ABSTRACT

FREEDOM OF SPEECH, CINEMA AND CENSORSHIP:
A COMPARATIVE ANALYSIS OF ISSUES OF FREEDOM OF SPEECH VIOLATIONS AS A RESULT OF THE RATING REGULATION AUTHORITIES IN THE MOTION PICTURE INDUSTRY IN FRANCE AND THE UNITED STATES

by

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Motion pictures may be the single greatest cultural influence on the collective psyche, along with television. The silver screen has become a reflection of France (where it was first invented) and the United States (where cinema is a major art form) as nations. With, arguably, is the national character of these countries at stake; one would expect the government to assert a substantial interest in monitoring this powerful cultural instrument. They do so in France, the industry in charge of it in the United States. Therefore, the success of the motion picture industry has come at the expense of many silenced artistic visions and to the detriment of both of their cultural identities.

However, alternatives to the present rating systems do exist and should be used in order to prevent censorship. Indeed, with some modifications, these systems as designed can work and protect creativity.

Index Words: Freedom of speech, Censorship, Motion pictures
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To my mother and my grandmother, for their constant love and support
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CHAPTER 1

INTRODUCTION

"I disapprove of what you say, but I will defend to the death your right to say it."\(^1\)

This thesis intends to examine issues regarding freedom of speech and motion pictures in France and the United States as a result of the rating regulation authorities in both of these countries.

Free speech rights have been constitutionally protected in France and in the United States since the late 1700. Indeed, in France, the constitutional provision guaranteeing freedom of speech is Article 11 of the Declaration of the Rights of Man and of the Citizen of 1789\(^2\):

\(^{1}\) The phrase "I disapprove of what you say, but I will defend to the death your right to say it" is widely attributed to Voltaire, but cannot be found in his writings. With good reason. The phrase was invented by a later author as an epitome of his attitude. It appeared in *The Friends of Voltaire* (1906), written by Evelyn Beatrice Hall under the pseudonym S[tephen] G. Tallentyre. Hall wrote:
"The men who had hated [the book], and had not particularly loved Helvétius, flocked round him now. Voltaire forgave him all injuries, intentional or unintentional. 'What a fuss about an omelette!' he had exclaimed when he heard of the burning. How abominably unjust to persecute a man for such an airy trifle as that! 'I disapprove of what you say, but I will defend to the death your right to say it,' was his attitude now."
Hall herself claimed later that she had been paraphrasing Voltaire's words in his *Essay on Tolerance*: "Think for yourselves and let others enjoy the privilege to do so too."

\(^{2}\) The Declaration of the Rights of Man and of the Citizen of 1789 is included in the French Constitution: Preamble to the Constitution of October 4, 1958:
"The French people solemnly proclaim their attachment to the Rights of Man and to the principle of national sovereignty as defined in the Declaration of 1789, confirmed and completed by the preamble to the Constitution of 1946."
“The free communication of ideas and opinions is one of the most precious rights of man; every citizen may therefore speak, write, print freely, answerable only for abuse of this liberty in those cases determined by law.”

The First Amendment of the United States Constitution, adopted in 1791, reads as follow:

“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.”

Free speech rights are accorded a preferred place in the French and US societies. Freedom of speech protection extends to a communication, to its source and to its recipients. Above all else, freedom of speech means that expression cannot be restricted because of its message, its ideas, its subject matter, or its content\(^3\). In France, no one can restrict speech. In the United States, only the government cannot restrict speech, but does it mean that private organizations should have some kind of censorship power, especially over Art?

Cinema is over a hundred years old - it goes back to the year 1895. Auguste and Louis Lumière, two brothers from Lyon, France, are credited with the world's first public film screening on December 28, 1895. The showing of approximately ten short films lasting only twenty minutes in total was held in the basement lounge of the Grand Cafe on the Boulevard des Capucines in Paris and would be the very first public demonstration of their device they called the Cinematograph which effectively functioned as camera,

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\(^3\) McCollum v. CBS, Inc., 249 Cal. Rptr. 187 at 192 (2nd Dist. 1988)
projector and printer all in one⁴. In a few years, the invention gave birth to a whole industry. French cinema became very significant, particularly in the first half of the twentieth century with the New Wave, and still is. The American motion picture industry is heavily influential throughout the world. Motion pictures are a significant medium for the communications of ideas and are protected by free speech rights just like other forms of expression⁵.

However, the medium has an increasing dramatic and artistic power, as motion pictures are not only able to entertain, amuse and provoke emotions, but also to address social issues in compelling ways. And because of this power, very often have motion pictures been censured for various reasons, such as sexual, religious or violent content; whether it is by a government controlled board, as it is the case in France with the Classification Commission, or a private one, like the Motion Picture Association of America.

Movies may be the single greatest cultural influence on the collective psyche. The silver screen has become a reflection of where countries stand for as nations. John Updike, a chronicler of twentieth century American experience, has characterized the movies as “a secular substitute for religion, promising eternal life (on celluloid) in place

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⁴ Their work consisted mainly of moving images from scenes of everyday life. Ironically as we look back in retrospect in comparison to what film has developed into today, the Lumière Brothers believed it to be a medium without a future as they suspected that people would bore of images that they could just as easily see by walking out into the street. However, their film sequence of a train pulling into the station reportedly had audiences screaming and ducking for cover, as they believed that the train itself was about to plow into the theater.

⁵ Motion pictures were granted constitutional protection in 1952, when the United States Supreme Court decided in Burstyn v. Wilson, (343 U.S. 495) a case brought in relation to the movie “The Miracle”, that “Expression of by means of motion pictures is included within the free speech and free press guaranty of the First and Fourteenth Amendments.” Motion pictures were never officially granted Constitutional protection in France, as it has always been assumed that they were protected under Article 11 of the Declaration.
of real redemption, narrative order in place of Calvinist predestination." With, arguably, national character at stake, one would expect the government to assert a substantial interesting monitoring this powerful instrument. In fact, they do so in France with the Classification Commission, but not in the United States where which films are made and which ones Americans get to see are largely controlled by the industry through the Motion Picture Association of America.

Film censorship can be defined as the suppression of film content through industry self-regulation or through legislation. Its interest is, officially, to keep the industry profitable. But, as Karl Ludwig BÖRNE stated, “Only the suppressed word is dangerous.” As film developed into the dominant mass medium of the early twentieth century, it became a principal battleground between forces advocating censorship and those demanding freedom of expression. Even though, as Potter Stewart said, “Censorship only reflects a society’s lack of confidence in itself.”

To evaluate the depth of the free speech violations in the motion picture industry in France and in the United States, the film censor boards of these two countries, the Classification Commission in France, and the Motion Picture Association of America in the United States will be examined– how they came into existence and how they function (Chapter 2). Then, the ratings systems themselves will be discussed in light of the censorship they engender (Chapter 3). Finally, attention will be directed to alternatives to the present systems by which both ratings systems could rate without censoring, either by

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8 Karl Ludwig BÖRNE, German journalist (1786-1837)
9 Potter Stewart, Associate Justice of the U.S. Supreme Court from May 15, 1959 to July 31, 1981.
adding a new rating or by changing the whole system (Chapter 4), prior to concluding on this matter (Chapter 5).
CHAPTER 2

THE RATING BOARDS

France and the United States have different ways of rating motion pictures, as well as different entities to do so: in France, the Classification Commission is a government controlled authority, when the Motion Picture Association of America is a private one.

I- Origins

A- La Commission de Classification des Oeuvres Cinématographiques

In 1895, the Lumière Brothers gave birth to Cinema in Lyon, France, when they first showed their motion picture, “La sortie des usines Lumière”, or Leaving the Lumière Factories\(^\text{10}\). Soon after, the cinematographic industry started to develop at an

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Born in the Haute-Saône district in 1840, Antoine Lumière was a man of character, a non-conformist with an artistic flair as demonstrated by his attraction for painting and singing and especially the way in which he encouraged and, later, in 1894, took charge of his sons’ invention. Married at the age of 19, Antoine established himself in Besançon as a painter then a photographer. His first two sons were born there; Auguste in 1862 and Louis in 1864. In 1870, the Lumière family fled eastern France under the menace of the Prussian army and settled in Lyon. A born businessman, Antoine opened a photo studio in the center of town. He kept a close watch on the latest inventions in the field of moving pictures and followed his sons' education with equal attention. Louis and Auguste attended La Martinière, the biggest technical high school in Lyon. The youngest son, Louis, developed a dry-plate photo process, known as Etiquette bleue, which brought fame and financial success to the family business. To manufacture and commercialize the plates, Antoine Lumière bought a large tract of land in the Monplaisir quarter in the Lyon suburbs. Fortune came
incredible pace and became one of the most important forms of art in France. It was such a major business that the government felt the need to create a special commission to regulate it, with one, open, goal: protecting minors.

1- History

It was in the 1930s, after World War I and before World War II, that debates started about ruling on the cinematographic industry in France. Indeed, the French cinema then knew some difficulties: decrease of resources, increase of costs of financing, financial uncertainty and competition from foreign films. The creation, at the end of the war, of the CNC\(^{11}\) (Centre National de la Cinématographie - National Center for Cinematography), after long discussions within the professional organizations, then in quickly. In the autumn of 1894, Antoine Lumière asked his sons to work on the problem of animated images which had so far stumped such great inventors as Edison and others. This paternal push in the right direction resulted in the invention of the "Lumière Cinematograph" which Lyon, France and the world celebrated on its one hundredth birthday in 1995. "La Sortie des Usines Lumière", Louis Lumière, 1895, Lumière Brothers Association.

Lyon has the great fortune to have preserved, with the help of the Lumière Institute, traces of the Lumière inventive process. Historic evidence proves that it was indeed the Lumière brothers who invented the Cinematograph, the final link in a long chain of inventions to which Louis Lumière humbly paid tribute. The Lumière brothers may also be credited with other inventions and research in the field of photography, 3-D cinema, medicine, etc. Symbolic and living vestiges of the Lumière talent are the Lumière Château, the Factory, the Rue du Premier Film and, above all, the films The 1,425 Lumière "scenes" remind us how important yet neglected their work is. Even today we are impressed by the creative potential of the Lumière brothers and their cameramen-technicians who in 1896 went out across the world in search of images. And we can only be amazed by "Leaving the Lumière Factory", the first film using the Cinematograph, the first time men filmed each other and, it could be said, the first true communication of men, such was the impact of this new language born with the invention of moving pictures. This momentous occasion took place in Lyon, on March 19, 1895, in what is now known as the Rue du Premier Film. This first film opened the way for the development of cinema. The curiosity, inventiveness and determination of two men culminated in scientific achievement and launched the adventurist history of moving pictures. The impact of this event was universal and remains so to this day.


\(^{11}\) Centre National de la Cinématographie: http://www.cnc.fr/a_presen/fr_a.htm
Congress, was created to give a durable answer to these problems. The CNC was created by the law of October 25, 1946. When it first started, the CNC was invested with a mission of economic regulation. In 1947, the CNC began to clean up the market. It took control of the growth of the film exploitation to favor the development of the French cinema by guaranteeing it a better distribution over the world. The law of September 23, 1948 established a mechanism for a financial aid system to the cinematographic industry: taxes on film releases put on a special account for temporary aids which allowed the allocation of an automatic sponsorship to the production and exploitation of films. In 1959, this mechanism ended with the creation of a financial state support fund from the government for the cinematographic industry. Besides, an aid fund for the distribution of French cinema abroad, subsidized by the CNC, was created in 1949. It was at the origin of Unifrance Film International. During the 1950s, the CNC strengthened its activities with all the branches of the profession, for example, by establishing a minimum obligation of financing for the producers.

The license procedure for motion picture production, which would soon be replaced by an approval system, was established in 1953. On January 27, 1956, the "Cinematographic Industry Code" was created to clarify the law on French cinema, and cinema in France. It was divided into four categories: the CNC as an institution, the motion picture business in France, the Centre national’s Public Ledger, and the financing of the cinematographic industry. The CNC has always favored the promotion of French cinema by supporting its national and international presentation. At the same time, the more specific CNC took cultural measures, like the creation of the Commission de

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12 Created in 1949, Unifrance Film International promotes and favors the diffusion of French motion pictures in the world. For more information, go to http://www.unifrance.org/
Classification des Oeuvres Cinématographiques (The Classification Commission of Motion Pictures), a commission to which producers are bound by law to submit both scenarios and finished films to get an exhibition visa. Indeed, in order to release a motion picture on French territory, filmmakers and producers need to get a visa; i.e. a license, a rating, for their film, whether French or foreign. In fact, even if motion pictures are dubbed in French, the original language version must also be approved.

The Commission de Classification des Oeuvres Cinématographiques met for the first time in 1962 and has been rating every film released in France ever since in ways that shall be detailed next.

2- The Rating Board

i- Composition of the panel

The Commission of Classification of Motion Pictures – hereafter the Classification Commission - includes a president, a vice president as well as seventy-five members, divided into four groups:

1. The first group includes fifteen members, respectively representing the ministries in charge of Justice, National Education, Internal Affairs, Social Affairs and Children.

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13 The Commission is an institution of the CNC; http://www.cnc.fr/index_dyn.htm?a_presen/r2/ssrub2/p2_2_clas.htm
2. The second group is composed of twenty-four professionals chosen by the Ministry of Culture among the motion picture industry, after consultation with the principal organizations or associations of the industry.

3. The third group includes twenty-four experts:
   - Fifteen of them are designated by the Ministry of Culture after consultation with the ministries in charge of Justice, National Education, Social Affairs and Children;
   - Three of them are designated by the Ministry of Culture after consultation with the Conseil Supérieur de l’Audiovisuel¹⁴ (High Council of Audiovisual);
   - The Ministry of Culture designates two of them after consultation with the National Union of Family Associations and the Association of the Mayors of France.

4. The fourth group includes:
   - Nine members from eighteen to twenty-five years of age at the date of nomination, chosen by the Ministry of Culture after consultation with the ministries in charge of National Education and Youth;
   - Three members from eighteen to twenty-five years old at the date of their nomination, chosen by the Ministry of Culture after consultation with the President of the National Center for Cinematography.

¹⁴The Conseil Supérieur de l'audiovisuel, is an independent administrative authority that was created by the Law of January 17th, 1989 to guarantee broadcasting freedom. http://www.csa.cfwb.be/
The Council of State\textsuperscript{15} (Supreme Court of administrative matters) appoints the president and the vice president for a three-year period, renewable twice. Moreover, the president is selected among the members of the Council of State. The members are also appointed for a three-year period, renewable twice.

\textbf{ii- Operation of the Commission}

The Classification Commission either sits in full commission or in committees. A decree\textsuperscript{16} fixes the missions and procedures of the committees. The committees screen the films and refer them to the full Commission only if adverse action seems necessary; i.e. when the committees have decided to rate a motion picture $X$. The Ministry of Culture provides the exhibition visas to French and imported motion pictures based on the Commission’s recommendations. The debates of the Commission are not public. The full commission only validly sits if at least thirteen members are present. The Members of the Commission cannot delegate their vote. They are held in professional secrecy and cannot, in any form, report the deliberation of the Commission. Likewise, the votes are secret. However, in the event of equal sharing of the votes, the president must vote publicly and his vote dominates.

The members of the Commission and the committees cannot sit when they have a direct or indirect interest in the motion picture they have to rate.

\footnotesize\textsuperscript{15} http://www.conseil-etat.fr/  
\footnotesize\textsuperscript{16} Decree 90-174 of 1990. Cf. www.legifrance.org
B- The Motion Picture Association of America

The motion picture is a major art form and a significant United States industry. Millions of Americans go to motion picture theaters regularly. Motion Pictures are also seen on television, videocassettes and on DVDs. They are one of America's major exports and are regarded as portraying, and even having an influence on, culture, morals, and behavior. As a result, motion pictures are widely discussed and critiqued.

The voluntary system of rating motion pictures for the benefit of American parents has become a widely used component of the American movie scene. Nevertheless, it engenders criticism in certain academic and entertainment circles17.

Therefore, we shall briefly discuss the origins and operation of the ratings system18.

1- History

From as early as 1911, city and state governments had established censorship boards in the United States. By the 1960's, there were many such boards, each applying its own set of standards. There were also private evaluators, such as religious groups, that

18 For a detailed description of the history and workings of the ratings system, see Jack Valenti, Motion Picture Association of America, The Voluntary Movie Rating System, How it Began; Its Purpose; The Public Reaction (1996).
recommended that certain pictures not be viewed due to content. Thus, it was difficult for the motion picture creator to determine whether their films would meet all of the various criteria for acceptability. In addition, many of the boards imposed significant economic burdens on the industry by ordering cuts in motion pictures.

In the early years, to deal with these problems and to provide guidance to motion picture makers, the motion picture industry published a list of scenes ordered by censor boards to be deleted. The Motion Picture Producers and Distributors Association - formed in 1922 and now called the Motion Picture Association of America ("MPAA") - promulgated a "production code," which set forth forbidden elements. For example, the general principles read as follows:

1. No picture shall be produced that will lower the moral standards of those who see it. Hence the sympathy of the audience should never be thrown to the side of crime, wrongdoing, evil or sin.
2. Correct standards of life, subject only to the requirements of drama and entertainment, shall be presented.
3. Law, natural or human, shall not be ridiculed, nor shall sympathy be created for its violation.

Only in the absence of the forbidden elements would a movie obtain a production code seal of approval. For several decades, motion pictures produced by major studios were not exhibited in theaters in the United States without a seal. The Code was known as the "Hays Office Production Code" - named after Will Hays, the first president of the

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20 The Motion Pictures Association of America is composed of the seven major motion pictures studios; Disney, Metro-Goldwyn-Mayor, Paramount, Twentieth Century Fox, Sony Pictures, Vivendi-Universal, and Warner Brothers; the National Association of Theater Owners ("NATO") and the International Film Importers and Distributors of America ("IFIDA").
21 The Hays Code stated that "though regarding motion pictures primarily as entertainment without any explicit purpose of teaching or propaganda, filmmakers know that the motion picture within its own field of entertainment may be directly responsible for spiritual or moral progress, for higher types of social life, and for much correct thinking." See [http://www.artsreformation.com/a001/hays-code.html](http://www.artsreformation.com/a001/hays-code.html) for the full text of the Hays Office Production Code.
MPAA. The Code was influential because the MPAA member studios produced and exhibited many motion pictures.

Many thought that the Code stifled creativity. In 1966, Jack Valenti, a highly regarded assistant to President Lyndon Johnson, became the third president of the MPAA, and recognized that adherence to the Production Code was disintegrating. Motion picture makers began circumventing the Code. Theaters were no longer controlled by moviemakers. Social and cultural mores were changing, and motion pictures had to compete against other forms of entertainment, such as television. Consequently, in 1967, Mr. Valenti essentially eliminated the Hays Office Production Code. After numerous meetings with producers, distributors, theater owners, religious leaders, and other members of the public, Mr. Valenti began to formulate a voluntary film rating system. The concept was not to approve or disapprove a motion picture based on content, but to give advance guidance to parents so that they could make an informed decision about the movie viewing of their children. As a result, in November 1968 the MPAA, the National Association of Theatre Owners ("NATO"), and the International Film Importers and Distributors of America ("IFIDA"), announced the creation of a new voluntary film rating system. This new system led to the breakdown of the former censorship board system, and eventually, the last local censorship board disbanded. Other private systems either disappeared or became less significant.

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23 Valenti, supra, at 4-5.
2- The Rating Board

i- Composition of CARA

The Rating Board located in Los Angeles decides on motion picture ratings. The members of the Board work for the Classification and Rating Administration (“CARA”), which is part of the MPAA and is funded by fees charged to the producers/distributors for the rating of their films. The MPAA President, after consultation with NATO and others, designates the Chairman of the Rating Board.\(^{24}\)

The Board is currently composed of a group of twelve people, each with parenting experience and many of them serve full-time. For most of the raters, the rating position is not a long-term career or job. Most of them have other careers, and their service is generally for a limited period. The current board includes a cabinetmaker, a homemaker, a teacher, a postal worker, a microbiologist, a hairdresser, a storeowner, and a restaurant manager. Some have college degrees and some do not, and they come from various parts of the country. Considering all characteristics, they are a diverse group of people.

If dissatisfied with a rating, a producer/distributor may appeal the rating to the Rating Appeals Board, which is composed of fourteen to eighteen members designated by the MPAA, NATO, and the American Film Marketing Association (a group of independent movie producers and distributors). A rating can be changed only by a two-thirds vote of those Appeals Board members present at an appeal. The Appeals Board

\(^{24}\) Richard M. Mosk, The Jurisprudence of ratings, Symposium Part I: Motion Picture ratings in the United States, 15 Cardozo Arts & Ent LJ 135
members vote to change a CARA rating only if they believe that the rating was "clearly erroneous." But reversals are not common.

Aside from appealing the rating or editing the motion picture, there are no means to change a rating. The "Policy Review Committee," comprised of members of the MPAA and NATO. The Policy Review Committee can revise the basic rules and regulations administered by CARA and promulgate new regulations, but that it all it can do.

Advertisement of films is also part of the film industry's self-regulatory mechanism. Advertising for all media is submitted to the Advertising Administration (not part of CARA, but within the MPAA) for approval with respect to rated motion pictures. For example, when trailers are approved for "all audiences"; it means that they may be shown with all feature films. Trailers rated for "restricted audiences" can only be shown with films rated "R" or "NC-17"^26.

ii- Operation of CARA

CARA board members view a submitted film and fill out preliminary ballots to record their impressions as to what most parents would consider the appropriate rating. After further reflection and discussion, the members complete a more detailed rating form to indicate the basis for their formal votes. The Board members also discuss and formulate the reasons for the rating. The rating is communicated to the producer/distributor of the submitted film, and the producer/distributor can accept the rating or edit the film and resubmit it for a new round of viewing and rating. The

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^25 The number of board members can range from eight to thirteen.
^26 See Valenti, supra.
producer/distributor can continue the editing and submittal process, but release commitments usually deter endless re-submissions. If the producer/distributor is still dissatisfied, it may appeal, as described above.

CARA seeks to determine how parents would consider the picture and what they would want to know about the picture. CARA’s role is to inform parents of the rating. Thus, CARA raters are not trained to determine what is best for, or potentially harmful to children. The system assumes that parents, given a certain indication as to the nature of the picture, will seek to learn more about the picture before deciding whether to take their children to see it. Many aspects of the US legal system are premised on the principle that parents have certain responsibilities toward their children. Thus, it is not unreasonable to assume that parents will exercise this responsibility in connection with their children’s movie viewing.

Richard M. Mosk, Chairman of CARA, ensures that no outside or improper sources influence the CARA board, that there is no favoritism of MPAA members or studios over independent producers. However, CARA Board members are paid by the MPAA, so how objective can they really be? Richard M. Mosk adds that aside from the appeal process, no one outside of CARA has any power to affect CARA Rating Board decisions. Except for senior raters, who communicate ratings to the producer/distributor, members of the CARA Board are anonymous. This anonymity,

29 Richard M. Mosk, The Jurisprudence of ratings Symposium Part I: Motion Picture Ratings in the United States, 15 Cardozo Arts & Ent LJ 135
which is sometimes criticized\textsuperscript{30}, is, supposedly, set to immunize the Board from attempts to influence its members.

After describing the rating boards, attention shall now be directed towards the rating systems themselves.

II- The Ratings Systems

The French and US ratings systems are fundamentally different, as one is binding and mandatory where the other one is “simply” voluntary.

A- France: A government-controlled system

Under the French ratings system, a submitted film receives a rating based on scenes that should or not be seen by minors under a certain age fixed by the law; whether the factors to be considered are nudity, language, violence, etc.

As mentioned in Article 19 of the Cinematography Code\textsuperscript{31}, the Ministry of Culture delivers an exhibition visa after consultation with the Classification Commission.


\textsuperscript{31} Article 19: La représentation cinématographique est subordonnée à l'obtention de visas délivrés par le ministre chargé du cinéma.
Up until July 2001, the Commission could only rate films, including the trailers, with one of the following ratings:\(^\text{32}\):

- **G**: Exhibition visa authorizing the presentation of the film to all audiences

- **NC-12**: Exhibition visa prohibiting the presentation of the film to minors under 12

  Children under twelve do not have access to the showrooms\(^\text{33}\).

- **NC-16**: Exhibition visa prohibiting the presentation of the film to minors under 16

  Children under sixteen do not have access to the showrooms.

- **X**: The film cannot be released in theaters at all

  Along with rating motion pictures, the Commission must match every exhibition visa with a warning intended for the information of the spectator on the contents of the film and some of its peculiarities, such as “This movie contains scenes of extreme violence which may hurt the sensibility of some spectators.”

  In view of the opinion emitted by the Classification Commission, the Ministry of Culture makes a decision. The Ministry can decide, of his own initiative or after consultation with the Commission, that a warning concerning the contents or the peculiarities of a motion picture will be exposed to the sight of the public, at the entrance of the rooms where the film will be presented. This warning shall also precede any

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\(^{32}\) Because of the controversy surrounding the release, then ban, of the motion picture “Baise-moi” during the summer 2000, the law was changed and a new category of rating was added. This will be the topic of Chapter 2, Section A.

\(^{33}\) Unlike in the US where, for some ratings, children can be allowed to see a motion picture when accompanied by a parent or a guardian, in France, as ratings are law, movie theater workers have to check IDs and prohibit access to showrooms when the ratings make it illegal for people under 12, 16 or 18 now to watch a particular movie.
distribution of the film. Before ruling, the Ministry has the power to ask the Commission for a new examination of the film. He/she passes on to the president of the Commission the motives for this demand as well as any observations. It is a compulsory measure in case the Ministry in charge of the Culture intends to make a decision containing a measure more restrictive than the one proposed by the Classification Commission.

When the rating bans the presentation of a motion picture to minors under twelve, sixteen years or eighteen years old (since July 2001), the ban shall be mentioned in “a clear and understandable way”34, on any posters, advertisements or trailers concerning the film, whatever is the way of distribution (i.e. Movie theaters, television, videocassettes…) The ban on a motion picture has to be highly publicized in the advertisements in the press, on television, as well as before the presentation of the film in showrooms.

Ratings can only be given to a finished motion picture. Producers have to apply for a rating at least one month before the foreseen date as the first public presentation of the film. To support the application, the Commission has to consider:

- a copy of the exact and complete version of the film such as the producer wants to exploit it in France;
- a copy of the script with the dialogues in its complete and definitive form.

The “exhibition visas” are worth license of public presentation of the film on the territory of the French Republic. Exhibition visas are valid for an unlimited period, and must be attached to each print of any film before the film can be exhibited. On a more practical note, no film can be publicly shown without indication of the nature, the number and the date of the visa on the screen immediately following the title of the motion picture.
Exhibition visas are only delivered to complete films that have been registered at the Centre National’s Public Ledger\textsuperscript{35}.

Alongside with the Classification Commission, some other groups rate motion pictures to inform about films, such as religious groups. For example, the Catholic Film Institute (Centrale Catholique du Cinema) also reviews films and issues morals ratings. And some people take those ratings more seriously than others. The mayor of the town Les Herbiers suggested that “Basic Instinct” be banned after reading in church publications that the film was pornographic and the owner of the local cinema complied\textsuperscript{36}. A December 18, 1969 decree provides that local municipal governments may forbid the showing of films within the community, even though the films have received clearance from the Classification Commission. The most frequently cited reason in these cases is “maintenance of public order”\textsuperscript{37}. But this kind of censorship should be allowed as it does not affect free speech rights on a national level, but only on a local standpoint, when the necessity for such censorship is legally shown.

\textsuperscript{34} Decree 90-174 of 1990, article 5
\textsuperscript{35} For an example of the registration, go to: http://www.thotfiction.com/contratAuteurUnitaireTV.htm
\textsuperscript{36} Protest march on “Basic Instinct” ban, The Reuter Library Report, June 13, 1992
\textsuperscript{37} In 1979 was released the motion picture, “Le Pull-Over Rouge”, a film version of author Gilles Perrault's best-selling book about the 1976 trial and execution of Christian Ranucci, the youth who was convicted with extremely inconclusive evidence of murdering an eight-year-old girl in Aix-en-Provence, a city in the south of France. The mayor of Aix forbade the showing of the motion picture in the city because he thought it would be too hard on the people who had been personally affected by the crime. The distributor of the film appealed the decision to the Council of State, which overturned it, on the basis that there was not enough evidence to prove that the showing would lead to public disorder. C.E., July 26, 1985, Ville d’Aix-en-Provence c./ SociétéGaumont et autres.

However, even though the Council of State overturned the mayor’s decision, it did so six years after the film was released in France. Therefore, the motion picture’s life was already over, and thus, it was never released in Aix-en-Provence.
B- United States: A self-imposed mechanism, but…

Under the US voluntary rating system, a submitted film would receive a rating based on a determination of what most American parents would consider appropriate for viewing by children. The factors to be considered included theme, language, nudity and sex, violence, and drugs. Initially, the ratings used were "G" for all ages; "M" for parental guidance suggested; "R" for children under a certain age not admitted without an accompanying parent or adult guardian; and "X" for no one under 17 admitted. However, the current system has modified the earlier symbols. The present rating symbols are the following:

- **G: General Audiences**
  
  All ages admitted. This signifies that the rated film contains nothing most parents will consider offensive for even their youngest children to see or hear. Nudity, sex scenes, and scenes of drug use are absent; violence is minimal; snippets of dialogue may go beyond polite conversation but do not go beyond common everyday expressions.

- **PG: Parental Guidance Suggested**
  
  Some material may not be suitable for children. This signifies that the rated film may contain some material parents might not like their young children to be exposed to - material that will clearly need to be examined or inquired about before children are allowed to attend the film. However, explicit sex scenes and scenes of drug use are absent; nudity, if present, is seen only briefly, horror and violence do not exceed moderate levels.
- **PG-13: Parents Strongly Cautioned**

Some material may be inappropriate for children under 13. Parents are urged to be cautious. This signifies that the film rated may be inappropriate for pre-teens. Parents should be especially careful about letting their younger children attend. Rough or persistent violence is absent; sexually oriented nudity is generally absent; some scenes of drug use may be seen; one use of the harsher sexually derived words may be heard.

- **R: Restricted**

*Under 17* requires accompanying parent or adult guardian (age varies in some locations). This signifies that the rating board has concluded that the rated film contains some adult material. Parents are urged to learn more about the film before taking their children to see it. An R may be assigned due to, among other things, a film's use of language, theme, violence, sex or its portrayal of drug use.

- **NC-17: No one 17 and under admitted**

Patently adult. Children are not admitted. This signifies that the rating board believes that most American parents would feel that the film is patently adult and children age 17 and under should not be admitted to it. The film may contain explicit sex scenes, an accumulation of sexually-oriented language, or scenes of excessive violence. The NC-17 designation does not, however, signify that the rated film is obscene or pornographic.

The rating symbols are trademarked. Only the "X" designation is not trademarked, thus pictures that are labeled "X" no longer receive that rating from the
MPAA. Rather, an "X" rating is now self-imposed. For all submitted films, the ratings appear on all advertising, videocassette and DVD packaging, and the cassettes and DVDs themselves, and at the theaters. The ratings are generally included in newspaper reviews and listings. When a rating is given, it is accompanied by a short explanation for the rating; the explanation is not generally used in advertising. Nevertheless, the reasons for the ratings are often reported by the media and available to the public from various sources, including theaters, Moviefone, and the Internet. Filmmakers, officially, can choose whether or not to submit their films for rating as the ratings system is, supposedly, a completely voluntary one. However, the member companies of the MPAA have pledged to submit all of their films for classification; while other distributors and producers are free to submit their films. And, the “member companies of the MPAA” are the seven major studios that produced and distribute if not all, the majority of motion pictures released in the United States and over the world. These studios are Disney, Metro-Goldwyn Mayer, Paramount, Twentieth Century Fox, Sony Pictures, Vivendi-Universal, and Warner Brothers. Therefore, most of the motion pictures distributed in the United States do get a rating from the MPAA because member companies of the MPAA distribute them. And it is not voluntary: it is mandatory for them to do so as it is in their contract. Movie theaters may decline to comply with the rating system, but the majority of the theaters - approximately eighty-five percent - do utilize the ratings for information and admission policies. Officially, ratings do not purport to be judgments or evaluations of the merits of films and are NATO members, i.e. MPAA members. So is it still a voluntary system? They are claimed to only deal with certain elements that would affect

39 The Internet address is http://www.mpaa.org
40 Valenti, supra, at 11.
parental decisions concerning children movie-viewing. These elements, as explained above, include theme, language, nudity, violence, sex, drugs, and other relevant matters. Not only is it not a voluntary system, but also, as no film will be released without a rating that satisfies the studios, it acts as a censor system.

Although there is no binding precedent or stare decisis in rating pictures, patterns and consistencies in ratings can be discerned. However, violence is a difficult area to rate because there is an infinite number of variations in type and intensity of such violence, but generally, films with significant violence receive restricted ratings. A picture may receive a strict rating for violence and then be edited to obtain a less severe rating. The public is not aware of rating decisions that precede editing and the final rating. Some people complain about violence in restricted pictures. But once a picture is restricted, it is then up to parents to determine if the film is appropriate or inappropriate for their children.

Again, the ratings are there so that motion pictures can be classified as appropriate to be viewed by children a certain age. And by doing so, it engenders censorship as there is no category for films that would not be suitable for children, but would be solely intended for adults.

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41 Valenti, supra, at 4-5.
42 Valenti; supra, at 5.
CHAPTER 3

FILM CENSORSHIP, OR HOW THE MERE FACT OF RATING MOTION PICTURES AFFECT THEIR CONTENT

As stated, in France and in the US, the motion picture industry, whether it is mandatory or not, is subject to ratings. These ratings do affect the contents of these motion pictures, therefore the Commission and the MPAA act as censors.

I- The X rating pariah in France: A regime of governmental censorship

As previously observed, motion pictures cannot be released in France without an “exploitation visa”, which is a rating. The Commission has a choice between four ratings, ‘General Audiences’ (G), ‘No children under 12’ (NC-12), ‘No children under 16’ (NC-16), and ‘X’, which bans the movie from being released in theaters. Therefore, since no motion picture can be released in France without a rating, all movies have to fit in either one of these categories. The rating is given on the global “look and feel” of the motion picture, considering its topic, its general tone, and when applicable, its genre. The Commission can also specify that one scene or some images in particular may not be suitable for children under the age of twelve or sixteen\(^47\). Nonetheless, once in a while, children under 18 should not be allowed to see a specific motion picture. As the only
other category above the NC-16 rating is the X rating, when a movie is not for minors, the only solution is to rate it X. Then what?

A- Consequences of an X rating

Up until 1975, X-rated movies could be released, but their releases were limited to specialized movie theaters, theaters that only showed X-rated motion pictures. Spectators had to be over eighteen as these movies were prohibited to minors, and proper identification was necessary to be let in. In 1975, the law was changed. Indeed, in 1975, the government decided to close down all X movie theaters, simply making it illegal to show pornographic motion pictures in theaters. Therefore, since 1975, X-rated motion pictures can only be released on video, limiting de facto their economic success. As a matter of fact, most of the time, only pornographic movies have to bear the X rating cross and support its severe financial consequences. However, occasionally, a director may wish to release a motion picture that is neither intended for children under 16, nor a pornographic movie, but merely a motion picture that is solely intended for adults. Unfortunately, and up until July 2001, a motion picture could not be prohibited to minors (children under 18) in any other way than by putting it on the pornographic or extremely violent film list, meaning by rating it X. Indeed, there was a gap in the law: there simply was not a rating between the one prohibiting children under sixteen to see a movie, and the one purely proscribing the motion picture from having a theatrical run. By

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47 Governmental decision of July 12, 2001, Article 3.
48 Law 75-1278 of December 30, 1975
not allowing directors, or, for that matter, producers and distributors, to release their movie the way they intended to have it presented to the public, the French government purely and simply was violating their free speech rights that are Constitutionally protected.

B- Absence of an “adults only” rating: a freedom of speech violation

The free speech issue had been raised many times before the summer of 2000, for many films and by many directors and motion picture studios. For example, in 1998, at the Cannes Film Festival, was first presented director Lars Von Trier’s last piece, “The Idiots”. The motion picture is an exploration of normality as a social system, the constraints it places on individuals to behave in prescribed ways even under abnormal circumstances. The film chronicles the escapades of a small group of young middle-class men and women who have formed an organization to upset what they perceive to be bourgeois principles and participants, that is, well to do and unscrupulous people. The group attempts to accomplish its goals by acting as if they are mentally challenged, so as to annoy the gentlefolk with their "spassing" (spastic behavior), and interacting with each other within the confines of their private commune. They create their own subculture with behaviors very different from those enforced by conventional society, which, of course, allows for extensive nudity, violence and some particularly hardcore sex scenes. The controversy about its NC-16 rating and the fact that it should have been rated X began right after its showing at the Festival. Film critics, journalists, family associations,  

49 The new law changing the ratings was just voted in July 2001. Details of it will be explained and discussed in the following chapter. For this chapter, only the problems that were going on before the law
PTAs, they all had something to say on the matter. But in spite of all this, the motion picture came out in the summer of 1998 with an NC-16 rating. In 1999, another French motion picture raised the controversial question of what is appropriate for minors to see. It happened when Catherine Breillat released her movie "Romance X". This motion picture is a rather cerebral study of female masochism, with florid philosophical monologues by the troubled heroine. The major difference with "Romance X" is that this film is told from a woman's point of view. Director Catherine Breillat brings fresh vision to the sex scenes by exhibiting rare curiosity about the psychology of female sexuality. The heroine reels from rejection when her lover refuses to sleep with her and she sets out on a search forever more degrading erotic experiences. Her adventures are sometimes disturbing to watch, but they have an emotional authenticity to them. However, the "authenticity" of some of the scenes was such that, after it received an NC-16 rating, a family association brought an action against the Ministry of Culture for wrongfully rating the motion picture, which should have been classified as an X film. Because the Council of State did not find their arguments to be enough to censure Breillat's motion picture, the claim was dismissed.

Hence, up until 2000, even though some motion pictures had been at the heart of the controversy between NC-16 and X rated films, none of them had received an X rating when they were not intended to be a pornographic movie. But this was before Coralie Trinh Thi and Virginie Despentes released their piece, "Baise-moi".
C- The "Baise-moi" controversy

"Baise-moi" is based upon the controversial novel written by co-director Virginie Despentes. Baise-moi is a brutish and blunt examination of two young women's dastardly quest to exorcise their sexual demons and psychological duress. The film focuses on women who have been thoroughly alienated, abused, and humiliated by mainstream society: Nadine (Karen Bach), a streetwise prostitute, and Manu (Raffaela Anderson), who endured a violent rape. A chance meeting leads the two to hit the road à la Thelma and Louise and find a voice for their bottomless rage by gleefully killing any and all who might cross their path, while also nurturing their sexuality with long benders of animalistic coupling. Despentes and Trinh Thi delivered an outlandish and relentlessly excitable storyline. They served up a tremendous dosage of raw sex scenes that feature shots of penetration, sexual organs, and oral sex—all for a titillating, caustic effect. The motion picture was made for the shock value that it would have on its spectators, but absolutely not to make a pornographic film. The only way the directors intended it to be pornographic is in the violent sense of the word, not the sexual one. It received a NC-16 rating from the Commission on June 22nd, 2000. The very next day, a family association group called Promouvoir, filed a suit against the Ministry of Culture for wrongfully rating the film. A few days later, on June 27th, "Baise-moi" is released in France bearing an NC-16 rating. On June 30th, the Council of State, agreeing with Promouvoir, overturned the Ministry's rating for that "the film contains a succession of extremely violent and non-simulated sex scenes, it constitutes a pornographic message that should not be seen by minors. As the law does not allow to prohibit a motion picture to minors under the age of

51 CE, Association Promouvoir v. Ministry of Culture, July 22, 1999
eighteen without rating it X, the motion picture "Baise-moi" should have been rated X\textsuperscript{52}. After the Council of State's decision, the Ministry of Culture, Catherine Tasca, had no choice but to rate "Baise-moi" X. By doing so, the film could not enjoy a theatrical run anymore, as it is illegal in France to show X-rated motion pictures in theaters. So the movie was taken off the screens. However, the controversy had begun right after the association had filed their complaint. Which rating should "Baise-moi" have gotten? Is it really a pornographic film, or only a film about the sexual violence women have to face? Should there be a way of prohibiting the showing of a motion picture to minors without rating it X? Have Despentes and Trinh Thi's free speech rights been violated?

The economic consequences of an X rating are tremendous\textsuperscript{53}, as unconditionally no theater is allowed to carry an X-rated motion picture. So by rating it X, the Council of State, financially and artistically, "killed" the film “Baise-moi”. However, a couple of theater owners, who were showing the film before its NC-16 rating was overturned, illegally kept on showing it after it was rated X\textsuperscript{54}. But they were only able to do so for a few weeks before the government threatened to shut them down for showing X-rated movies and Promouvoir filed a suite against Karmitz for violating the law\textsuperscript{55}. Thus, after the movie was rated X, its commercial life in France was over. However, it did very well at the box-office in Belgium and in Canada, where they have “adults-only” ratings, and was selected for the Locarno Film Festival. Therefore, the censure that “Baise-moi” had to undergo in France had for sole reason the absence of an “adults-only” rating. Soon

\begin{footnotes}
\item[53] So are they in the US, see infra.
\item[54] Cf. Martin Karmitz in its MK2 theaters in Paris, and the CNP Corporation in its theaters in Lyon, but with a self-applied restriction to minors under 18.
\item[55] Martin Karmitz showed the motion picture for 3 weeks after it was rated X, whereas the CNP Corp. stopped showing it after 2 weeks. On April 11, 2001, the court dismissed Promouvoir’s complaint, as the association had no standing for suing Karmitz; only the government could have, but did nothing.
\end{footnotes}
after the film’s NC-16 rating was overturned and the X rating was applied to it, people in the cinematographic industry started to react. Martin Karmitz, a motion picture distributor, said in an interview with Le Monde\textsuperscript{56}:

\textit{“It is obvious that there is a gap in the law protecting minors. A change is necessary so that censure will not become the law.”}\textsuperscript{57}

Catherine Breillat\textsuperscript{58} initiated a petition to overturn the X rating, to allow the motion picture to be shown in theaters. The petition\textsuperscript{59} was co-written by directors Romain Goupil, Tonie Marshall, Jeanne Labrune and by Breillat herself, and by producer Humbert Balsan. Demonstrations occurred in the streets of every major city throughout the country: the population wanted to show some support to the co-directors of \textit{“Baise-moi”} and also make a political statement on freedom of speech in the motion picture industry. Indeed, the government should not have been able to ban a motion picture, and therefore restrict free speech, because of a gap in the law that the same government was responsible for. The ratings system in force was simply not working. It needed to be changed in order to respect free speech rights.

The French government regulated ratings system does not work as it was intended to. It violates Article 11 by forbidding filmmakers to release a picture designed for adults only – whether the elements looked at are language, nudity, sex or violence - without risking the X rating and therefore not getting a theatrical run. But it has to be observed that the private and voluntary US ratings system does not work either, as it censors motion pictures the same way, with the unique goal of keeping the industry profitable.

\textsuperscript{56} Le Monde is the most prestigious newspaper in France.

\textsuperscript{57} Le Monde, July 4th, 2000.

\textsuperscript{58} Catherine Breillat is a French director who had to deal with the rating problem in 1999 with her feature film, “Romance X”.

\textsuperscript{59} Published on July 5, 2000, the text of the petition can be found at http://www.humanite.presse.fr/journal/2000/2000-07/2000-07-06/2000-07-06-031.html
II- The MPAA ratings system in the United States: A regime of private censorship

“We live in oppressive times. We have, as a nation, become our own thought police; but instead of calling the process by which we limit our expression of dissent and wonder "censorship," we call it "concern for commercial viability".\(^{60}\)

As was previously stated, the Motion Picture Association of America is an organization of major studios created to control the standards of the American motion picture industry.\(^{61}\) As the MPAA is a voluntary association of studios\(^{62}\), its interest is and has always been to keep the industry profitable. Since the entertainment industry is based on the proliferation of new ideas and stories (product), the pursuit of profit requires the MPAA to push the proverbial envelope of public taste while maintaining the public’s trust in the consistency of the product. It has been very clever in doing so and it has been very successful\(^{63}\).

But this great American success story is not without its victims or villains. The success of the American motion picture industry has come at the expense of many silenced artistic visions and to the detriment of the American cultural identity.

A- Voluntary system, but contractual obligation

In the US, even though the rating system is “strictly voluntary”, as claims MPAA president, Jack Valenti\(^{64}\), when a motion picture is produced, or distributed, by one of the

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\(^{60}\) David Mamet (b. 1947), U.S. playwright. Writing in Restaurants, "Radio Drama" (1986).


\(^{62}\) Cf. Supra

\(^{63}\) Jack Valenti, *The movie rating system*, 560 F. Supp. at 1340. Polls conducted by the Opinion Research Corporation of Princeton New Jersey have consistently shown that 60-70% of parents polled consider the MPAA rating system to be “very to fairly useful” as guides to children’s attendance.

\(^{64}\) Jack Valenti, *The voluntary rating system: how it began; its purpose*, Supra
seven major studios, the motion picture will have to be rated. Indeed, the major studios are contractually obligated to go through the ratings process and release their films with ratings\(^{65}\), while independents are often compelled to seek ratings out of pressures from the marketplace\(^{66}\). Indeed, even if a filmmaker could produce his or her motion picture with the help of an independent studio, if he or she wants the film to get a fairly important release in theaters throughout the country, he or she will have to get a rating, as most theater owners are members of NATO and will only show rated motion pictures. Therefore, although submitting a film is, supposedly, a voluntary decision made by filmmakers, the overwhelming majority of the producers and distributors\(^{67}\) force, by contract, their directors to have their motion pictures rated.

**B- A “value-neutral” judgment?**

As explained above, the Motion Picture Association's guidebook on the rating system states that in judging any film, the rating association considers "theme, violence, language, nudity, sensuality, drug abuse and other elements"\(^{68}\). Jack Valenti claims that the task of ratings board members is to watch movies on behalf of the nation's parents and discern, with their best guesses, how a simple majority of their fellow parents would feel about their children seeing them\(^{69}\). He also affirms that the system is “not designated to serve the function of “critic”. The ratings do not determine or reflect whether a film is

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\(^{65}\) As they are members of the MPAA. Cf. Supra.

\(^{66}\) See Jack Mathews, *A System Rated NC-17*, Newsday, November 22, 1992

\(^{67}\) The seven major motion picture studios produce and distribute 85% of the motion pictures released every year.

\(^{68}\) See Jack Valenti, Supra.

\(^{69}\) Jack Mathews, *A System Rated NC-17*, Newsday, November 22, 1992
“good” or “bad”. The system is not intended to approve or disapprove any film. However, how can an industry place a rating on a product without conveying, implicitly or explicitly, a value judgement? How do you draw the line between a PG and a PG-13 motion picture without conveying a value judgement? It simply cannot be done: by rating motion pictures, the Board provides “value-neutral” information and “non-value-neutral” information. And because this “non-value-neutral” judgement the Board conveys on a motion picture has consequences over its content for economic reasons, the system does censor films. Indeed, depending on the rating motion pictures get from the MPAA, directors will have to change their picture in order to comply with the studio's requirements. Currently, almost any director who makes a movie for a major studio is contractually obligated to deliver nothing stronger than an R. "As a studio, we will not release an NC-17," said Nikki Rocco, Universal Pictures' president of distribution. "If for any reason a film is rated NC-17, we make sure it's edited to a version that is accepted by the [ratings] board as an R. If a film crosses some line with the MPAA, it must be watered down. Thus, US moviegoers watched surgically altered versions of Stanley Kubrick's "Eyes Wide Shut" and Mary Harron's "American Psycho".

A question comes up, then: why can’t motion pictures get “anything stronger than an R”, when the motion picture could be released as the director intended to film it under another rating, the NC-17 rating? Why should not Stanley Kubrick be allowed to have his movie released without being altered, under an NC-17 rating instead of an R? Well, the

70 Id.
71 Id.
72 See Mark Caro: Rated 'F' for failure; NC-17 doesn't work. The U.S. movie rating system needs to grow up and allow the wide release of films that are appropriate for adults only. Chicago Tribune, June 17, 2001
answer is because getting an NC-17 rating is seen as “the kiss of death” in the marketplace.

Indeed, the economic consequences of an NC-17 rating can be severe.

C- **Severe economic consequences**

The NC-17 was created in 1990 as an attempt to remove the stigma from adults-only rating, yet it has not become much more respectable than the X. "We did not do a good job as an industry when we made the transition from X to NC-17," said Mary Ann Grasso, vice president and executive director of the National Association of Theater Owners. "The intent was pure, and it was to allow filmmakers a rating to communicate to parents and adults: 'This is for you, not for kids.' But somehow it didn't gain acceptance. The press really didn't help a lot because they said, 'All you've done is change it from X to NC-17,' and in the public's mind X meant bad."73

Because the NC-17 rating is only seen as a new name for the X rating, many theaters refuse to show an NC-17 film, and many newspapers, radio and television stations will not carry advertising for one; many newspapers even refuse to carry the most discreet ads for NC-17 movies. Other forces play a role in the conflict: Blockbuster Video, Kmart and Wal-Mart, which account for more than half of the video sales in the United States, will not handle NC-17 titles. Likewise, mall owners often stipulate in their leases that theaters can't show NC-17 films.74 Therefore, as NC-17 motion pictures would be restricted to about 300 theaters across the country, would not get much publicity and would probably not turn a profit with a budget of more than $3 million, the major studios,

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73 See Mark Caro, *Rated 'F' for failure; NC-17 doesn't work. The U.S. movie rating system needs to grow up and allow the wide release of films that are appropriate for adults only.* Chicago Tribune, June 17, 2001
74 See William Grimes: *Reviewing the NC-17 Film Rating: Clear Guide or an X by a New Name?* The New York Times, November 30, 1992
which count on their bigger-budget films playing in a thousand or more theaters, have invariably chosen to cut films rather than face the dread rating.

Thus, agreeing with Harvard law professor Alan Dershowitz, the NC-17 rating is a censorship measure. "I generally support a ratings system that informs parents so they can make a decision, but that does not apply to NC-17. It's a censorship rating." Elements of censorship are impediments to the exhibition of a picture with an NC-17 rating, and, in effect, an NC-17 label is tantamount to a prior restraint.

The MPAA ratings system goes beyond providing parents information on films: it is taking an active role in the editing decisions of filmmakers. In a word: censorship.

D- “Nothing stronger than an R”: Censorship by another name

In the 1970s and '80s, filmmakers began to push the limits of the R rating with the MPAA quietly redrawing its line. The MPAA "tango" often involved filmmakers intentionally submitting films that were clearly "too much" and cutting the film down to R-rated acceptability at the suggestion of the MPAA. The tango exists today in the similar battles over the NC-17 rating. Martin Scorcese, submitting his film "Casino" for MPAA rating, included a scene in which a man's head is crushed in a vise, as a strategic ploy. Scorcese reportedly included the scene so that he could use it as a bargaining chip in the event the movie did not receive an R rating. What results from this “cat and mouse chase” is the assertion that, again, the MPAA is no longer engaging in a rating

75 See Brooks Boliek, After 30 years, movie rating system still works Chicago Sun-Times, November 20, 1998
76 See Bob Strauss, Debate on "Basic Instinct"; Film Thriller's Trials Illustrate Problems of NC-17 Rating, Chi. Sun-Times, Feb. 23, 1992, at Show-5.
77 Caro, supra, at 6.
system, but is taking an active role in the editing decisions of filmmakers. In a word: censorship. “The present system of rating motion pictures 'G,' 'PG,' 'PG-13,' 'R' and 'X' is an effective form of censorship. It is censorship from within the industry rather than imposed from without, but censorship nevertheless.” Another example of censorship is 1992’s “Basic Instincts”. "Basic Instinct", a thriller about a bisexual woman who becomes a serial murder suspect, received an R rating after director Paul Verhoeven agreed to make minor trims in scenes depicting a gruesome ice-pick attack and lengthy lovemaking between stars Michael Douglas and Sharon Stone. It first received an NC-17 rating, but was not acceptable because such a rating would significantly reduce the box office, for the reasons described above. Indeed, an NC-17 rating would have severely damaged profits for the $50 million film. That is why Carolco Pictures, which produced the film, and Verhoeven were contractually obligated to deliver an R-rated film to TriStar, its distributor. So Paul Verhoeven had to admit to having shot several of the scenes from different angles, from the discreet to the revealing, to provide footage for a version that the ratings board would not reject. He then used outtakes to produce a less graphic version that the board did approve and grant an R rating, which allowed teenagers accompanied by an adult to see it in the United States. So what if "Basic Instinct" wasn't as graphic as director Paul Verhoeven intended? Well, it is a censorship measure.

Oliver Stone directed “Natural Born Killers” in 1994. It is the story of Mickey and Mallory, two mass murderers who go on a killing spree across America, making certain that everybody knows their names so they get credit for their crimes. More than

78 Miramax Films Corp. v. Motion Picture Ass'n of America, Inc. 560 N.Y.S.2d 730N.Y. Sup.1990.
their killings, however, the movie deals with the way in which the public and the media turn them into folk heroes. The killers inspire a media feeding frenzy, and during their rampage, they are the most famous people in America. The MPAA threatened the film with an NC-17 rating. After the distributor made five appeals and agreed to cut several segments, the MPAA relented and changed the NC-17 rating into an R rating. For good measures, though, the MPAA attached to advertisements for the movie a parental warning: “For extreme violence and graphic carnage, for shocking images, and for strong language and sexuality.” With all this, couldn’t the motion picture be released in its intended form, under an NC-17 rating? No, because the economic consequences attached to such a rating are so tremendous that the motion picture would not be viable.

No Hollywood studio is willing to release an NC-17 movie, no matter how serious and adult, because of the severe economic consequences of releasing a motion picture with such a rating. Every year, a handful of filmmakers challenges the dividing line between NC-17 and R -- it's the equivalent of a routine dog-bites-man story, but the press bites every time -- and almost always the filmmakers are forced to heel. The most recent hue and cry: Stanley Kubrick's "Eyes Wide Shut" and the infamous digitally cloaked orgy. Even though Kubrick was recognized as one of the world’s master

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79 Robert W. Welkos 'Basic Instincts' gets R rating with trims Chicago Sun-Times, February 12, 1992
80 Gregg Kilday, Gross & grosser; Tacky comedy wins the ratings game; indie dramas don’t, Chicago Sun-Times, August 13, 2000
81 Along with cutting and reshooting scenes, another phenomenon can be observed as far as censorship in motion pictures is concerned: The Alan Smithee phenomenon. [Copyright Act, Sect. 106 A (a)(1)(B); (a)(2)]
Sometimes battles with producers and studio executives and others result in the destruction of a director's vision of the motion picture he/she agreed to direct. Therefore, in such cases, the reliable Alan Smithee is around take credit for such ill-fated productions. However, Alan Smithee is not a real person at all, but rather a perverse fiction designed for the directors refusing to have their name credited on a motion picture they do not approve of. In the late 1960’s, the Directors Guild members created Alan Smithee as a shield for those who felt their productions were abused or destroyed by studios.
filmmakers, he still had to censor his version of his latest work in order to comply with the MPAA’s requirements.

Therefore, for films with either high budgets or high expectations, it is mandatory to not only get ratings, but ratings that won't limit the audience. Indeed, now moviemakers do tailor their movies to get a certain rating.\textsuperscript{82}

Thus, the MPAA ratings system does work as a censorship system. But as a ratings system intended to inform parents on which motion pictures their children should be allowed to see, it has failed. Surely, the NC-17 rating does exist in theory, and should allow filmmakers to direct adults-only motion pictures, but for all practical purposes, it does not exist. No motion pictures are released under this rating. Since the Motion Picture Association of America introduced the NC-17 to replace the pornography-tainted X in 1990, only two major releases have carried the rating: Philip Kaufman's "Henry & June," for which NC-17 was invented, and Paul Verhoeven's bomb "Showgirls" (1995). As a result, the MPAA rating system is like “a thermometer that doesn't go above 60 degrees”\textsuperscript{83}. Indeed, more than half of the movies released in the US carry an R rating, which allows children to be admitted alongside a parent or guardian. That category now includes everything from the family-themed but profanity-filled "Billy Elliot" to the ultra-gory "Hannibal" to the ultra-explicit "Freddy Got Fingered."\textsuperscript{84} This happened through erosion of the ratings system. Movies that should have been NC-17, like “Scary Movie” are R. Movies that should have been R, like “Coyote Ugly”, are PG-13. “The MPAA

\textsuperscript{82} In the summer of 2000, a giant hamster (the result of a genetics experiment run amok) abuses college dean Larry Miller (who's first horrified, then smitten) in "Nutty Professor II: The Klumps," the ratings board awarded the movie a family-friendly PG-13. "I can't even tell you how many times we resubmitted it to the ratings board or how many cuts we made to get the PG-13," admits director Peter Segal (Gregg Kilday, Supra)

\textsuperscript{83} See Mark Caro, supra.

\textsuperscript{84} Mark Caro, Supra.
consults its guidelines and pounds its gavel”\textsuperscript{85}. This erosion commands one conclusion: the system does not work. That’s a fact. It does not work.

Therefore, an alternative to the present ratings system shall be found.

Whether a governmentally enforced system or a voluntary one censors motion pictures, and censorship should not be permitted. Whether motion pictures are censored because of their sexual, social, political, religious or violent content, too many films will never be seen in their original form because the portions excised were destroyed and no master copies kept. Whatever the case, the loss of each frame from each movie represents a measure of freedom lost. Something needs to be done so the systems can rate motion pictures without censoring them, thus silencing artistic visions to the detriment of cultural identities.

\textsuperscript{85} Id.
CHAPTER 4

HOW THE SYSTEMS CAN RATE WITHOUT CENSORING

Depending on the system each country uses to rate motion pictures, their ways of censoring differ. Nevertheless, there are ways to rate films without affecting their content. Indeed, in France, adding a new category can be sufficient to cure the problem, where the US system needs more of a global transformation.

I- The new NC-18 French classification: An “adults-only” rating in the end

As previously analyzed, the rating system in France was simply not working. It allowed the government to ban motion pictures from theatrical runs for the sole reason that there was a gap in the law the government was responsible for. An “adults-only” rating was necessary in order for filmmakers, and the whole motion picture industry to be able to release films that were not intended for children under 16, but only for an adult audience. The rating system was treating moviegoers as children, as all motion pictures shown on screen in the country had to be, at the worst, viewable by children of 16 years of age. Otherwise, a government fully violating free speech rights would censure them. The rating system in force was simply not working. It needed to be changed in order to respect free speech rights.
A- The results of the “Baise-moi” controversy

As observed earlier, the fact that the motion picture “Baise-moi” was first granted an NC-16 rating, which was later converted into an X rating - a financially and artistically deadly rating - was why the controversy on motion pictures and free speech became greater than ever. The population had already had to witness the government allowing them to only watch altered versions of “Romance X” by Catherine Breillat and of “The Idiots” by Lars Von Trier and they were not willing to be treated as children any longer. Demonstrations followed petitions; strikes at movie theaters, incredible fall in admissions in theaters, websites supporting the film were created… The entire population of free speech defenders seemed to be supporting the co-directors of “Baise-moi” in their crusade for free speech rights. The elected government had no choice but to listen.

B- The new legislation

French Culture Minister, Catherine Tasca, had to take action about the motion picture ratings the Commission was able to use. She needed to fill the gap in the law that was preventing filmmakers from directing movies solely intended for adults without risking an X rating that would banish them from movie theaters. On July 12, 2001, Catherine Tasca signed a decree modifying the 1990 decree and the 1975 law on

85 Cf. Supra, Chapter 2, A.
87 Catherine Breillat’s (see supra), one initiated by the art newspaper, Les Inrockuptibles,
http://amsterdam.nettime.org/Lists-Archives/nettime-ro-0104/msg00012.html, sites like Le Collectif’s,
http://lecollectif.free.fr/…
88 For example, go to http://courierbenoit.citeweb.net/soutien.htm
classification of motion pictures. The decree\textsuperscript{89}, in its article 4, modified Article 3 of the decree of 1990\textsuperscript{90}, by allowing the Commission of Classification to rate a motion picture using five categories:

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" The Commission of Classification rate cinematographic works, including trailers, with one of the following ratings:

- **G**: Rating allowing the motion picture to be seen by all audiences;
- **NC-12**: Rating prohibiting the showing of the motion picture to children under 12;
- **NC-16**: Rating prohibiting the showing of the motion picture to children under 16;
- **NC-18**: Rating prohibiting the showing of the motion picture to children under 18;
- **X**: The motion picture cannot be shown in movie theaters\textsuperscript{91}.
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Hence, since July 2001, France has a new motion picture rating, which can be described as an “adults-only” rating. This rating allows filmmakers to release motion pictures that are neither intended for children under 18 (i.e. minors), nor pornographic. It is a middle-ground rating to be used for “artistic” films. This new rating protects filmmakers and the like’s free speech rights by acknowledging the fact that “adults-only” motion pictures are not systematically pornographic ones and should not be censured automatically. The new legislation is the step the French government had to take in order to protect the freedom of speech in the arts in the country.

\textsuperscript{89} Decree 2001-618 of July 12, 2001, J.O. \# 161, p. 11241
\textsuperscript{90} Decree 90-174 of February, 23, 1990, J.O. \# 48
\textsuperscript{91} “Article 3: La commission émet sur les œuvres cinématographiques, y compris les bandes-annonces, un avis tendant à l'une des mesures suivantes:

- a) Visa autorisant pour tous publics la représentation de l'œuvre cinématographique;
- b) Visa comportant l'interdiction de la représentation aux mineurs de douze ans;
- c) Visa comportant l'interdiction de la représentation aux mineurs de seize ans;
- d) Visa comportant l'interdiction de la représentation aux mineurs de dix-huit ans;
- e) Interdiction totale de l'œuvre cinématographique.”

C- The consequences of the new rating

Catherine Tasca’s new rating went into effect during the summer of 2001. On August 20, 2001, the Commission rated Virginie Despentes and Coralie Thinh Thi’s motion picture NC-18. The decree of July 12, 2001, which modifies the classification of films, is the last episode of the “Baise-moi” controversy. Indeed, the motion picture was re-released on August 29, 2001 in approximately forty theaters throughout the country after an entire year of debate, which deeply affected the commercial exploitation of the film. However, this re-release of “Baise-moi” does not put an end to the polemic on motion pictures and free speech, as the new legislation now includes two different ratings prohibiting the showing of motion pictures to children under 18; the NC-18 rating, and the X rating. Indeed, the whole problem now resides in determining how the Commission will differentiate between a NC-16 motion picture from NC-18 and X ones. In an interview with Le Monde, Francis Delon, the Commission’s President, stated:

“It is necessary to look at the new rating from its genesis standpoint. The new rating was enacted to solve a problem created by the motion picture “Baise-moi”. We are in a gray zone as far as films that are not pornographic but that do contain problematic scenes are concerned. Almost thirty motion pictures are released every year with a NC-16 rating, and it is possible that some of them will be, from now on, rated NC-18 more easily. There is nothing, neither in the law nor in the decree, which precisely establishes classification criteria. The Commission will rate NC-18 motion pictures that will have both extremely violent scenes and non-simulated sex scenes.”

Consequently, the Commission, along with the Ministry of Culture, have all powers to decide what should be considered as fitting in the new NC-18 category. Therefore, indeed, the French government’s legislation on motion picture ratings does now respect free speech rights, but, nonetheless, extreme caution shall be used when deciding which

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92 Le Monde, August 28, 2001: “Baise-moi” ressort en salles [“Baise-moi” is re-released]
rating is attributed to which motion picture, since, if not controlled, this new measure could easily be turned into a new form of censorship.

Since “Baise-moi”, no motion picture had gotten the new NC-18 rating…until Gaspar Noé filmed his “Irreversible”, which was presented at the 2002 International Film Festival of Cannes and released in France on the same day. The story is about rape and vengeance, and is told backwards by the rapist himself. It is a few hours in the life of a couple that goes from ordinary happiness to horror, after having gone through the irreversible. It is a very graphic and disturbing film that should only be viewed by people who are very aware of the type of movie they are about to see. Because of this, the Classification Commission decided that the new NC-18 classification was appropriate for this film. The director, Gaspar Noé is not surprised, or upset by the decision. “The film is prohibited to children under the age of eighteen, but it is still released in a regular number of theaters. It has not been cut down because it is rated NC-18. If the new classification is only used for films such as mine, it will be great. Directors won’t have to censurate themselves, and the producers won’t have to pressure us into filming an NC-16 motion picture.”93 Thus, so far, it seems that the new classification is being used properly, but there is no evidence that a film such as “Irreversible” would have been treated the same way, had it not been selected for the Cannes Film Festival.
II- Alternatives to the present US ratings system

A- Need for an “adults-only” category

What is the purpose of the ratings system? For consumers, ratings are guideposts for making informed decisions about the use of media technologies. For parents, ratings are intended to function as deterrents against material that may be harmful to children. Because the current ratings system does not serve this last function, it does not work. The reason why it does not is money. Indeed, that is what Hollywood is all about. Therefore, the less severe the rating they get on a motion picture is, the more people will be able to go see it. But while doing so, Hollywood carelessly abandoned the concept of adult films.

“‘Adults only’ used to be the only ratings category; in recent years it has been the only one missing. Adult choices have faded, while 12-year-olds sample a buffet of entertainment options. Today the nation is in the curious position of (1) retailing unsuitable content to kids, while (2) having no workable category for adult material.”

Certainly, there is no actual "adults only" category in the US. It goes directly from the R rating to the hinterlands of NC-17, X and XXX. As X and the likes are not MPAA ratings, it actually goes directly from the R rating to the NC-17 rating. Unfortunately, because, with some rare exceptions, no studio will release an NC-17 motion picture, this category does not really exist, at least not effectively. Movies have been released "unrated" rather than with an NC-17 rating. And because the NC-17 rating is such an

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94 Diane Roberts, The jurisprudence of ratings symposium part 1: on the plurality of ratings, 15 Cardozo Arts & Ent LJ 105
95 Roger Ebert, Ugly reality in movie ratings, Chicago Sun-Times, September 24, 2000
abject failure, many films that should not have been seen by minors are re-cut so that they receive an R rating and directors can only show altered versions of their motion pictures\(^96\). In short, US moviegoers are treated as children. Hence, the MPAA is left, in effect, with an empty and useless rating category, and there is a need for a functional "adults only" category.

\section*{B- Options}

To correct this state of things, many options have been offered, some even before the NC-17 rating was created, and therefore proving its uselessness. In the early 1990’s, the pressure on the MPAA started to come from within the industry. After Wayne Wang's "Life is Cheap . . . But Toilet Paper is Expensive" received an X rating, a letter urging the adoption of an "A" rating, signed by Francis Ford Coppola, Ron Howard, Penny Marshall, Rob Reiner, Barry Levinson, Spike Lee and some 25 other top directors, was read outside MPAA headquarters in Los Angeles\(^97\). Roger Ebert\(^98\), a famous motion

\(^{96}\) E.g. Stanley Kubrick’s “Eyes Wide Shut” in 2000.
\(^{97}\) Jacob Septimus, \textit{The MPAA Ratings system}, Columbia-VLA Journal of Law and the Arts Fall 1996.
\(^{98}\) Co-host of "Ebert & Roeper and the Movies." The show appears on more than 200 stations and continues to rank as the top-rated weekly syndicated half-hour on television. For the previous 23 years, he co-hosted "Siskel & Ebert" with the late Gene Siskel. Pulitzer Prize-winning film critic of the \textit{Chicago Sun-Times} since 1967. Syndicated in more than 305 papers in the U.S., Canada, England, Japan and Greece. Author of 15 books, including the annual editions of "Roger Ebert's Movie Yearbook," "I Hated, Hated, HATED this Movie," the Norton anthology "Roger Ebert's Book of Film," the best-selling "Ebert's Bigger Little Movie Glossary" and "Questions for the Movie Answer Man." Critic for WLS-TV, the ABC owned-and-operated station in Chicago, and host of the live pre- and post-Academy Awards broadcasts for KABC-TV in Los Angeles, which are carried in many markets. Co-host of the live coverage of the Cannes Film Festival awards on the Independent Film Channel. Lecturer on film, University of Chicago Fine Arts Program, since 1970. Adjunct professor of cinema and media studies, University of Illinois at Urbana-Champaign. Known for his sessions conducting shot-by-shot analysis of films at the Universities of Colorado, Virginia and Chicago, the Smithsonian Institution and the Canadian Center for the Advanced Study of Film. Recorded a shot-by-shot commentary track for the DVD version of "Dark City."
pictures critic, also thought about the MPAA ratings system’s need for a change and came up with a simpler, more useful code for movie ratings. He proposed a five-category system:

- **G**: Suitable for all.
- **PG-13**: Some content may not be appropriate for younger children.
- **R**: No one under 17 without parent or guardian.
- **A**: Adults only.
- **X**: Pornography.

While R should be more strictly observed, the PG-13 category should be graded more realistically, not like it is now, when all it takes to make an R rating into a PG-13 one is “keep the same story and values, but eliminate the nudity and language. Violent action is OK. You can kill people as long as you keep your clothes on and watch the f-word”\(^\text{100}\), as affirms Roger Ebert. According to him, the line between A and X should be drawn by looking at the motion pictures and making a value-judgment, the same way the lines are drawn now between the G, PG, PG-13, and R categories. After all, “that is what the MPAA ratings board is paid to do. Any reasonable person can tell the difference between hard-core porn, which essentially consists of the graphic depiction of sex acts, and an adult film with sexual themes”\(^\text{101}\). Indeed, Hollywood most definitely needs an adults-
only rating, a rating that would not be a statement of aesthetics or a moral judgment, merely a statement to the intended audiences. Furthermore, after the category of serious adult films had been so seriously maligned by the X stigma, the use of the respectable letter A could go a long way to change perceptions of the genre.

C- Why does the NC-17 censorship system still exist?

The NC-17 rating came out in 1990, its uselessness has been proven many times since then, so why isn’t the MPAA doing something to change its system? Why does Hollywood fear an A rating? It seems that it is because they oppose any category that requires them to deny admission. Indeed, the R rating is a public relations triumph because it gives the appearance of enforcing something, while in fact, any child can see an R rated movie if accompanied by a parent or a guardian.

The MPAA ratings system is one of censorship. Every time a rating engenders cuts and changes in a motion picture in order to meet the R rating requirements, the system takes a step away from liberty in censuring. This should not be allowed in the Land of the Free and Home of the Brave. Therefore, the system needs to be changed so that it includes an adults-only rating. This flexibility would give the directors of adult films someplace to go, instead of making cuts in their films to qualify for an R rating, or disappearing into the hinterlands. An alternative to the present ratings system is necessary, but not only. If a simple change were done to the system so that it allows adult films to get a fair rating, it would not be enough as the economic consequences of such a rating may be the same as the ones that face NC-17-rated motion pictures today.
Therefore, a more thorough modification of the system is indispensable to prevent “non-value-neutral” judgment that lead to censorship. Adult films can economically work in the US. However, they cannot economically work when many multinational corporations like theaters, video stores and even newspapers restrict them.

The impetus for this change is unlikely to come from within the motion picture industry, which is enjoying the profitability of the R rating. Possible sources of pressure could be independent filmmakers, parents or the government, which could bring suit in an antitrust context. The Supreme Court has previously recognized the motion picture industry to be monopolistic; perhaps it is time for a new consent decree. Public interest groups should also apply pressure, as they are certainly civil liberties at stake. Or as Deutchmann\(^\text{102}\) put it, “aside from all the initials, I’d love to see the ACLU take on the MPAA”.

\(^{102}\) Interview with Ira Deutchmann, former President of Fine Line Features; President of Redeemable Features (Jan. 9, 1996) 21 Column.-VLA J.L. & Arts 69, 93 (1996)
CHAPTER 5

CONCLUSION

"You have not converted a man because you have silenced him."\textsuperscript{102}

This thesis intended to show that, in France and in the United States, whether the releases of motion pictures are subject to a mandatory or a voluntary rating system, they, no matter what, endure some kind of censorship. Indeed, whether films have to face an industry self-imposed mechanism or a government-controlled one, the outcome remains the same: motion pictures, a major art form and significant industry, are censored in France and the United States.

\begin{footnote}{\textsuperscript{102}John Morley, 1st Viscount Morley of Blackburn, 1838–1923, English statesman and man of letters. Educated at Oxford, he made his reputation as a journalist in London and served (1867–82) as editor of the liberal \textit{Fortnightly Review}. He was elected to Parliament in 1883 as a strong supporter of William Gladstone. As chief secretary for Ireland (1886, 1892–95), Morley helped prepare the first and second Home Rule bills and cautiously modified the coercive laws for the preservation of peace. He lost his seat in Parliament in 1895 but regained it the following year. He was a vigorous opponent of the South African War, leading the “pro-Boer” wing of the Liberal party. As secretary of state for India (1905–10), he worked with the earl of Minto to produce the Morley-Minto reforms (1909). Raised to the peerage in 1908, Morley helped steer the Parliament Act of 1911 through the House of Lords. He was lord president of the council from 1910 until 1914, when he retired because of Great Britain's entry into World War I. One of the best biographers of his time, Morley wrote lives of Voltaire (1872), Rousseau (1873), Richard Cobden (1881), Robert Walpole (1889), Oliver Cromwell (1900), and Gladstone (1903; perhaps his best work). He was general editor of the “English Men of Letters” series, for which he wrote a life of Edmund Burke (1879). His political and critical writings include \textit{Critical Miscellanies} (1871–77), \textit{On Compromise} (1874), \textit{Diderot and the Encyclopedists} (1878), \textit{Studies in Literature} (1890), and \textit{On Politics} (1914). His \textit{Recollections} provide an explanation of his Victorian liberalism. The Columbia Encyclopedia, Sixth Edition. 2001}
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In France, the Classification Commission used to only have a choice of four ratings to rate motion pictures, leaving out any kind of “adults-only” rating, therefore not allowing filmmakers and studios to release such a film without fearing the “kiss of death” of the X rating, which censors motion pictures to the worst extent, as X-rated films cannot be released in theaters. Because this type of classification was simply and purely against free speech and because the population was so upset that they took over the streets, the government had to review its legislation on the matter. Consequently, the law was changed in July 2001, creating a new rating, NC-18. With this rating, motion pictures that are solely intended for adults, but are not pornographic, can be released and find their audience. Hence, freedom of speech is protected, and so are the children whom are prohibited by law to attend such a film in a theater.

In the United States, a private association rate motion pictures, the MPAA. However, even though the MPAA is a private entity and submission of films to it for rating is “voluntary”, one knows that the MPAA is of such importance and includes such studios and theater owners that a filmmaker cannot (except in very rare circumstances) release his/her picture without having it rated by the MPAA. The ratings available to the MPAA officially range from G to NC-17, but one knows that they really only range up to R. Meaning that censorship is in full force in the US, as no filmmaker can economically release a motion picture that would be profitable enough for him/her without the support of the MPAA’s ratings and theater owners association. By deliberately preventing a movie intended for adults-only from being released, the MPAA exercise some kind of censorship over what the US citizens should be able to watch. And in a society like the American one, where freedom of expression is one of the basis of the nation and where
the film industry is one of most important revenue-producing business, censorship should have no place. Especially in the motion pictures business, censorship has no reason to be as other options are available to protect children from seeing a film that is not appropriate for them to watch, rather than censuring it. The MPAA’s rating system does not work the way it should, i.e. if its goal is really to protect children, then it needs to be adjusted. The NC-17 rating, which could allow “adults-only” movies to be released is only a façade. A new rating is needed so that filmmakers can be artistically as creative as they want without having to fear the MPAA’s judgment on their work. The simple code Roger Ebert\textsuperscript{103} came up with, the five-category system\textsuperscript{104}, seems to be more useful for the purpose the MPAA is supposed to serve, as it would be a statement to the intended audiences.

As a result, I believe that any form of regulation should not censor Art, whether governmental or self-imposed by the industry. There should be full freedom of expression in motion pictures, as they only exist to tell a story. People should be treated as adults and their ability to make a decision be respected. As human beings, people have the aptitude to think for themselves and they know what they do and what they do not wish to see. However, the decision should be left up to them, and not to the Classification Commission or the MPAA to determine in advance how the story should be told. The artist should have full control over his/her work. Censorship has no room in our societies nowadays, and especially not in the motion picture industry.

Lastly, I would like to explain why I wanted to write my LL.M. thesis on freedom of speech, censorship, and motion pictures. The reason for writing this thesis is my love

\textsuperscript{103} See supra, Chapter 4, B.
\textsuperscript{104} See supra, id.
for motion pictures, love in the truest sense of the word. I truly, deeply enjoy watching them. Like David Lynch said in one of his latest interviews, I believe that “motion pictures are like dreams. Once you enter the showroom of a movie theater, you leave the ‘real’ world outside. You put yourself in the hands of the director, you give up and you let the images of the film take over, you let them drawn you for a couple of hours.”

This passion started at a very young age. I was born and raised in Lyon, the city where the Lumièrè Brothers started it all. My loving mother has such an enthusiasm for the cinematographic art that she passed it on to me, consciously or not. Furthermore, it is in France that, over two hundred years ago, people fought, and died, to be free to express themselves. Ever since the Revolution, freedom of speech has been highly regarded in, especially in Art, and motion pictures are no exception. As for the United States, I fell in love with this country at a very young age, thanks to my grandmother who would constantly talk about it, and to my mother and the movies she would take me to see. In films, the United States was always portrayed as a country of liberty and infinite possibilities, as well as one of freedom of expression.

Consequently, because of this passion for the art of story telling, my strong beliefs in freedom of speech, my raising in France and my love for the United States, I decided to write a comparative analysis of the motion pictures business in France and the United States as far as freedom of expression, and thus censorship, was concerned. I am convinced that filmmakers should be allowed to express their artistic visions in any way they wish. Moviegoers should have the choice to decide which movie they want to see without having someone looking over their shoulder to make the decision for them. Censorship in the Art industry should entirely rely on the spectators themselves. Indeed,

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moviegoers, but most of all, adults should be able to decide what they want to be exposed to. The rationale behind censorship is that a group of people needs to be filtering what the rest of the nation, or even the world, gets to see for their own protection. However, the problem with motion pictures is that the rating boards act as censors so that what gets released on screen is either suitable for children or, at least, politically correct; therefore not denying admission to anybody, which seems to be the primary goal, especially for the MPAA. Thus, only motion pictures that fit these criteria are released, and marketed, in a way that makes them profitable. Otherwise, they most likely will not be released, or released unrated as the MPAA cannot rate a movie as unsuitable for children for lack of efficient rating, which means that the motion pictures will only get a limited release, therefore suffering severe consequences.

In short, I believe that, as previously argued, other options are available rather than censoring motion pictures, censorship should not exist in democratic societies as far as the Fine Arts are concerned, and especially the film industry. Freedom of speech is something that represents the very dignity of what a human being is. As Diogenes\textsuperscript{106} said, “the most beautiful thing in the world is the freedom of speech”.

\textsuperscript{106} Diogenes of Sinope, d. c.320 BC, was a Greek philosopher, perhaps the most noted of the CYNICS. He pursued the Cynic ideal of self-sufficiency, a life that was natural and not dependent upon the nonessential luxuries of civilization. A student of ANTISTHENES, he is credited with the development of the chreia (moral epigram), with a scandalous attack of convention entitled Republic (which influenced ZENO OF CITIUM), and with tragedies illustrative of the human predicament. Because Diogenes believed that virtue was better revealed in action than in theory, he made his life a protest against what he thought of as a corrupt society. He is said to have lived in a large tub, rather than house, and to have gone about Athens with a lantern in the daytime, claiming to be looking for an honest man--but never finding one. In later art, Diogenes is often depicted in a torn cloak, with a dog, carrying a lantern. ROBERT S. BRUMBAUGH \url{http://www.halcyon.com/colinp/diogenes.htm}
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