

CENSORSHIP: THE CURRENT LEGAL POSITION IN BRITAIN (MARCH 1991)

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VIDEO RECORDINGS

There is statutory pre-publication censorship of video recordings in the United Kingdom by virtue of the Video Recordings Act 1984. The Home Secretary designates the censoring body. He has appointed the British Board of Film Classification. It adopts a stricter standard for video censorship than for films on the grounds that videos are watched at home. No concessions for consenting adults in the privacy of their own homes!

Video recordings classified as "18R" can only be sold in licensed sex shops. They cannot be sold by mail order. Under the Local Government (Miscellaneous Provisions) Act 1982 local authorities can refuse to license any sex shops. In order to avoid controversy most have adopted this option. Therefore in most of England and Wales there are no sex shops and 18R videos are thus unobtainable.

In practice this doesn't make much difference since James Ferman, Secretary of the British Board of Film Classification, has said that even in 18R videos and films he will not allow close-up shots of human genitals (GLC Cinema Policy Conference 30th May 1984). This defeats the whole object of the 18R category, which was to provide an outlet for soft porn.

Apart from the United Kingdom and the Republic of Ireland, no country in the European Community has video censorship (as opposed to classification). Britain's overt state censorship of video recordings was appropriately enacted in the Orwellian year of 1984. Not one Member of the House of Commons had the courage to vote against the measure (as opposed to merely criticising it). By contrast in the Upper Chamber, Lord Houghton gallantly opposed it, clause by clause.

The chill factor in the elected chamber was caused by a carefully timed and planned Press propaganda campaign, which falsely claimed that a high proportion of British children were watching 'video nasties' (i.e. violent video recordings). Instead of limiting censorship to violence, however, the British Board of Film Classification also cuts all explicit sex.

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FOR LIFE, LIBERTY AND PROPERTY

The system of video censorship is not even logical since, even if a video is classified under the Video Recordings Act, it enjoys no immunity from prosecution for obscenity. Thus classification does not mean legality!

CINEMA

Film censorship in the United Kingdom is governed by the Cinemas Act 1985. This imposes the requirement of local authority licensing on cinema clubs as well as public cinemas. Such licenses will only be granted if all the films shown are ones granted classification certificates by the British Board of Film Classification (BBFC). Such films are often censored or refused a certificate. In 1985, for instance, 17% of films shown in British cinemas had been cut by the BBFC.

Unlike video censorship, film censorship was introduced surreptitiously. The original law was enacted in 1909 to deal with the fact that films were then highly inflammable. Licensing of public cinemas was therefore introduced to ensure adequate fire escapes. The system was however used as an instrument of censorship, since local authorities would grant licences only if all the films shown were categorised by the British Board of Film Censors. In 1982 this was extended to cinema clubs. In 1985 the law was consolidated in the Cinemas Act and the British Board of Film Censors was hypocritically renamed British Board of Film Classification, while retaining its censorship function.

Film censorship has been or is in the process of being abolished in every other state in Europe except Ireland. As other countries liberalise, the United Kingdom becomes more censorious! Unlike video censorship, the system for films does at least guarantee immunity from prosecution for obscenity regarding those passed by the British Board of Film Classification (because the consent of the Director of Public Prosecutions is required under Section 53 of the Criminal Law Act 1977 before charges can be brought in connection with such films).

BOOKS AND MAGAZINES

Regarding publications in the United Kingdom, self-censorship is necessary to comply with the Obscene Publications Act. This law is used by the Establishment to try and suppress material it considers antisocial. The fear of raids by the Obscene Publications Squad (the Orwellian Thought Police) operates as a chill factor enforcing self-censorship.

Wide ranging prosecutions have been initiated to extend the scope of the Act by securing convictions for more types of publication. In 1967 the cases of DPP v. ABC Chewing Gum Ltd showed that description of non-sexual violence could contravene the Obscene Publications Act. In 1984 a conviction was secured in the Airlift Books case regarding an American book about drugs. In other words a publication which contained neither sex nor violence was illegal in the United Kingdom.

On the March 21st 1984 it was revealed that the Metropolitan Police had seized over two million publications in Greater London under the Obscene Publications Act during the previous year (as

revealed in the case of *R. v. Snarebrook Crown Court ex parte Commissioner of Police of the Metropolis*). Not content, however, with the draconian effect of this Act, the Establishment has resurrected the old common law offence of "conspiracy to corrupt public morals" in order to proscribe even more publications.

CONTACT MAGAZINES

In December 1985, in a test case brought by the Director of Public Prosecutions for such a "conspiracy", two directors of *Rendezvous* were convicted. The chill factor which the DPP wanted to generate has had the desired effect. Contact magazines are now operating a system of self censorship and contain statements that they will not accept certain types of advertisement.

ART GALLERIES

In addition, the common law offence of "conspiracy to outrage public decency" has been used to obtain convictions of an artist and the curator of the gallery exhibiting his work, which was seized by police and cannot lawfully be displayed to the public. (*R v. Gibson and Sylveire, Central Criminal Court, 1989.*)

LETTERS

It is a criminal offence to send "indecent" articles by post. (Section 11 of the Post Office Act 1953.)

TELEPHONE CALLS

Even the content of telephone calls is subject to control. On the May 10th 1990 the Director-General of Telecommunications announced that one-to-one chatline services would have to tape record all their calls in a tamperproof way, so as to ensure the enforcement of full compliance with the prohibition of indecent conversations contained in Section 43 of the Telecommunications Act 1984.

RADIO AND TELEVISION

The content of all British radio and television programmes is controlled by the Government through the Broadcasting Standards Council which is appointed by the Home Secretary, who also has the power to proscribe foreign satellite services (Broadcasting Act 1990). By contrast, in France code (cable) television and in the Netherlands satellite television are permitted to broadcast hard core pornography, while in Italy soft porn is allowed on private (non State) television.

IMPORTATION

The importation of anything indecent is prohibited by Section 42 of the Customs Consolidation Act 1876. "Indecent" has been defined in the courts as including anything "immodest or unbecoming". This is a much wider definition than obscenity. In 1984 Customs officers raided gay bookshops throughout Great Britain, searching for and seizing indecent books of foreign origin. They took eight hundred books from Gays The Word bookshop in London and instituted the prosecution of the shop's manageress and the eight other directors.

Salvation came from the continent. On March 11th 1986 the Court of Justice of the European Communities ruled, in the case of *Conegate v. H M Customs and Excise*, that it was against Common Market Law for the United Kingdom to have a stricter prohibition for imports (indecency) than for home produced products (obscenity). As a result on June 27th 1986 H M Customs discontinued its prosecution of Gays The Word.

THEATRE

The Theatres Act 1968 abolished censorship by the Lord Chamberlain but prohibits obscene performances. Other European Community countries are more tolerant. Live sex shows are lawful in France, Germany, the Netherlands, Portugal and Spain.

OFFICIAL SECRETS

The Official Secrets Acts of 1911, 1920 and 1989 impose a blanket prohibition, including even trivial information. There is no defence of public good. This allows Government cover-ups, such as the Westland Helicopter affair of 1986. By contrast other Western countries have Freedom of Information Laws.

CONCLUSIONS

There is a definite contrast between the United Kingdom and the continental countries of the European Community. It is based on British nannyism, hypocrisy and guilt about sex. This causes adulterous Tory politicians to condemn public immorality and demand more stringent laws against pornography. By contrast, in 1984 the French Minister of Culture publicly stated that his government did not seek to control what adults read and viewed. The authoritarian, grundyst attitude of the British Establishment precludes any such government statement here. Speaking at the Annual General Meeting of the National Viewers and Listeners Association on March 23rd 1991, Home Secretary Kenneth Baker boasted that Britain has as strong a battery of controls as exists anywhere in the world.

APPENDIX: The Relevant Laws and Statutes

- Common Law Offence of Blasphemy
- Common Law Offence of Conspiracy to Corrupt Public Decency
- Common Law Offence of Conspiracy to Corrupt Public Morals
- Common Law Offence of Conspiracy to Outrage Public Decency
- Common Law Offence of Exhibiting Indecent Activities, Pictures or Things
- Common Law Offence of Keeping a Disorderly House (affects film, stage and video shows)
- Common Law Offence of Obscenity (exists in addition to the Obscene Publications Acts)
- Common Law Offence of Outraging Public Decency
- Scottish Common Law Offence of Shameless Indecency
- The BBC Charter (allows the Home Secretary to ban BBC programmes)
- Customs Consolidation Act 1876 (Section 42 prohibits the importation of anything indecent)
- Post Office Act 1953 (Section 11 prohibits the sending of "indecent" articles)
- Obscene Publications Acts 1959 and 1964
- Theatres Act 1968 (abolished theatre censorship but substituted prohibitions on the content of plays)
- Indecent Displays (Control) Act 1981
- Cable and Broadcasting Act 1984 (contains prohibitions on the content of programmes)
- Telecommunications Act 1984 (contains prohibitions on the content of messages)
- Video Recordings Act 1984 (imposes censorship on video recordings)
- Cinemas Act 1985 (imposes censorship on films)
- Local Government Act 1988 (Section 28 prohibits the promotion of homosexuality in local authority assisted theatres and publications)
- Official Secrets Acts 1911, 1920 and 1989
- Broadcasting Act 1990 Part VII (contains prohibitions on contents or programmes)