forbes from the US Catholic Bishops Conference. That certain appeals were being heard in secret by a group whose primary interest was in box office performance - but with an eye on issues of morality - seemed to suggest that the shift from the Production Code era might not have been as radical as Valenti had originally indicated. However in terms of absolute numbers, the overall effect of the Appeals Board on the ratings system has been relatively small with appeals running at a rate of about ten each year. Of these, about one in three results in an overturned rating; and these are typically where the Appeals Board has agreed to make an exception to the language rule that calls for an automatic R rating, if more than one harsher sexually derived word or phrase is used in non-sexual contexts; or if used once in a sexual context.

Responding in part to the issues highlighted by Dick, both Dan Glickman, who had replaced Valenti in September 2005 as president of the MPAA, and Joan Graves attended the Sundance Festival in January 2007 to launch proposals for improvements in transparency of the ratings process. These proposals included plans to publish the ratings rules on the MPAA web site, as well as details on the ratings and appeals processes. Glickman also undertook to formalise CARA’s training and education processes and to formalise a requirement that CARA raters could no longer remain in post after their children had grown up. The new arrangements were published in April

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2007 jointly by the MPAA and NATO. In the introductory section, the document explained that the Rating Appeals Board would consist of “representatives of the members of the MPAA and NATO and others with knowledge of motion picture production and distribution and of the levels of the types of content that are appropriate for children of various ages.” The “others” would include up to four individuals not affiliated with any part of the industry who were knowledgeable about “the standards generally applied by American parents for determining the suitability of motion pictures for viewing by their children.” In addition, the new arrangements allowed for a representative of up to three designated “observer organisations” which could be appointed from time to time by the MPAA and NATO. Observer organisation representatives were not given rights to speak or vote at appeals. No mention was made of the ongoing presence of observers from church organisations.

In response to the question of systematic bias in the portrayal of straight and gay sex, alleged by Dick, Graves argues that parents do have concerns about when their children are taught about sexuality and as a result, in the lower ratings, G, PG and PG-13, there may be circumstances in which a depiction of homosexuality would push up a film’s rating; however, for the restricted ratings, R and NC-17, she contends that there is no discernable effect.

More generally, the evidence on studio attitudes to NC-17 ratings and the actual numbers of NC-17 ratings, as discussed in chapter three, points towards a continuing pressure to include more explicit content in R and PG-13 ratings. According to Graves, many films start out, in terms of content, as NC-17 but as a consequence both of the studio contractual requirements as well as mall cinema lease restrictions on exhibition of NC-17 films, changes are made. She comments that:

Most distributors are afraid of the outside pressure that may arise as a result of marketing an adult themed film or they don’t want to cut their perceived income. This is a shame, because CARA sees a lot of material that would make very good adult-themed product but the pressure is to re-shape the film into an R.

Occasionally a distributor will happily accept an NC-17. Graves recalls that in the case of Bernardo Bertolucci’s *The Dreamers* (2003) the distributor, Fox Searchlight, had no difficulties getting the advertising or the play dates they wanted. However, Fox is seen to be in a minority in this respect. Graves also agrees that a key underlying pressure for lower ratings arises from the fact that studios are not stand-alone companies but parts of larger conglomerates. Adult-oriented material can look incongruous to corporate boards and stockholder groups who are protective of their brand.

The primary pressure on CARA in the present era, as noted earlier, is from filmmakers with R movies that the studios want labelled as a PG-13. CARA attempts to cope with the pressure on rating categories by use of the descriptors that are issued along with the rating. These allow the raters to convey to parents some sense of the strength of material contained particularly in films rated R and PG-13. Graves believes that the current rating categories plus the descriptors provide an appropriate level of granularity and there are no plans currently for additional ratings. CARA has however received complaints from parents about other parents who take their under ten year olds into the cinema to watch R-rated films. One possible response to this is to impose an additional

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369 MPAA and NATO “Classification and Rating Rules” April 1, 2007.


371 Ibid.
Chapter 4: Corporate control, post 1994.

minimum age limit on entry into R-rated films. No such change is planned at present, but Graves’s view is that the proposition is certainly not off the table.

One area of the marketplace where the pressures to achieve lower ratings are less noticeable is in the independent film sector. Currently some sixty-five percent of films rated by CARA are from small independent producers. These companies are less concerned than the studios about television restrictions on advertising placement. They are also more content to make R movies and target them on the rental sector of the market. One secondary consequence of the size of the independent sector is that yearly trends in CARA’s ratings can give a misleading picture of what ratings the major studios are interested in achieving.

Overall, there is ample evidence of the economic utility of film censorship as described by Jon Lewis. The long established policies of retailers like Wal-Mart and Blockbuster to cater to a family market by the selection of the videos and DVDs that they stock represent a different form of censorship than that produced by the decisions that re-touched Eyes Wide Shut and The Golden Compass or that delayed the transmission of Strange Justice, but they all share motives of commercial self-interest. CARA occasionally finds itself at the scene of the crime, but it is industry action rather than the ratings themselves that is ultimately contributing to a distortion of the informational market from which, as Fiss outlines, the public learn about the world beyond their immediate experience. Cinema is by no means the sum total of that market, but neither can cinema’s influence on and contribution to our understanding of the world be discounted as negligible.

Troubling as this distortion of the informational market is, the issue is nonetheless eclipsed by the possibility that the circumstances of concentrated corporate ownership and the absence of federal oversight has created a space where censorship for political purposes is also possible. That possibility, along with further evidence of the economic utility of censorship, will now be explored with reference to the recent film and documentary work of Oliver Stone.

A turbulent filmmaker

In the pantheon of conspiracy theorists constructed by the popular press, few if any names have more resonance than that of Oliver Stone. His reputation is such that what otherwise might have been a small entry in a UK newspaper’s education supplement- an announcement to produce a series of re-appraisals of recent American history- found its way onto the front page. It was not always this way.

Stone first came to the attention of a wide audience of cineastes and students of Hollywood after the release of Midnight Express (1978). This gritty and violent depiction of the inside of a Turkish prison, directed by Alan Parker, was released in October 1978. Shot on a budget of some $2.3

\[372\] Ibid.


\[374\] Fiss, Irony of Free Speech, 53.

million, the film took $35 million at the US box office. The film gained six Oscar nominations including best picture and won two, including an Oscar for the screenplay written by Stone. Further public recognition and some notoriety followed with his screenplays for Scarface (1983) and Year of the Dragon (1985). However, Stone’s career really took a quantum leap in 1986 when he found himself critically and commercially lauded for both Salvador and, later the same year, Platoon. The box office and critical success of Platoon represented for Stone the culmination of a ten year struggle to turn his personal recollections of military service in Vietnam during 1967-1968 into a movie. Whilst New Yorker film critic Pauline Kael took issue with the film, it was widely acclaimed for its departure from Hollywood’s clichés about military combat. Both Platoon and Born on the Fourth of July (1989), a film that also focused on aspects of the impact of Vietnam on American society, resulted in Best Director Oscars for Stone. The audience reaction to Born on the Fourth of July was slightly more mixed, due in part to the representation and implications of the injuries received by the film’s subject, veteran Ron Kovic. However, Stone’s position as a controversial but popular filmmaker had already been established, in the wake of Platoon, by sharp political and social observations in Wall Street (1987) and Talk Radio (1988). This positive media perspective on Stone shifted sharply in the summer of 1991.

In a Washington Post article published on May 19, 1991, George Lardner Jr. sought to discredit the thesis being expounded in a film directed by Oliver Stone that was still in production-JFK (1991). Lardner charged that Stone was chasing fiction and that the investigation by District Attorney Jim Garrison into events surrounding the assassination of President Kennedy, upon which the film is largely based, was a fraud. At the centre of Stone’s portrayal in JFK is the contention that Lee Harvey Oswald did not act alone and therefore the Warren Commission, established under the Chief Justice Earl Warren to investigate the assassination, was fundamentally flawed in its analysis and conclusions.

The Washington Post piece was the opening shot in a long running media debate about the veracity of the film as well as the start of a more nuanced academic debate about the nature of historical fact and the role film can play in historical analysis and representation. Efforts to discredit both Stone and his sources, in particular, Garrison, continued as the film reached completion. The Wall Street Journal described Stone as a “propagandist”, while Newsweek ran a story with similar themes with a front page title that read “The Twisted Truth of JFK. Why Oliver Stone’s new movie can’t be trusted.” The New York Times accused Stone of being “careless with the truth.” Jack Valenti also criticised the film for what he saw as a disparaging lie directed at the integrity of his former boss Lyndon Johnson. In his statement, Valenti described JFK as a “hoax” and a “smear” and compared it to the propaganda films of Leni Riefenstahl. The release of Valenti’s statement had been delayed following the intervention of Warners chairman Bob Daly, as the studio sought to

silence Valenti prior to the Oscars ceremony, and limit the commercial damage of his comments.\textsuperscript{381} Having been stung by some of the pre-release criticism of the film, Stone went so far as to commission a book which included a meticulously foot-noted screenplay plus copies of newspaper articles and a series of official documents which Stone and co-writer Zachary Sklar had drawn on.\textsuperscript{382} Stone also engaged a Washington publicist Frank Mankiewicz who himself had previously worked for Robert Kennedy. With help from Mankiewicz, Stone secured space for his replies in several publications which had carried critical articles, including the \textit{Washington Post} and \textit{Time} magazine.

Despite the efforts to negatively influence the reception of the film, \textit{JFK} found a substantial US audience, with takings from the initial theatre release estimated at $70 million. More remarkable in some respects, was the box office revenues outside the US. The film seemed to break the Hollywood maxim that films with high political intent and content, which focused on US-centric subject matter, could not be commercially successful overseas.\textsuperscript{383} Estimated box office takings outside the US were $135 million.

The pre- and post-release criticisms and the audience reactions were however only the prologue to the story of \textit{JFK}'s reception. Following a special screening of the film for Congress in 1991, Stone met, at the beginning of March 1992, with members of Congress, including Senator David Boren, Chair of the Senate Intelligence Committee and House Representative Louis Stokes who had formerly headed the House Select Committee on Assassinations.\textsuperscript{384} The purpose of the meeting had been to confirm plans for establishment of an Assassination Records Review Board (ARRB) with the aim of making public many of the government files relating to Kennedy’s assassination that had remained closed since 1963. The ARRB was subsequently established in 1994 and by November 1998 it had released some 33,000 previously restricted files into the National Archives. Whilst many files were withheld and some of the released files had sections redacted, the result seemed a remarkable achievement for a filmmaker. Indeed the Executive Summary of the ARRB final report acknowledged the influence Stone's \textit{JFK} had had in initiating the process of review. In December 1997, the ARRB released files that supported one of Stone’s key contentions in the film, that by October 1963, President Kennedy had already initiated a draw down of US military advisors in Vietnam, with the clear implication that, had Kennedy remained in office, the military build-up in Vietnam in the mid-1960s would not have taken place.\textsuperscript{385} After the closure of the ARRB the accumulation of relevant records by the National Archives and Records Administration continued, building to a total of some five million pages of material.\textsuperscript{386}

The popular debate about the veracity of \textit{JFK} also played into an academic debate about the representation of historical fact on film and indeed about the nature of documented historical fact. Robert Rosenstone has argued that for a film to be historical it must not indulge in “capricious

\textsuperscript{381} Bob Daly, interview by author, Santa Monica, CA, October 18, 2010.
\textsuperscript{382} Oliver Stone and Zachary Sklar, \textit{JFK. The Book of the Film} (New York: Applause Books, 1992).
\textsuperscript{386} National Archives and Records Administration, Press Release, December 20, 2004.
invention” or ignore finding or assertions that are already known. Instead it must situate itself “within the ongoing debate about the meaning of the past.” Many of Stone’s detractors certainly saw Stone’s blending of archive and re-shot material in JFK, as well as his hypothesising about Kennedy’s killing being a coup d’état, as capricious invention. However the congressional meetings and work of the ARRB seem to point to the conclusion that Stone did not just situate himself and his film within the ongoing debate- one that by that point was largely marginalised and ignored by mainstream media- but that, in the wake of repeated revelations from the ARRB, he radically altered the dimensions of that debate. Perhaps inevitably the output from the ARRB has not ended discussions about Kennedy’s assassination. Detailed accounts about for example, possible tampering with the Zapruder film, the iconic archive footage of the assassination shot by a member of the public, or the possibility that the autopsy photographs in the National Archives are not from the original autopsy continue to fuel both the arguments and the demands for more information.

The initial criticisms of JFK, the public reaction to the film, the congressional intervention plus subsequent controversies over films like Natural Born Killers (1994) and Nixon (1995) and criticisms of more recent documentary work about Fidel Castro, have all helped cement Stone’s place in popular discourses about conspiracy, media control and establishment accountability. However the profile of, and response to his work has also placed him in a unique position to comment on the economic and political utility of censorship within the industry.

As regards the argument about the economic utility of censorship, Stone concurs with the view that after the brief appearance of X-rated pornography in mainstream metropolitan cinemas in the early 1970s, the X certificate became essentially unusable as newspapers and television stopped taking advertising for these films. The result was the increased downward pressure on filmmakers to achieve at least R ratings. In the case of Natural Born Killers (1994), a graphically violent satire on American media culture, Stone became involved in a protracted disagreement with CARA about the content of the film and about the rating. NBK was first reviewed by CARA on March 25, 1994 and was unanimously considered to be an NC-17. The film returned to CARA on two further occasions on April 4 and 21. At this point Heffner intervened in the rating process and insisted on personally seeing the proposed edits before he would schedule a further full screening. This step was taken to prevent the gradual wearing down of the Board through multiple exposures to the film. At a further screening on May 4, 1994 a majority of the Board finally agreed on an R rating. Stone had in fact shot a second ending of the film in which the protagonists Mickey Knox (Woody Harrelson) and Mallory Knox (Juliette Lewis) do not escape at the close of the story, but are killed. This alternative had been prepared in anticipation of objections from CARA to the proposed ending.

Whilst the second ending was not needed, approximately 150 other changes were

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390 Oliver Stone, interview by author, Santa Monica, CA, January 19, 2010.
required to achieve the R rating. Bob Daly had made it clear to Stone that Warners would not be able to release the film as an NC-17, and that it had to achieve an R.

Stone’s assessment is that during the 1990s even the R rating became increasingly problematic:

Since the 1990s the R rating has come under pressure from Christian groups and the current situation is that similar pressure [to that previously experienced by the X in the 1970s] is coming on to the R rating. An R rating can only be shown at certain times on television. For the last 5-7 years everyone has been under pressure to make PG-13 rather than R.\(^{391}\)

One consequence of this development is the increased wariness on the part of the studios of content that is either politically or sexually contentious.\(^{392}\) In the case of \textit{Alexander} (2004) Stone’s representation of the gay relationship between Alexander and Hephaestian proved to be a shock both for the studio and for some Southern audiences where attendances were noticeably low. A review of the film published in the \textit{Dallas Observer} suspected, as it turned out correctly, that some gay scenes had nevertheless been removed from the film.\(^{393}\) One consequence of the studio reaction was that the original theatrical release only hinted at Alexander’s relationship with Bagoas-a eunuch. In the 2007 DVD version- \textit{Alexander Revisited}- this relationship is fully restored. In the case of \textit{World Trade Center} (2006) Stone sought to tell the story of the aftermath of the collapse of the Twin Towers through the stories of two New York Port Authority police officers. The desire for realism was however tempered by the economic pressure to achieve a PG-13 rating, resulting in modifications being made to the representation of crush injuries suffered by several of the characters in the film.

Whilst changes like those to \textit{Alexander} and \textit{World Trade Center} seem to support, on a case by case basis, the central contention in Jon Lewis’s argument about the economic utility of censorship there is also evidence of a more structural economic effect on film content, operating in two ways. Stone notes that in the 1970s it was possible to cater to niche audiences with films that could cover their costs on relatively low box office returns. However, in the 1980s, “above the line” costs for actors and for television advertising increased dramatically meaning that a film that cost $30 million to produce might require a budget of a further $20 million for advertising to build the necessary audience. As well as making it more financially difficult to respond to niche audiences this increase in the dependence on television advertising brought with it the need to ensure that adverts for films had to be suitable for prime time audiences and indeed that the films themselves could be marketed to general audiences. Studios, exhibitors, video retailers and television advertisers thus all found themselves with a shared economic interest in avoiding controversies and selling to as wide an audience as possible. Stone concurs, for example, with the view discussed earlier that video retailing has brought its own pressures to bear on content as companies like Blockbuster and Wal-Mart seek to foster a family-friendly image.

Stone has also observed a similar trend with the re-cutting of theatrical films for re-transmission by cable companies. This was particularly noticeable for example in the case of Stone’s \textit{U Turn}}
(1997). Based on a book by John Ridley, the film is a dark narrative tracing the un-ravelling of the life of a small time gambler after he is forced to stop in a small town in Arizona for repairs to his car. The portrayals of violent sex and the inclusion of incest - a theme that Stone added to the original story during shooting - made for a very controversial film. In Stone’s view, it is difficult to retain control of the edit after the theatrical release. Television transmission offers commercial opportunities to the studios, but at the cost of further editing. Stone’s own production files for *U Turn* reveal that HBO Asia requested nine edits to the film before transmission in its home region. In a memo sent to Stone and dated March 26, 1999, these edits were referred to as “censorship edits” with love-making being the prime target. During a series of edits performed in the spring of 2002 by Columbia Tristar, Stone commented in a memo dated April 9, 2002, to his agent that:

> It makes almost no sense to me now as a story and whatever meaning it has is diminished.

A few days later, Stone asked for his director’s credit to be removed from the resulting version.

In the case of the 2000 DVD Gift set re-release of *JFK*, lawyers for Warners asked for a number of deletions from Stone’s commentary in the Special Features section of the DVD. In a memo from Paul Hemstreet, Director of DVD Programming for Warners dated August 16, 2000, proposals for cuts to the commentary were made on the basis that the Warners Home Video lawyers could not verify some of the claims. In an almost comical admission both of a lack of knowledge of the progress of the debate about Kennedy’s assassination or of the key people involved in the Warren Commission, the memo included the following request for a deletion:

> Remove line about Ford changing the position of the bullet hole in the autopsy. Which Ford?

Documents describing changes to the Kennedy autopsy report by then House Representative, and later President, Gerald Ford, had in fact been released by the Assassination Records Review Board in July 1997.

In addition to the economic pressures that affect film editing, the availability of video rentals and re-editing for television, Stone observes a more fundamental conservatism within the studios. Whilst his production company Ixtlan is often approached with interesting topical stories, no such approaches ever come from the studios:

> They are not interested in making those kinds of movie. The official line is that “dramas are dead” It either needs to be a comedy or big pull teenager film.

Interestingly, Stone’s reading of the situation, as regards the presence of an institutional conservatism within the industry, aligns closely with Joan Graves’s perspective on the industry’s disinclination to invest in the promotion of relationship films, noted earlier.

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394 Oliver Stone, interview by author, Santa Monica, CA, June 18, 2010.
395 *U Turn* Office File, Ixtlan Production Files (hereafter I-PF), Ixtlan Inc., Los Angeles, California.
396 *U Turn* Office File, I-PF.
397 *JFK* Office File, I-PF.
399 Oliver Stone, interview by author, Santa Monica, CA, January 19, 2010.
Chapter 4: Corporate control, post 1994.

Stone’s personal experience is that on occasion, individual studios have taken risks with projects.  
Bob Daly’s intervention to silence Valenti reflected not just commercial self-interest but a wider  
commitment from within Warners to support JFK from the film’s inception. However the trend  
appears to be towards the kind of conservatism that Ted Turner, Terry Semel and Chris Weitz all  
admitted to.

Stone’s overall assessment of the industry is that in terms of freedom of expression, the movie  
business has fallen behind cable television. The influence of cable on what directors can include for  
example in relation to portrayals of sex has been substantial. In response to the kind of censorship  
operated by network television, as discussed earlier in the chapter, Stone records that he often  
shot television versions of certain scenes to make subsequent editing easier. That kind of  
adaptation for television is no longer seen as necessary.

Whilst intense commercial competition between cable companies has opened a space for artistic  
expression not available on broadcast television, Stone contends that the medium can be subject  
to political censorship even as it offers relief from commercial censorship. His own experience of  
this concerned the planned airing by HBO of a documentary about Fidel Castro prepared by Stone.  
In Comandante (2003), Stone offered a sympathetic view of Cuba’s revolutionary leader that was in  
contrast to what Stone saw as a long standing mis-representation of Castro by mainstream media  
in the US. The documentary was initially aired at the Sundance Film Festival in January 2003 and  
was scheduled for transmission by HBO later that spring. According to a report in the New York  
Times, HBO objected to the favourable portrayal of Castro and asked Stone to return to gather  
additional information. HBO’s sensitivity may have been heightened by the fact that diplomatic  
relations between the US and Cuba had worsened that spring. This was in part as a result of two  
plane hijackings on March 19 and April 1, in which Cuban airliners were diverted from Cuba to Key  
West in Florida. However tensions were also raised in April as a result of the round-up and  
imprisonment by Cuban authorities of seventy-five dissidents, as well as the execution of three  
hijackers who had attempted to take a Cuban ferry to Florida. The political temperature in the US  
was in any event high in the wake of the launch of the invasion of Iraq on March 20, 2003 and HBO  
and its corporate parent Time-Warner would not have been oblivious to the possible negative  
publicity that a sympathetic re-appraisal of Castro might have elicited at that time.

What concerned Stone was that the film’s cancellation was announced within three weeks of the  
scheduled transmission.

The decision was made in hours, when I was out of the country. There was no  
consultation with me. I was simply informed it was cancelled, and it was dead in the  
water.  

The fact that promotional materials were already running on HBO, raised the possibility in Stone’s  
mind that HBO’s corporate owners Warners had been lobbied to drop the programme, possibly by  
representatives from the Cuban exile community in Florida and possibly also by the White

400 Ibid.  
402 Oliver Stone, email to author, February 16, 2010.
House. Following HBO’s decision to cancel, it then retained the film under licence for eighteen months, but took no further action. This action essentially removed the film from circulation and any possibility of transmission. The film was then returned to Stone, with the copyright returning to a company in Spain. Ixtlan has not as yet been able to secure the release of the film in the US although it is available in Canada and the UK. Stone meanwhile did return to Cuba and collected further material from Castro for a second documentary for HBO titled Looking for Fidel (2004). This film, which had a much more limited scope than Comandante, was more favourably received by HBO and was aired in 2004.

As with the interventions by Turner and actions taken by Chris Weitz, discussed earlier, the action taken by HBO highlights a key issue in relation to the analysis of censorship- the absence of any mechanism of public accountability. Decisions to screen particular materials, and withhold others, may depend on personal taste, as appears to be the case with Crash, or immediate commercial advantage, as was the case with The Golden Compass or strategic commercial advantage as was the case with Strange Justice, or these decisions may have more overtly political dimensions as appears to be the case with Comandante. Part of the difficulty in distinguishing political censorship from other forms of censorship- personal or commercial- is that commercial mechanisms can have a role to play in all modes of censorship. The fact that an act of censorship has economic utility does not exclude the possibility that its motivation is political.

The nature of the self-regulatory system introduced by Valenti facilitated this lack of transparency of motives from the outset. As noted in earlier chapters Valenti took various measures to limit public engagement with the operation of and strategic development of the rating process. He sought to limit the provision of supplementary rating information despite the demand, and evidence of positive results from the 1981 trial. He sought to limit public discussion about the rating process by resisting calls for the inclusion of childcare professionals, or PTA representatives in the rating board. The rationale used by Valenti- and supported by Heffner- was that the board members were simply American parents, but the avoidance of anyone with explicit professional affiliations meant that Valenti was spared any pressure to publically debate the development of the ratings process. Had the PTA been invited to provide a candidate, such a development would have, in all probability, elicited a range of candidates, a selection process and a debate about standards. Valenti’s insistence on Heffner’s public silence when ratings disputes arose, as for example with Rollerball (1975), Honkytonk Man (1982), Scarface (1983) and Basic Instinct (1992) was merely one more corollary of the system’s strategic purpose- to maintain commercial control. The perceived need for that control pre-dated Valenti but its intensity increased after the introduction of the Code and Rating Program as a new entertainment culture emerged, dominated by large corporations with multiple routes to market. As the earnings potential for these corporations increased, so too did the consequences of failure.

Whilst there is plenty of evidence of the continuing corporatisation of entertainment culture, as evidenced for example in the recent Comcast announcement, questions remain about the continuing lack of public engagement and accountability in the current ratings system. This may yet

403 Stone, interview by author, January 19, 2010.
prove to be a critical weakness, a possibility discussed in the next section of this chapter.404 This possibility arises not out of any immediate pressure for regulation from government- although Graves has detected that the new Obama administration is much more interested in regulatory issues than the Bush administration- but from changes at the Supreme Court.405

A changing Court

William H Rehnquist, Chief Justice of the Supreme Court, died on September 3, 2005. He had been nominated for the bench by President Richard Nixon in 1972 and elevated to Chief Justice by President Ronald Reagan in 1986. Rehnquist’s death in office brought to an end both a period of eleven years when there were no new appointments to the bench and a longer period of some thirty six years during which the political instincts on the bench between left and right had, by in large, been held in balance despite the fact that the formal political affiliations of the bench were overwhelmingly Republican. This longer period can be traced back to the retirement of Chief Justice Earl Warren and his replacement by Chief Justice Warren Burger in June 1969.

The appointment of Burger had in its turn marked the formal end of a defining period of US jurisprudence in the twentieth century under Warren. The period from 1953, when President Eisenhower had nominated ex-California Governor Earl Warren to lead the Supreme Court, until 1969, was one where the Court pursued a decidedly liberal agenda. The Court made key pronouncements on civil rights, access to birth control, criminal suspect rights, press freedoms and censorship. In the period after 1969, the political rebalancing of the Court as a result of appointments made by President Nixon did not entirely have the effect desired by Nixon and the Republican Party. Far from diminishing its liberal inheritance, the new Court protected, and in some respects extended, a broad range of civil rights in a series of rulings including the landmark Roe v Wade abortion rights case in 1973. The Court did however, as Owen Fiss records, adopt a less interventionist stance when assessing the role of government in determining a balance between liberty and equality.406 Prior to 1969, the Court had supported the proposition that the State did have a role in regulating the market place in the wider interests of democracy. Most notably, in the Red Lion decision in 1969, as noted earlier, the Supreme Court upheld a lower court ruling that the Red Lion Broadcasting Company had failed to meet its obligation under the Fairness Doctrine, when it failed to offer a right of reply to a writer following a radio broadcast critical of that writer. In so ruling, the Court re-affirmed the right of the State to ensure that the public had access to the widest range of views, as a pre-condition for effective public debate. The liberty of the radio station to broadcast what it chose to needed to be balanced by the need for a wider equality of participation in the democratic process. After 1969, the proposition that the government had a role in intervening to stay the hand of corporations, for example in relation to the increasingly dominant role of entertainment and media conglomerates received no significant support from the Court.

405 Graves, interview by author, January 19, 2010.
Under the leadership of both Warren Burger and William Rehnquist, the Court had tended to favour a libertarian reading of the First Amendment, and consistent with that position, it exhibited a disinclination to support the advancement of regulation. In a series of decisions including *Columbia Broadcasting v Democratic Committee* (1973) and *Pacific Gas and Electric* (1986) the Court moved away from the wider democratic principle established in *Red Lion*.\(^{407}\) The Court’s later deliberations over the *Turner* case, as discussed earlier in this chapter, reflected the same disposition.

The Court’s reticence to support government intervention was bolstered by support from an influential legal advocacy group known as the Federalist Society which not only called for smaller government but pushed for greater judicial intervention based on a pared down “originalist” interpretation of the Constitution, to right what it saw as the wrongs visited on America by the liberal consensus of the 1960s- visited by government and the Warren Supreme Court.\(^ {408}\) Originalism as a legal doctrine emerged in the 1980s and is most often associated with legal academic and former US Court of Appeals judge Robert Bork. Essentially the legal proposition in originalism is that the Constitution’s meaning is fixed to the meaning that the original framers had in mind when they produced the document. A key political significance of the doctrine however grew out of its use as a proxy in the debate about legalised abortion- an indicator of the underlying social conservatism of supporters of the doctrine.\(^ {409}\)

Under Rehnquist’s replacement, Chief Justice Roberts, the Court began to experience a realignment of its ideological centre of gravity, more favourably disposed to judicial activism. That shift continued in January 2006 when Justice Alito replaced Justice O’Connor. In combination with sitting Justices Scalia and Thomas, these new additions have created a caucus on the bench that is significant not so much for its conservatism- although it undoubtedly is- but for its willingness to intervene to challenge the will of Congress. The conservative leanings of the bench have been illustrated in a number of recent decisions including *Gonzales* (2007), in support of the 2003 Partial-Birth Abortion Ban Bill, and *Ledbetter* (2007), a rejection of a sex discrimination claim under the 1964 Civil Rights Act. The contiguous willingness to challenge the will of Congress, as recently illustrated in the *Citizen’s United* case, discussed below, distinguishes the conservatism of this group from the conservatism of the Rehnquist Court.

At one level, a more conservative Court may serve the business and de-regulatory interests of the MPAA and the entertainment industry. A case that seemed to support that line of thinking was argued before the Court in March and September 2009. The case picked up a key underlying theme in the *Turner* case discussed earlier, the extent to which a corporation can claim First Amendment protections similar to those that would apply to an individual. This constitutional issue of “corporate personhood” was a key aspect of the *Citizen’s United v Federal Election Commission* case, decided on January 21, 2010.\(^ {410}\) At issue was the question of whether the government could ban a corporation from making political speech during an election campaign. Whilst on first

\(^ {407}\) Ibid.


\(^ {409}\) Ibid., 18.

\(^ {410}\) *CITIZENS UNITED v. FEDERAL ELECTION COMMISSION*, 000 U.S.08-205 (2010).
inspection this case would seem to have little to say to the movie industry, a closer investigation of the way in which the case was disposed should certainly be of interest to the industry.

The case was a complex one, arising after Citizens United, a non-profit corporation involved in advocacy of a range of conservative issues, produced and released a film documentary titled *Hillary: The Movie* (2008), released during the 2008 presidential election campaign. Fearing that the running of adverts and the offering of the film to cable television channels on video-on-demand would contravene the 2002 Bipartisan Campaign Reform Act, a law that placed strict limits on electioneering communications, Citizens United sought a ruling from the District Court in Washington DC. The Court ruled that Citizens United would be in breach of Federal Election Commission rules and it was that District Court ruling that was eventually over-turned by the Supreme Court. However, unusually, the Supreme Court widened the scope of the question before it beyond those of the status for legal purposes of video-on-demand, the status for legal purposes of the particular kind of communication— a polemical documentary- and whether Citizens United could use a general treasury fund rather than a Political Action Committee fund to finance the broadcast of the movie. The Court essentially claimed that it was not possible to rule on these narrow issues alone and it instead reframed the questions before it into a consideration of the constitutional position of corporations as regards their freedom to engage in political speech.

The Court’s majority opinion, delivered by Justice Kennedy, argued that the government’s attempt to limit the influence of corporations during elections was at odds with First Amendment protections of free speech, and it argued further that corporations should enjoy the same free speech protections as individuals- a move that effectively strengthened the ability of corporations to bring their full resources to bear in any contests with individual citizens. That the Court justified this step with the argument that corporations should be protected from the overbearing influence of government merely highlighted the Court’s doctrinaire antipathy to regulation, and by extension the continued influence of the Reagan era ideological hegemony.

The ruling was controversial both because of the re-framing of the case, as noted above and for the nature of the judgment. In reaching its decision, the Court took the opportunity to overturn previous precedent on Federal limitations that had been placed on corporate expenditure for political purposes, dating back to the Tillman Act (1907) and re-affirmed most recently by the Supreme Court in 2003. For opponents of the *Citizens United* decision including Justice Stevens, who wrote a dissenting opinion, it was not just the Court’s decision that caused offence but this up-ending of precedent. The Court has long observed the principle of precedent- stare decisis- which calls for, particularly in constitutional cases, the avoidance of overturning earlier decisions merely because the new bench disagrees with the previous findings. There should be a rationale that extends beyond mere disagreement. In a landmark 1936 Court decision Justice Brandeis outlined seven rules of self-governance designed to stop the Court straying onto constitutional questions beyond the specific ones raised by the case before it. Several of these

rules were trampled on by Justice Kennedy’s majority opinion in *Citizens United*. In his minority opinion, supported by three others on the bench, Justice Stevens concluded that the only explanation for the Court’s up-ending of precedent was the change in composition of the Court itself. Indeed the Court members who joined Justice Kennedy in the majority opinion were those noted by Toobin as representing the new conservative core of the Court—Justices Alito, Scalia and Thomas and Chief Justice Roberts.\(^{413}\)

With respect to the maintenance of a marketplace of ideas, the case highlighted a key issue raised by Fiss, namely the role of the State in providing regulation in the wider interests of democracy. The decision taken by the Court in *Citizens United* re-affirmed the Federalist Society goals of pared-down government, and strengthened the power of corporations at the expense of individual citizens. The significance of the case for the MPAA and its present regulatory regime lies not in the ruling itself—after all, a reduced Federal capacity to regulate campaign expenditure is unlikely to concern any of the studios— but in the nature of the Court’s decision making.

The presence of a conservative and interventionist nexus within the Supreme Court free to pick the cases it wishes to rule on, willing to redefine cases to allow for the consideration of wider constitutional issues and then also willing to overturn judicial precedent would all seem to present an unusual opportunity for social conservatives interested in increased restraint in movies. The real risk here for the MPAA is the unpredictability that has been introduced into Court decision-making, an unpredictability that is unlikely to be lessened as a result of the recent retirement of the leading liberal on the bench, Justice Stevens.\(^{414}\)

The introduction by Valenti in 1968 of movie ratings as a replacement for the Production Code proved a prescient choice. As a mode of self-regulation it could be seen to be answering to the needs of parents whilst retaining control and flexibility within the industry. It was a mode of regulation that would prove eminently suited to the pro-business de-regulatory preferences of the Reagan presidencies and indeed of the Supreme Court. As has been described in chapter three, the industry systematically exploited the control it exercised over the rating system to pack increasingly explicit content into the PG-13 and R categories. Whilst this has been good for business, it has done nothing to build a wider public engagement with, or acceptance of, one of the broader purposes of the original Program which was to protect artistic freedom. For the movie industry, whether they recognise it or not at this point, Rehnquist’s death, marks the opening of a period of uncertainty.

**Cause for concern?**

The tenor of the recent healthcare debate in the US and the election failure by the Democratic Party to retain the Senate seat vacated on Ted Kennedy’s death were both widely seen as reflecting a substantial public antipathy to big government.\(^{415}\) On that basis, any speculation about

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\(^{413}\) Toobin, *The Nine*, 393.


an intervention by the Supreme Court or indeed any other arm of government, in Hollywood’s business seems fanciful at best. Supporters of the Program and adherents of the New Hollywood story see no reason to suppose the future will be any different from the present. Stephen Vaughn’s assessment that in the digital age, the industry has outpaced any efforts to regulate it is one that is widely shared. Without speculating on the possibility of a Court intervention, those who are and have been closer to the Program are less sure that things can go on as they have done. While compiling his Oral History in 1995-1997, Richard Heffner recognised that the principle of voluntarism that he had worked so hard for was no longer adequate in the face of the challenge posed by the technological and ideological changes that the country had witnessed during the Reagan and Bush eras. He concluded that there would be sooner or later a need to react to the free enterprise ideologies through increased anti-trust regulation of conglomerates to “build fences around the people who not only purvey goods but the people who purvey ideas.” Graves does not detect any pressure for government regulation but has noted the increased interest from Obama administration officials on issues related to regulation and has recognised the need for greater engagement with the public on the ratings system.

Critics of the rating system, including Jon Lewis, point both to the restrictive and homogenising effects of a system that in practice only deals in non-adult ratings and the wider economic and licensing pressures on mall cinemas as evidence of de facto censorship. Defenders of the system, including Heffner and Graves, can rightly counter that the system itself has been administered without fear or favour. Whatever failings there may be in the wider marketplace, these are not inherent to the system. That is true, but here we need to clearly distinguish between the operation of the ratings and the overall ethos of the Program. There is no substantive evidence of censorship in the post-1974 operation of the ratings. However, in embracing self-regulation and minimising public engagement, the Program cannot be completely absolved from any responsibility for the wider distortions in the marketplace of ideas that Lewis and others point to. Towards the end of Douglas Adams’s fantasy novel, *Dirk Gently’s Holistic Detective Agency* (1987), the eponymous detective counsels his colleague to the effect that if something looks like a duck and quacks like a duck then we have at least to consider the possibility that it is indeed a duck. Despite pockets of good intent spread through the history and operation of the ratings system, any overall assessment of the efficacy of the Program is confronted with the same challenge. Amid high ambitions, the operation of the ratings system has become tangled in, and tarnished by, Valenti’s failure to seek a more comprehensive public engagement on the overall purpose of the Program and the industry’s pursuit of growth and profit. The resulting commodification of entertainment- the denial of any interest other than that of the consumer- has produced a distortion of the informational marketplace. It is a brand of censorship for the postmodern age perhaps, but censorship nonetheless.

Program and industry evolution

The Code and Rating Program, introduced by Jack Valenti in 1968, has now been in operation for over forty years—longer than its regulatory predecessor the Production Code. In view of the dramatic commercial and technological changes within the movie industry and the equally dramatic social and ideological changes beyond, this seems no trivial achievement. The survival of the Program clearly owes much to the elegance of its basic and adaptable design. A process that simply sought to categorise movies against standards that were no more substantive than a set of assumptions about how an “Average American Parent” might judge a film at any point in time was infinitely more malleable than the detailed pronouncements of the Production Code. However, that malleability has ensured that whilst the Program has witnessed great change, it has been changed itself. The most visible facet of that change has been the introduction of two new ratings. Nevertheless, a much more significant aspect has been the change to what was considered appropriate for each rating. In the process of that change, the key principle of voluntarism that was integral to the original Program has slowly lost its purchase, as the calls for responsibility and self-restraint when dealing with the non-adult movie market have become drowned out by the clamour for ever more revenues. Had other factors remained static then those in charge of the Program may well have succeeded in tempering the impact on content of that overwhelming pursuit of revenues. However, culturally, ideologically and technologically, the world within which the Program operates has been in constant flux. The celebration of individualism, the widespread distrust of big government, the pursuit of business de-regulation, the emergence of narrowcasting, the growth of conglomerate holdings and above all else, the deification of the consumer, have all contributed to a de-stabilisation of the Program.

The greatest single change in the world of movies has been the emergence of a global entertainment complex—the concentration of vast media holdings in cinema, television, music, news gathering and publishing in the hands of just a few global corporations including Sony, News International, Viacom, Time-Warner, Disney and Comcast. Both the size and inter-dependency of the revenue streams within each of these businesses have exerted pressures on film content. With increasing size the investment in individual projects has climbed, necessitating film projects capable of generating large returns from family and teenage audiences. Interdependency between different corporate divisions brings risks of significant brand damage if a particular project generates negative publicity. In an effort to limit their exposure to potentially damaging publicity, the studios have steered increasingly away from adult-oriented movie content, as demonstrated by the persistently low levels of NC-17 ratings since the introduction of that rating in 1990.

From the very early days of the new Program the commercial attractiveness of ‘all audience’ ratings including G and PG, generated pressure on those ratings as the studios sought to adjust to changing social mores by pushing the boundaries of these ratings with increasingly explicit content. For the conglomerate owned studios, the predominant business model that emerged in the mid-1970s called for big budget event movies with spectacle, special effects and as much sex and violence as the system would tolerate. As the independent sector began to grow in importance in
the 1980s it developed a slightly different business model which was less reliant on wide theatrical releases, preferring instead to target niche art house audiences and the emerging direct-to-video market. Even here however, commercial pressures have tended to skew content as retailers have moved to avoid association with the NC-17 rating for fear of adverse customer reaction.

Patterns of investment remain broadly similar today. Huge sums of money are put into a small number of relatively formulaic films targeted at teenagers, while very little studio money is put into the promotion of adult-oriented films. In the spring of 2011, a series of big budget sequels are in preparation including two spin-offs from *Lord of the Rings*, plus sequels to *Batman*, *Superman*, *Avatar* and *The Bourne* trilogy Studios continue to look for the summer blockbuster hit that will provide a key contribution to annual earnings. That business priority produces continuing downward pressure on ratings as the categories designed for young teenagers are re-tasked to accommodate increasingly explicit content. The result, according to producer and director Oliver Stone is that the industry produces “centrifugal movies” as it seeks acceptance by mainstream audiences.\(^{418}\) The overall effect on film content is restrictive and homogenising and results in a spectrum of mainstream movie offerings that favours spectacle, that tones down or avoids controversial materials for commercial reasons and that, on occasion, indulges in overt politically motivated redaction. The entire enterprise produces a distortion in the range of ideas and critiques made available to the viewing public and amounts to a systematic exercise in censorship. The economic utility of that censorship is predominant, but on occasion that economic utility is certainly matched by its political utility.

In parallel, with these developments in mainstream cinema, the narrowcasting revolution has allowed the industry to deliver premium adult content to paying customers without drawing any significant political criticism. Porn has become an important revenue stream for independent production companies and DVD retailers as well as for hotel chains and cable television and telecommunication companies who occupy lower rungs on the pornographic food chain.

The net effect of all of these changes is not merely a commodification of entertainment but, in effect, the privatisation of a key part of the process of setting cultural norms. The emergence of a global entertainment complex that can be shown to have an overwhelming economic interest in shaping the range of ideas and entertainment it makes available, clearly poses some risks for a functioning democracy. The fact that this same entertainment complex can be shown on occasion to have indulged in more explicit political suppression of unwelcome content would seem to push that risk towards direct threat.

**The distortion of the marketplace of ideas**

The debate about movies and censorship has always provided, and continues to provide, markers to a wider debate about cultural meaning and control. In the early years of cinema, activists and commentators were relatively open and comfortable with the idea of censorship in the wider interests of society. Thus the New York based National Board of Censorship of Motion

\(^{418}\) Oliver Stone, interview by author, Santa Monica, CA, January 19, 2010.
Pictures (NBCMP) formed in 1909, was initially comfortable with its title (changed in 1915) and comfortable with its inherent paternalism. As it noted in 1910, its achievement was in making available “cleaner” and “more moral” entertainment for the metropolitan working classes. The commitment of organisations such as the NBCMP and the People’s Institute was not simply indicative of a desire to improve the range of entertainment available for the poor but reflected an underlying anxiety about a large and potentially unruly urban underclass. Despite very different circumstances, the controversy some ninety-one years later concerning the filming of JFK (1991) highlighted one key similarity, the struggle to control popular perceptions. Criticism of the director, Oliver Stone, from journalists like George Lardner Jr. was not simply indicative of a desire to correct perceived inaccuracies in Stone’s representation of District Attorney Jim Garrison, but reflected a deeper anxiety within the political classes about the threat posed by any widespread public acceptance of the allegation of a coup d’état.

From this perspective the real contest for meaning and control is not vested in cinema but becomes visible through it. The complex mix of industry-specific and wider societal developments in the story of Hollywood post-1968 including, the ratings system, New Hollywood, the emergence of narrowcasting, the growth of global media corporations as well as the emergence and decline of the counter-culture, the rise of Sun Belt Republicanism and the Reagan ideological hegemony, all provide context for a detailed study of the operation of the Program. However these contextual features also serve to remind us of the ideological tensions that have opened up in American society since the 1960s. As Charles Lyons indicates, both liberals and conservatives seek to sit on both sides of the argument about censorship. Conservatives want business de-regulation but seek political action to maintain societal standards. Liberals want regulation that would constrain the excesses of the industry but call for First Amendment freedoms for filmmakers. Both sides deplore the ‘race to the bottom’ in quality of output, but for different reasons. Both support a partisan view of freedom.

Jack Valenti’s gift to the industry was a Program that offered some prospect of straddling this wider cultural rift. The Program’s twin objectives of expanding creative freedom whilst remaining sensitive to the standards of the wider society offered the industry a means of hitching their wagons both to the youth market and to the silent majority. Those forces were moving in distinctly different directions and that certainly exerted pressure on the principle of voluntarism upon which the Program relied. The ultimate failure of voluntarism was not however simply a result of the movement of irreconcilable forces or of the added pressures that de-regulation and consolidation placed on the industry. In seeking to bolster claims to First Amendment freedoms for cinema, Valenti sought to limit any discussion about constraints on cinema to the issue of the well being of children. This in essence ducked the more substantive issue that had been highlighted in a series of Supreme Court cases not least the 1968 Dallas case that precipitated the introduction of the Program- namely that there remained significant public pressure for censorship. Valenti’s failure to

419 *New York Times*, October 1, 1910, 12.

engage with the public on what the ratings system represented to all adults on the issue of freedom of speech was no doubt commercially expedient, but it proved to be a hostage to fortune. Engagement with parents was only half the solution. A much more proactive and wider engagement with the public might have created a commercially viable space for non-porn adult-oriented content. By focusing on parents, the Motion Picture Association of America (MPAA) played into the hands of those who sought to place constraints on cinema. When pornography briefly entered mainstream cinema in the early 1970s, the pressure from social conservatives coupled with the lack of a strong public engagement on the objective of freedom of expression meant that Valenti and the MPAA had no option but to retreat from the field, effectively making adult-oriented cinema a no-go area for the studios. “Anything goes” was a principle that the MPAA never really sold to the public. From that perspective, voluntarism was never destined to make good on the most ambitious hopes of the auteur filmmakers and liberal commentators of the early 1970s. The new Program, which incorporated a revised Code, new objectives and a set of ratings was piecemeal in its construction and pragmatic in its purpose - the prevention of a commercially de-stabilising move to myriad local regulations.

As recorded in chapter two, there is clear evidence that CARA engaged in both regulative and constitutive censorship in the years immediately after its formation. The studios quickly settled on the G and PG rating categories for almost all of their output, viewing these as the most commercially advantageous. This commercial calculation crucially weakened one of the underlying purposes of the new Program. Rather than make full use of the range of ratings available, non-adult ratings were re-tasked to carry increasing levels of explicit content. When CARA first sought to resist this trend - following the appointment of Heffner as Chair in 1974 - it found itself being accused by industry senior executives and some film critics of censorship. This charge significantly misrepresented what was actually happening. Partly out of respect for Valenti’s desire to be the one public voice of the Program and partly out of a desire not to damage the Program, Heffner, for the most part, sought to avoid confrontation with the industry. Instead he made adjustments to the system that he hoped would allow it to reflect a more gradual transition between G and X, from all audience family content to more adult material. Two new ratings were introduced, a non-restrictive PG-13 category in 1984, and a restricted NC-17 rating in 1990. Both changes were resisted by Valenti, and both came too late to have the desired effect.

The period after Heffner’s departure has been notable not least for the general absence of the kind of heated internal and public debates that accompanied the rating and release of films like Basic Instinct (1992) and Natural Born Killers (1994). This reduction may partly be due to the fact that Heffner and Valenti provided a physical embodiment of the competing principles of voluntarism and commercial self-interest. Their various tussles reflected a clash of egos as well as a clash of principle and the removal of one protagonist and later, the other, from the arena had a natural dampening effect on the tenor of the debate. The reduction of controversy may also be due to the fact that producers are more adept at anticipating contentious issues and removing them from scripts, as was the case with The Golden Compass (2007). A third possible contributory factor to the reduction of controversy is the way in which both narrowcasting and the changes in ownership...
structures have subtly favoured the consumer at the expense of the citizen. Multiple niche channels including DVD and premium cable, allow the industry to offer an opt-in for more contentious and explicit materials, whilst maintaining stricter controls on the mainstay blockbuster materials that generate most revenues. In one sense, the conglomerates are providing the freedom for individuals to choose, un-encumbered by social and political pressure groups. However, as discussed in chapter four, a closer look reveals that, as for example with cases like Strange Justice (1996) and Comandante (2003) this freedom comes with its own set of restrictions.

Shifting the debate away from the citizen and towards the consumer may seem to reduce the influence of social conservative lobby groups but it in fact only serves to ensure that there is no significant public debate on issues of free speech in cinema. This serves no public interest. Instead the senior executives of the global entertainment complex have become the guarantors of our collective viewing freedoms, a role that they have grafted on to their prime role as guarantors of their own commercial and personal gain.

At issue here is something much more fundamental than the possibility that a senior entertainment industry executive made it more or less easy for anyone who was so inclined to see the occasional film that most people would have ignored in any case. Individual high profile instances of intervention like those taken by Ted Turner in the case of Strange Justice certainly highlighted the issue of censorship and of corporate conflicts of interest but they tend to distract from the more insidious low level and widespread interference that calls for re-writes for screenplays, scene deletions from films during editing and post-production edits for television broadcast which cumulatively amounts to a systematic distortion in the marketplace of ideas.

The two key forces that appear to be driving this distortion are not so very different to issues identified by Alexis de Tocqueville in his assessment of the state of democracy in the America of the early 1830s. Tocqueville identified what he saw as two key risks to the well-being of the nascent democracy. The first risk concerned the inability of the vast majority of citizens, to individually resist concentrations of power in the hands of a few. The second risk concerned the inability of minorities to resist the desires of an overbearing majority- the tyranny of the majority. Recasting these risks in today’s terms, we might represent them as the threat of the corporation and the threat of populism-albeit one expressed through consumer behaviour in the marketplace.

Whilst Tocqueville was able to conclude that the America of his day had succeeded in avoiding the risks he identified, any similar conclusion today would seem both optimistic and naive. The movie industry today embodies a set of relationships between corporate owners and consumers which give rise to an interconnected set of threats to freedom of speech that can be mapped directly to the risks described by Tocqueville. Corporate self-preservation requires two sets of actions from the entertainment industry senior executives. Firstly they must ensure that their products are capable of maintaining and growing global communities of loyal consumers. Secondly they must gain co-operation from, and avoid antagonising, the legislators and regulators in their business environments. In both instances, increasing revenues and risk aversion walk hand-in-hand. The

homogenising of content and ‘race to the bottom’ in terms of quality tends to serve the first of those needs. Spectacle leavened with the judicious addition of sex and violence allows the industry to both meet that need and test the water for more of the same kind of content. The less visible but more direct interventions on the part of industry executives- interventions like the dropping of productions like Strange Justice (1999) and Comandante (2003) will tend to service the latter need. Through the editing of storylines to remove offending ideology or through the refusal to fund or distribute certain film projects, some of the features in our cultural landscape are re-shaped or airbrushed away. Both as consumers and citizens, the overall effect on all of us- regardless of the availability of porn or number of channels on our televisions- is a reduction in real choice.

Supreme Court Justice Oliver Wendell Holmes Jr., wrote in a dissenting opinion in 1919 that “the best test of truth is the power of the thought to get itself accepted in the competition of the market.”

In later judgments, including Red Lion (1969) the Supreme Court refined the idea of a marketplace of ideas and couched it within a reading of the First Amendment that sought to balance two competing readings of freedom. One view privileged the personal liberty to speak- the libertarian view- while the other privileged an equality of opportunity to speak in the interests of collective self-determination- the democratic view; the latter including the possibility of state regulation. However as the ideological tenets of the Reagan era became ubiquitous, the position of the Court shifted towards a privileging of the libertarian view. The extension of this libertarian view to the point where corporations begin to acquire the same Constitutional rights as citizens- a doctrine known as corporate personhood- would seem to represent the final frontier of the Reagan hegemony and a point at which the on-screen postmodern aesthetic - the cultural logic of late capitalism- has finally acquired its judicial counterpart. It is unlikely that Justice Holmes would have seen this development as conducive to the application of the test of truth he advocated, and indeed it is difficult to see how the extension of corporate personhood might have any outcome other than to further distort the marketplace of ideas.

Whilst an important part of the Program’s contribution to the wider distortion of the marketplace of ideas arose can be traced to the issue of engagement noted earlier, part of the contribution arose inadvertently out of one of its key strengths- flexibility. The Program was a form of regulation that sat easily with the political, business and judicial environment that emerged after 1968. The tenets of de-regulation and small government- integral components of President Reagan’s two election campaigns- ensured that the mergers and leveraged buyouts of the studios in the 1980s met with no Justice Department resistance on anti-trust grounds. Those same tenets of de-regulation and small government were reflected in the Supreme Court’s emerging distrust of government and subsequent privileging of the corporation. In the midst of these changes, the MPAA was able to easily re-task the Program to serve the emerging business agendas of the entertainment industry. In so far as voluntarism provided a high moral purpose for the Program it also exposed its Achilles heel- an inability to resist rampant self-interest. In his efforts to resist changes that might expose
the Program to more restrictions or public critique, Valenti was both serving his masters and following the political wind.

In that respect Valenti was no more or less visionary than the many other movers and shakers who, during a half century of corporate concupiscence, celebrated growth and profit to the exclusion of all other considerations. In an environment where even the government seemed to be suspicious of big government, it was only natural that the industry should adopt, and stick with, a brand of paternalistic self-governance that served its commercial self-interest. The decision by the industry to avoid adult-rated materials produced a distortion in the ratings system which paradoxically was not wholly beneficial to parents with concerns about what their children were seeing at the cinema. What became clear, if only in retrospect, was that the exclusion of public accountability—something that was axiomatic in the system of regulation chosen by Valenti—removed the only real prospect of applying any ameliorative action to the joint risks posed by the corporation and by populism dressed as consumerism. In a hostile environment, voluntarism can be seen to have been the last gasp of an earlier ethos that had heard its most eloquent expression on the west side of the Capitol building on January 20, 1961 as the newly sworn-in President Kennedy had called for a national renewal borne of public service.\footnote{Robert Dallek, \textit{John F. Kennedy. An Unfinished Life. 1917-1963} (London: Allen Lane, 2003), 326.} Despite Heffner's best efforts to steer the Program in this direction it was not a task he could complete without the co-operation of the industry. As the principle of voluntarism was overwhelmed, there was no means by which cinema could subsequently play its full part in the maintenance of the marketplace that Justice Holmes and several of his successors had done so much to secure.

\textbf{Anything goes!}

Justice McKenna’s assessment in 1915 that the motion picture industry was “a business, pure and simple, originated and conducted for profit” which should not be regarded as an organ of public opinion, lost its legal force in the wake of the restoration of First Amendment protections for cinema in the 1952 \textit{Burstyn} decision, but the substance of his comments seem to sum up where the industry had arrived at by the mid-1980s.\footnote{MUTUAL FILM CORP. v. INDUSTRIAL COMMISSION OF OHIO, 236 U.S. 230 (1915).} Whatever higher purposes Valenti, and in due course Heffner, had imagined for voluntarism, these had, even by this point, all but faded from view. By the mid-1990s, even Heffner, had reluctantly concluded that voluntarism had failed and that the movie industry, along with the other behemoths of American capitalism, including pharmaceuticals, oil and finance, had lost its moral leadership.\footnote{Richard D. Heffner, interview by author, New York City, NY, April 14, 2008.} In developing that conclusion about the failure of voluntarism, Heffner’s observation was that at some point there would be a need to “build fences around the people who not only purvey goods but the people who purvey ideas.”\footnote{Richard D. Heffner, \textit{Oral History: Reminiscences of Richard D Heffner}, Volume 9, Session 27, November 29, 1996, 1651-1661.} This was in essence the substance of the argument put forward by Owen Fiss. In the interests of collective self-

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\begin{footnotes}
\item[425] MUTUAL FILM CORP. v. INDUSTRIAL COMMISSION OF OHIO, 236 U.S. 230 (1915).
\item[426] Richard D. Heffner, interview by author, New York City, NY, April 14, 2008.
\end{footnotes}
Chapter 5: Conclusion; a distorted marketplace.

determination some kind of counter to the ideological weighting towards individual liberty and the 
preferencing of the consumer would be required. Just what that counter might look like and how it 
might be achieved is debatable- but is not much debated.

While concluding his oral history in 1997, Heffner’s own thinking on this question of control led 
him to ponder whether an institution like the Smithsonian, a publically accountable institution, might 
provide a model of governance and control for the industry.428 However his more recent reflections 
have left him less optimistic about any possibility for reform. Aside from the specific difficulties that 
the Smithsonian has encountered over allegations of censorship, Heffner sees more significant 
obstacles.429 He recently commented that:

My disgust over the power of money to corrupt/trump any effort to "do the right thing" in the 
USA makes me much less hopeful of a “blue ribbon” solution to our problems.430

The absence of any wider debate on questions of reform is hardly surprising. The movie industry 
collectively sees no need for change. Whilst Joan Graves, the current chair of CARA, is aware of 
the increased interest in regulatory issues on the part of officials in the Obama administration, there 
is no particular popular pressure for reform or federal regulation. Public and pressure group 
concerns about on-screen violence in cinema and on television- concerns that could precipitate 
Congressional action- have dissipated somewhat from the position in the late 1990s. However, as 
discussed in chapter four, the presence of a conservative and interventionist bench at the Supreme 
Court signals the potential for judicial action that could impinge on the industry’s regulatory territory. 
A case that may allow the Supreme Court to flex its muscles in this area came before a New York 
Appeals Court after the end of the 2009-2010 Supreme Court term. In Fox Television Stations Inc. 
v FCC, the Appeals Court struck down what it saw as an overly restrictive Federal Communications 
Commission policy on indecency and, in particular, the use of “fleeting expletives” on radio and 
television.431 If the case is picked up by the Supreme Court in its next session, as seems likely, it 
will allow the Court to make a pronouncement on exactly where it stands in relation to the two key 
strands in conservative ideology- a “neoconservative” antipathy to regulation and a “new right” 
interventionist social conservatism.432 In its recent decisions the Court has displayed both social 
conservatism and an antipathy to government regulation. In the Fox case, these two strands are on 
opposite sides of the argument.

In the furtherance of collective self-determination, be it on the issue of movie content, or anything 
else, there are no ideal answers. The current regulatory and commercial arrangements within the 
movie industry invite us to participate as consumers in a process that has a profound influence on 
the cultural landscape around us. Both in the themes and images it presents to us and in the ones 
it redacts, the movie industry contributes to our cultural outlook, our language, and our opinions. As 
Fiss argues, movies do indeed provide part of the informational domain “from which the public finds

out about the world that lies beyond its immediate experience."\textsuperscript{433} Any deficiency in that information domain is self-evidently a problem for all of us. The cumulative distortion in the marketplace of ideas is acknowledged in various ways by academics, parents, politicians, social and religious lobby groups, and not least cinemagoers. However the lack of public engagement with the industry insulates it from much, if not all, of this critique.

In the course of the neo-liberal experiment over the last forty or so years the industry has flourished and, in the process, has distorted if not monopolised the marketplace of ideas. Any shift away from commercial self-interest to a measure of public accountability would call for compromises not just from the industry but from liberals and conservatives. The application of tighter controls on non-adult content, something social conservatives are likely to welcome, would have to come at the price of a much greater tolerance of adult-oriented and rated materials in mainstream cinema and associated retail channels.

Heffner recently wryly observed that “anything goes” had won out, and of course he is right, for now. However, that does not exclude the possibility that the MPAA might yet find the collective courage to ‘do the right thing’; leading a new process of engagement and debate based on the principles outlined in the Program, with the aim of securing more industry restraint in content targeted at non-adults and greater public tolerance of adult-oriented materials. Whether motivated for the greater good of collective self-determination or for economic self preservation, there is an opportunity at present for the MPAA to lend a helping hand to help secure Justice White’s ambition in the \textit{Red Lion case} - an uninhibited marketplace of ideas. Equally, we consumers need to remember that we are not just consumers and that we also have a role in maintaining that marketplace, both by seeking out films that speak to us and not just anaesthetise, and by giving voice to unhappiness about the formulaic sequels that currently underpin the industry’s playlists. Finally it is important to bear in mind the challenge offered by Fiss to the prevailing orthodoxies of de-regulation, when he notes that:

\begin{quote}
The state can be both an enemy and a friend of speech; that it can do terrible things to undermine democracy but some wonderful things to enhance it as well.\textsuperscript{434}
\end{quote}

In challenging the distortion of the marketplace of ideas, American citizens may have to re-evaluate their aversion to regulation and think the unthinkable.

\textsuperscript{433} Fiss, \textit{Irony of Free Speech}, 53.
\textsuperscript{434} Ibid., 83.
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