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Arbitration of International Sports Disputes

JAN PAULSSON

Editor's Note: Two years ago we published an article on the Court of Arbitration for Sport (CAS, referred to as the TAS in this article). The reader may find examination of both articles of great use. See Stephan Netzle, The Court of Arbitration for Sport: An Alternative for Dispute Resolution in U.S. Sports, THE ENTERTAINMENT AND SPORTS LAWYER, Vol. 10, No. 1, Spring 1992, at 1, 25.

Introduction

Few passions are as widely and as profoundly shared around the globe as the passion for sport. Its symbolism is awesome. It brings out the noblest human qualities (good sportsmanship, the quest for excellence, a sense of community), and the basest (chicanery and mob violence). Sports are big international business with a capacity to motivate vast populations that is nothing less than fabulous, and so naturally exercises a powerful attraction on those who would use its magic for their own ends. The appetite for political influence and money moves the heart inside the business suit with a force as primal as that of the dreams of glory that swell the distance runner's tunic.

In a word, the realm of sport is that of a precious and coveted commodity. It is an internationally significant resource that can be squandered or debased. Therefore the way it is controlled is not indifferent, and at the heart of the issue of control is that of ultimate authority to set norms and to settle disputes.

Limits of the Authority of Sports Federations

Potential parties to disputes arising from sports activities, or in connection with them, not only include the athletes and the federations that legitimize structured competition, but also include promoters, sponsors, team owners, organizers, licensees and agents of all types. Governmental authorities also may become embroiled in controversy when they are called upon to protect not only individual interests but the public interest as well.

Such disputes (although perhaps arising in unusual contexts) may involve contractual relations which are documented in familiar ways, using techniques of private commercial law. For example, contractual undertakings may include granting rights to televise a competition, promising to wear the trademark of a sponsor whenever participating in a public event, or hiring an agent to negotiate a contract with a professional team. One expects such agreements to be freely negotiated, and in an international context they frequently contain reference to international arbitration under mutually accepted rules.

But an equally important category of disputes—

one which attracts more public attention—relates to what one might loosely describe as *disciplinary* rather than contractual disputes. Recent examples from international headlines include the case of Butch Reynolds, the American world-record holder for the 400-meter run who successfully challenged his suspension by the International Amateur Athletic Federation for alleged doping and obtained a \$27.4 million judgment against the IAAF in a U.S. federal court; and that of the French football team *Olympique de Marseille*, which raised an initially successful challenge (later withdrawn) before the Swiss courts against a suspension pronounced by the European soccer federation following allegations of match-fixing, which has not yet been ruled on by the French courts.

Sports federations have traditionally sought to establish as close to total control as possible over such disputes. One approach long advanced in favor of a monopoly of authority might be characterized as a hagiographic one. It seeks to portray sports as something so uniquely exalted as religion, the implication being that no governing body outside the relevant federation should have any authority with respect to disciplinary actions and that any right of review by state authorities would be considered as inappropriate as allowing appeals to secular judges for wrongful excommunication by the Pope.

This conception is puerile.¹ For one thing, the state may have an overriding interest in ensuring standards of conduct in society. The fact that a hockey player may be sanctioned for unnecessary roughness by a penalty or suspension if he lifts his stick with both arms and brings it down repeatedly on the head of an adversary does not exclude the possibility that he may also be subject to civil or criminal sanctions for assault or indeed murder. For another thing, the interests of someone who complains about a decision of sports officials are not limited to a passing fascination for the outcome of a particular contest. Sport in our century is no longer a matter of entertainment spontaneously devised by a leisure class; it has become an organized industry. Disqualifications or suspensions may destroy professional careers, not to mention significant investments by sponsors. It is impossible to justify why sports federations should be less subject to judicial review than professional associations having power to issue mandatory licenses (such as those in the realms of medicine or law) if it is alleged that they have violated individual rights.

There is, however, a more credible line of reasoning in support of exclusive extrajudicial authority to settle sports disputes: the conception that the exclu-

sive disciplinary jurisdiction of sports officials has been granted by the parties to the dispute *on a consensual basis*. Ordinary courts are thus ousted by virtue of the familiar contractual mechanism of prorogation.

This approach is not without its own difficulty, which begins when one examines the circumstances of the purported consent. It often appears to have been entirely fictional. Typically the exclusive jurisdiction of sporting authorities is established in the bylaws of federations that grant licenses to compete in a season, or admission to participate in specific events. The federation in question has generally existed for decades if not generations, and has, without any outside influence, developed a more or less complex and entirely inbred procedure for resolving disputes. The accused participant, on the other hand, often faces the proceedings much as a tourist would experience a hurricane in Fiji: as a frightening and isolated event in his life for which he is utterly unprepared. The same may of course be said for most litigants in ordinary court proceedings. The difference is that whereas in the latter context the accused may be represented by experienced practitioners who appear as equals before the court, the procedures devised by most sports federations seem to be so connected to the organization that no outsider has the remotest chance of standing on an equal footing with his adversary, which is of course the federation itself. To speak of a *consensual process* here seems an abuse of language.

Yet one must have sympathy for the situation of most sports federations, because at many levels they struggle against considerable odds to maintain uniform standards of sportsmanship and organizational quality. It is irresponsible to insist that they should be routinely subjected to judicial review and be obliged to defend themselves in the courts of any country where their activity may have some ramifications. This observation is particularly important in the context of the fight against doping, where federations are fighting a costly uphill battle. The task of policing athletes' use of illegal substances throughout the world is a daunting one, given the development of "camouflage" chemicals that are absorbed to "purify" the athlete of traces of performance-enhancing drugs in time for a given competition, thus making it necessary to conduct surprise tests at any stage of an athlete's training. To allow national courts to second-guess the way federations perform this crucial policing function would not only lead to the risk of many federations being brought to their knees under the weight of paperwork and legal fees, but also would open the door to parochialism, favoritism, and possible corruption, and inevitably lead to a destruction of uniform standards as national judges intervene to apply inconsistent local norms. Furthermore, it is doubtful that ordinary judges are best suited to deal with specialized areas of sports discipline. Finally, the realities of international sports call for

decisionmaking speed of a degree rarely found in national judicial systems.²

In sum, while giving absolute authority to sports federations creates the *risk* of occasional instances of injustice (and increases the temptation of abuse under the maxim that absolute power corrupts absolutely), eliminating all their authority would lead to a *certainty* of total disruption of the present constellation of systems. That would appear most undesirable when one considers that in the present situation scandals and controversy seem the exception rather than the rule, and that sports authorities today appear to be in a position to generate permanent and institutional pressure against corrupt influences in a way that could hardly be duplicated if one had to rely instead on the episodic involvement of national courts.

Arbitration as a Means of Resolving Disputes Relating to Disciplinary Sanctions

Given this context of tension between legitimate individual rights and equally legitimate institutional objectives, the challenge is naturally to strike the right balance.

To ensure the greatest possible measure of uniformity and technical competence in the way international sports disputes are resolved, the federations may require that such disputes are referred to a specialized decisionmaking body. But in doing so, they must accept that the body be independent of the federation's control to avoid the perception or fact that the federation will act as judge in its own case and

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thereby deny parties challenging the federation's actions to ask judicial authorities to disregard the decision of the designated decisionmaking body. It appears that this simple lesson has not yet been universally assimilated.

Most federations have established specific organs to deal with disputes. They are given names ranging from the modest (disciplinary commission) to the pompous (international tribunal). Sometimes they provide for elaborate proceedings (in accordance with highly detailed codes) designed to give an appearance of both probity and complexity—two factors that seem calculated to encourage judicial authorities not to interfere with their operations. Often they provide for specific safeguards in the ostensible interest of the party challenging a deci-

sion, such as provisions that persons of the same nationality of the official who made the challenged decision may not rule on the challenge. Similarly, they may ensure that the decisionmakers are highly qualified jurists who have no salaried position within the relevant federation, and who thus are described as “entirely independent.”

Having established a superficially impressive decisionmaking procedure, federations then frequently conclude with much self-satisfaction that they have done as much as anyone could ask, and proclaim that anyone who challenges a final decision made pursuant to the statutory procedure will be barred for life from participating in competitions sanctioned by that federation.

This is a double mistake: the structure is inadequate and it is impermissible to punish people for seeking to exercise remedies provided by law. It is insufficient to claim that none of the members of the decisionmaking panel are employees of the federation because if those persons are selected by the federation the procedural equality of the parties is destroyed. The French Supreme Court (for one) has in similar circumstances explicitly held that equality to be an indispensable attribute of any body purporting to settle disputes with finality.³ The truth is that if only one side in a dispute selects the decisionmakers, and is in a position several times a year to offer appointments in interesting cases, the appointees are (or will be perceived as) unlikely to be even-handed in examining the complaint of a troublesome “outside” petitioner. Human nature is such that even if there is no monetary inducement, flattering deference to one’s moral authority, not to mention voyages, pomp and circumstance, and media attention, may be significant sources of gratification to most appointees.

This author has appeared before an “international appeals tribunal,” which was in fact part of the structure of the very federation whose decision was being challenged. The experience—very much like an arbitration where the claimant is allowed to nominate no arbitrators, the defendant five arbitrators, and there is no chairman—would have given any petitioner the impression that he was trying to swim up Niagara Falls. As for the attempt to exclude recourse to ordinary jurisdictions, the following passage from a decision by the *Tribunal de Grande Instance* of Paris in a case involving the appeal of twenty-six Formula One drivers against sanctions pronounced by the International Automobile Federation (FIA) is typical of the attitude of courts:

The exclusive jurisdiction which this text seeks to give the organs of the FIA is contrary to the right of any party to initiate an action before ordinary courts; there is thus a violation of a mandatory principle of public order which results in the nullity of this provision.⁴

This passage does not allude to the fact that there are in fact circumstances where it is permissible to waive the right to seek relief before the courts by referring to arbitration. The reason was clear: The

FIA mechanism was so far at odds with fundamental principles of arbitration that it did not occur to the FIA to argue that the drivers’ submission to the exclusive authority of the federation constituted a binding agreement to arbitration.

There is now a specialized international body, established by the International Olympic Committee in Lausanne, which is specifically designed to organize proceedings for the resolution of international sports disputes in such a way that they may qualify as falling within the category of arbitration. This body, called the Court of Arbitration for Sport (more commonly referred to by its French acronym TAS),

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has received over one hundred claims relating to contractual as well as disciplinary matters since its creation in 1984.⁵ Although its founders intended its decisions to be awards subject to the law of arbitration, and a commentator had indeed expressed the view that its awards were subject to transnational enforcement under the 1958 New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards,⁶ whether the Swiss courts would so acknowledge TAS awards in situations where its jurisdiction was not created by a negotiated contract, but by virtue of the conditions stipulated in a license, remained to be seen.

Recognition of TAS Awards by the Swiss Federal Tribunal

In the case of *Gundel v. International Equestrian Federation (FEI)*, which arose in the wake of a TAS award rendered in 1992 and was challenged and upheld by the Swiss Federal Tribunal (that country’s highest court) *under the Swiss law relating to international arbitration*, the central issue defined by the Federal Tribunal was precisely “the legal nature of awards rendered by TAS.”⁷

The facts are as follows: Mr. Gundel was at the relevant time a professional equestrian and a member of the German equestrian team. He held a license granted by the German equestrian federation, which entitled him to compete in national and international events. At every renewal of his license, Mr. Gundel submitted himself to the rules of the German federation, which, with respect to international competitions, referred to the rules of the FEI.

The FEI is an association in Lausanne comprised entirely of national equestrian federations. In the

1991 edition of its rules, a party dissatisfied with a decision rendered by the FEI's Legal Commission may appeal to the TAS for a "definitive" decision.

Mr. Gundel had been disqualified, suspended, and fined by the FEI Legal Commission following a positive drug test on his horse performed in connection with a competition in June 1991. He appealed to TAS, and a TAS arbitral tribunal was empanelled. The arbitrators ultimately confirmed the disqualification but reduced the period of suspension (from three months to one month) and the amount of the fine (from 1,500 Swiss francs to 1,000 Swiss francs).⁸

In challenging the TAS award, Mr. Gundel put forward a number of propositions that were disposed of by the Swiss Federal Tribunal as follows:

- *The intermediary decision of the FEI's Legal Commission was itself susceptible to annulment under the Swiss law of arbitration.* The court held that the Commission was an organ of FEI and thus did no more than express the will of one of the parties to the dispute. Accordingly, irrespective of the invoked grounds of annulment, the motion to set aside could not be considered because it did not relate to an arbitral award. This holding should not be understood as an acceptance of the finality of decisions of internal organs of associations. (As discussed below, Swiss law, like other national laws, provides remedies for aggrieved parties.) To the contrary, the most important consequence of this holding is to *deprive* such decisions of the immunity from judicial review on the merits, which in most countries is enjoyed by arbitral awards.

- *The TAS decision was susceptible to annulment under the Swiss arbitration law.* The court considered that the decision was rendered on the basis of an arbitration agreement by a private tribunal to which the parties had entrusted the task of ruling on a dispute dealing with "patrimonial" interests and having an international character. It observed that a true award supposes that the arbitral tribunal is independent and impartial, and stated:

An arbitral tribunal which is an organ of an association appearing as a party to the dispute does not ensure a sufficient degree of independence. Decisions made by such organs are no more than the expression of the will of the concerned association; they are acts of management and not judicial acts.

A party considering itself to be adversely affected by a decision of an association should be entitled, in the reasoning of the court, to challenge the decision even if the complainant is only an "indirect" member of the association (i.e., a member of another association which in turn is a member of the association, or federation, in question) and indeed even if he is not a member at all (e.g., a person required to accept certain rules as a condition of participating in an event organized by the association).

The challenged decision must be subject to an independent judicial control. This control, however, may be entrusted to an arbitral tribunal provided that

it is "a veritable judicial authority and not a mere organ of the association interested in the outcome of the dispute."

Accordingly, the key to the issue was the relationship between TAS and FEI. In this regard, the Federal Tribunal noted that TAS is a creation of IOC and does not have separate legal personality, and that of its sixty members, fifteen each are chosen by IOC, by accredited international federations, and by national Olympic Committees, respectively; the remaining fifteen are chosen by the president of IOC from persons outside IOC, the federations, and the national committees. The three arbitrators empanelled to hear any given dispute must be chosen from the sixty TAS members. Each party has the right to name one arbitrator, the presiding third arbitrator is named either by agreement of the parties or, failing such agreement, by the president of the Swiss Federal Tribunal. (The parties may also agree to a sole arbitrator.) An arbitrator may be challenged by a party if he is connected with the other party, or if he has already dealt with the dispute in another capacity.

The Federal Tribunal also observed that the founders of TAS expressed their intent that it be a "veritable arbitral tribunal, independent of the parties, freely exercising complete legal control of such decisions of associations as are submitted to it, particularly with respect to statutory sanctions pronounced against the petitioner" and that legal commentators unanimously considered TAS to have achieved this aim.

On the other hand, the Federal Tribunal expressed its own view (at page 13) to the effect that this analysis of the TAS role was acceptable "not without hesitation," given the "organic and economic" connections between TAS and IOC (which finances TAS and has an important role in designating its members), and therefore only in cases where IOC itself was not a party. Turning to the case before it, the Federal Tribunal was reassured by the following factors:

- TAS was not an organ of FEI;
- TAS was not subject to directives from FEI;⁹
- Fifteen potential arbitrators were unconnected with IOC, or any federation or national Olympic Committee; and
- It was possible to challenge any arbitrator connected with FEI or having already dealt with the dispute in some other capacity, and concluded: "In these conditions, one may accept that the TAS is possessed of the degree of independence which Swiss law requires as a condition of the waiver of recourse to the ordinary courts."

- *The dispute was not arbitrable, because it concerned a matter of penal law exclusively reserved for state courts.* The Federal Tribunal noted first that the petitioner was not entitled to raise such an issue at the stage of challenge against the award since he had failed to do so before TAS arbitrators. But the objection was erroneously taken, because the sanctions challenged by Mr. Gundel were "*peines statutaires*"

which may be disposed of by arbitrators; such a sanction is clearly distinguishable from “the power to punish reserved for the criminal courts.”

• *The TAS tribunal which heard the case had been wrongly constituted because the parties were obliged to choose arbitrators from the members of TAS and because two of the arbitrators who were in fact empanelled were connected directly or indirectly with FEI.* In reasoning familiar to international arbitration practitioners, the Federal Tribunal held that the petitioner had waived his right to object by failing to do so as soon as he had become aware, or could have become aware by reasonable diligence, of the grounds for his objections. In fact the TAS bylaws had been communicated to him at an early

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MECHANISMS OF PRIVATE LAW.**



stage, and he had been informed that two of the arbitrators were equestrian specialists. Having failed to react, either by way of challenge or request for further information, the petitioner had lost his opportunity. The Federal Tribunal explicitly left undecided the question whether the arbitrators' direct or indirect links with FEI would have been sufficient to disqualify them.

• *The arbitrators had violated the petitioner's procedural rights.* The particular criticisms of a number of procedural rulings by TAS arbitrators are of no present interest; it suffices to note that the Federal Tribunal's rejection of these complaints—familiar in the annals of garden-variety international arbitration—is entirely consonant with the view in favor of arbitral procedural discretion taken by most national courts in contemporary practice.

• *In holding that the mere presence of prohibited substances reversed the burden of proof and created a presumption of doping, TAS arbitrators had violated Swiss public policy.* Whether FEI's rules were overly severe in prohibiting substances which in fact do not enhance performance, and whether TAS arbitrators had reversed the burden of proof, the Federal Tribunal held that these were simple issues of evidentiary weight arising in a private law context, and denied the argument that there had been a violation of the principle of the presumption of innocence (which the petitioner raised by reference to the European Convention of Human Rights). Such a complaint belongs in the realm of criminal law. In a particularly important passage, the Federal Tribunal declared that “whether they are appropriate or not,

indeed whether they may or may not be said to be arbitrary, [the FEI doping rules] do not concern fundamental principles of the Swiss legal order in the domain of international relations.”

Reform of TAS

Aware that the close connections between IOC and TAS had given rise to some doubt of the extent of TAS' independence, and spurred by the explicit statements of the Swiss Federal Tribunal in the *Gundel* case that its acceptance of TAS' independence was “not without hesitation” in light of its links with IOC and the uncontested relationship between the arbitrators and FEI, IOC created a Supreme Council of International Sports Arbitration (Council) that will control the TAS.

The Council will be comprised of twenty legally trained persons, four each appointed by IOC, the accredited federations, the national Olympic Committees, representatives of athletes, and through co-optation by the Council itself. The Council, whose members may neither act as TAS arbitrators nor as counsel in TAS proceedings, will appoint the members of TAS (now expanded to include 100 potential arbitrators).

This reform means that a new level of authority is interposed between IOC and TAS, so that IOC no longer has any direct role in the composition of TAS. This general enhancement of TAS' autonomy is complemented, in individual cases, by a revision of TAS rules to place on each arbitrator a positive duty to disclose any links with a party which may cast doubt on his or her independence.

At the same time, TAS will be split into an Ordinary Arbitration Division, which will function in the same manner as other private law arbitration bodies, and an Appeals Arbitration Division, which will deal with challenges against disciplinary decisions of sports bodies whenever the statutes of that body—as accepted by the competitor—refer to TAS as having an appellate jurisdiction. The costs of proceedings in the Ordinary Arbitration Division will be borne by the parties; those in the Appeals Arbitration Divisions, which are intended to be particularly rapid in order to conform to the imperatives and realities of international competition, will be borne by TAS.

Conclusion

Many disputes relating to sports activities arise out of contracts that are based on ordinary mechanisms of private law, no matter how novel or specific their context of performance. In the international sphere, the search for neutrality often leads to contractual references to arbitration. There is nothing extraordinary in this respect; such disputes may be (and indeed frequently are) submitted to arbitration under traditional rules such as those of the International Chamber of Commerce. To the extent that parties wish to ensure that any dispute would be resolved by

arbitrators having a particular familiarity with transactions involving sports, they may find it appealing to refer to a specialized institution like TAS.

In such situations, which will now be dealt with by the new Ordinary Arbitration Division, TAS arbitration does not have any peculiar distinguishing characteristics; it is simply one of the various types of international arbitrations available to contracting parties, and its effectiveness is a function of the same legal regime as that which applies to the others.

The other type of dispute that may be subjected to international arbitration by TAS—namely controversies relating to disciplinary actions taken by various sports bodies—is highly unusual in that it does not arise from a contract, but nevertheless has a consensual origin. The consent here is typically expressed by an applicant for a license to participate in a sports activity who accepts TAS arbitration—now under the new Appeals Arbitration Division—as a condition of the license.

In the *Gundel* case, the highest court in Switzerland held that such a reference creates a binding agreement to arbitrate provided that the chosen mechanism is independent of the federation whose decision is being challenged.

Awards rendered in these circumstances will be internationally enforceable, provided that other national jurisdictions adopt the same approach, which in the particular instance of TAS is more likely in light of the internal reforms enacted since the *Gundel* case.¹⁰ As described above, those reforms increased the autonomy of TAS.

This development leaves international sports federations with a clear choice: they must either maintain maximum control or keep sports disputes out of the courts. If they choose to assert total and immediate control, they may find themselves in a fool's paradise, which may give them what they want for a while (because participants may be too intimidated to challenge the closed system), but sooner or later cases will arise in which aggrieved parties are sufficiently determined, sufficiently desperate, or—as in the case of the twenty-five Formula One drivers—sufficiently strong by the weight of sheer numbers that they will challenge the federation's actions before ordinary courts. When that happens, past experience proves that the supposedly self-sufficient system of control devised by the federation falls like a house of cards.

If on the other hand a federation focuses on keeping disputes out of courts, it has reasonable prospects to achieve that aim if it relinquishes control to a method of resolving disputes that is sufficiently independent of the federation so that its decisions have the legal standing of arbitral awards. Although arbitral awards may be challenged collaterally (e.g., if there has been some procedural irregularity) under the law of most countries, the designated decision-makers will thus have the authority to make definitive rulings on the merits of the controversy. Of

course the federation must then accept that an independent body will occasionally slap its wrists, as indeed TAS has done in some cases already,¹¹ but surely it is essential to the legitimacy (and positive evolution) of any authority that a mechanism exists to check its excesses. ■

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Footnotes

1. As stated above, sports are not necessarily ennobling. If one loses a sense of proportion, sports cease to be an adjunct to a healthy life and become an excuse for evading life's more complex challenges. For all his celebration of robust living, Kipling saw this danger clearly, in these caustic lines:

Then ye returned to your trinkets
then ye contented your souls
With the flannelled fools at the wicket
or the muddied oafs at the goals.

2. G. Schwaar, *Settling Sports-Related Disputes through the Court of Arbitration for Sport*, in *SPORTS MARKETING EUROPE 425* (I.S. Blackshaw et al., eds. 1993) [hereinafter Schwaar].

3. "*Le principe de l'égalité des parties dans la désignation des arbitres est d'ordre public*" (the principles of the equality of parties in the designation of arbitrators is a matter of imperative public policy), see *BKMI v. Dutco Construction Co.*, *JOURNAL DU DROIT INTERNATIONAL* 707, 712 (1992).

4. *Alboreto v. FIA* (decision of 26 January 1983) (unpublished) (passage in translation from the original French). The author represented the plaintiffs.

5. Selected excerpts from TAS awards have been published in a TAS booklet, *RECUEIL TAS* (1993).

6. Nafziger, *International Sports Law: A Replay of Characteristics and Trends*, *AM. J. INT'L L.* 508 (1992) [hereinafter Nafziger].

7. An English translation appears in *INTERNATIONAL ARBITRATION REPORT*, October 1993, at F-1; references below are to the original French text.

8. The TAS arbitrators accepted petitioner's argument that the undisputed presence of a banned substance was not sufficient in the context to establish a deliberate intent to procure an unlawful competitive advantage, but nonetheless considered that he was guilty of negligence in failing to ensure that the horse did not absorb the substance.

9. The cantonal tribunal of Vaud has held the Sports Tribunal of the Swiss Football Association not to qualify as a proper arbitral tribunal under this criterion, *JDT* 1988.III.5 ss. In the case of TAS, the independence of its arbitrators has been demonstrated in cases where they have deeply embarrassed federations by holding that the latter had violated the fundamental right of the petitioner to be heard; see Schwaar, *supra* note 2, at 431.

10. For the view that TAS awards may be enforced under the New York Convention as the Recognition and Enforcement of Foreign Arbitral Awards, see Nafziger, *supra* note 6.

11. See *supra* note 9.

SEX & VIOLENCE

(Continued from page 1)

most of all, have the capacity to put themselves in the role of most American parents.⁵ The objective of the rating system is "to give advance information to parents so that they can make judgments about the films they choose their children to see or not."⁶ But the MPAA system has been criticized for concentrating on what is offensive to parents rather than what is scientifically established as harmful to children.⁷

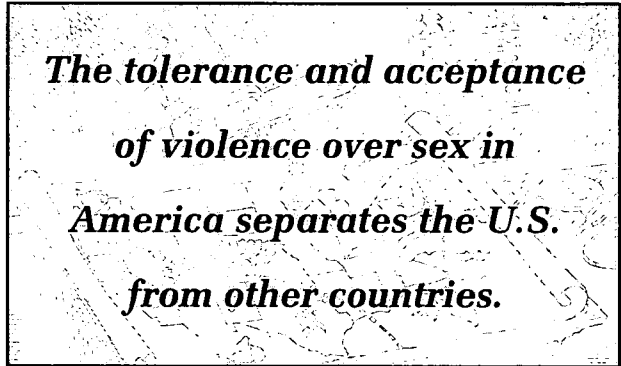
The current American rating system is far more restrictive of profanity and graphic sexual portrayals than it is of violence: "As long as the woman is nude, you can cut her up any way you want to, and that's okay. But it's not okay to show a nude man touching her."⁸ The American Psychological Association's Commission on Youth and Violence reports: "[According to the MPAA], any depiction of sexuality will automatically render a film an R rating, and explicit sex will often earn an NC-17 rating. In contrast, a film can contain violence and still be given a G, PG, or PG-13 rating."⁹ This system has been heavily and steadily influenced by conservative religious forces in America, which have effectively kept graphic sexuality banned.¹⁰ However, public opinion data report that United States citizens are more concerned with media violence than depictions of sexuality or profanity.¹¹ Surveys indicate that 82 percent of the American public consider movies too violent,¹² 72 percent find television too violent, and 80 percent of Americans believe television violence is harmful to society.¹³

Members of the public, scientific, medical and health communities agree that there is a causal relationship between exposure to violence in entertainment and violent behavior. Over forty years of 3,000 studies present one conclusion: Media violence contributes significantly to aggressive behavior, crime and violence in society.¹⁴ "There can no longer be any doubt that heavy exposure to televised violence is one of the causes of aggressive behavior, crime and violence in society."¹⁵ Studies have shown that college-age men exposed to extremely violent films, such as *Friday the 13th*, become more accepting of violence and more callous toward real-life victims of sexual violence than men exposed to nonviolent films.¹⁶ But even with the sexual content in violent films removed, the antisocial effects continue.¹⁷

The tolerance and acceptance of violence over sex in America separates the U.S. from other countries, such as Great Britain, whose censors "have not cut sex from a mainstream film in six or seven years."¹⁸ European versions of *Basic Instinct* included both male and female frontal nudity, unlike the American version.¹⁹ In Sweden, children are not automatically excluded from sex in films. In fact, people having sex in a "normal, healthy and happy manner" may be approved for children, whereas sexual aberrations are not tolerated.²⁰ European countries are much

more stringent in restricting film violence than the United States. European censors generally cut violent scenes in American films before distribution, or ban the films altogether. The British Board of Film Classification cut violent scenes from *Robin Hood: Prince of Thieves*, *Lethal Weapon 3* and *Teenage Mutant Ninja Turtles* before approving the films for younger audiences.²¹ In Sweden, distributing films or television programs that depict "sexual violence or coercion" or graphic violence toward people or animals in a detailed or outdrawn manner" can mean fines or two years' imprisonment.²²

According to the Motion Picture Association of America, in 1992 U.S. films, television programs, and home videos garnered \$8 billion in revenue from international markets.²³ American motion picture production companies have an important financial



**The tolerance and acceptance
of violence over sex in
America separates the U.S.
from other countries.**

stake in Western Europe: As of July 1989, the U.S. film and television industry had a \$2.5 billion trade surplus, with one-half of worldwide revenues coming from European sales.²⁴ In 1990, U.S. films comprised over 77 percent of Europe's motion picture market,²⁵ despite Europe's generating 474 films and the United States' producing 438 films that year.²⁶ In 1990, American films were responsible for 58 percent of box office receipts in France, 85 percent in Germany and 89 percent in Britain.²⁷ By capturing the European market, American films impact European censorship practices.

American production companies accept cuts in films as a standard part of business, like taxes.²⁸ But American companies expanding their overseas positions would prefer a harmonized routine. It is expensive to have films reviewed and classified and cut, especially for independent production companies operating without the financial resources of the major studios. At least this financial bottom line might have an effect on U.S. exporters, who might temper violence in films if only to exploit the lucrative teenage market. But the tempering of violence is dependent on European countries' maintaining standards against excessive violence.

This article examines the legal, cultural, and political impact of European censorship of American

films while assessing the resulting implications for American film exports. The second part of this article examines the censorship practices of European Community countries and several Western European countries.²⁹ The third part of this article describes the effect of the European Community's free movement of goods and harmonization standards on motion picture censorship.

National Censorship Practices

Ratings systems and censorship standards vary from country to country in Europe despite the European Community's single market. Standards may vary even among certain countries, depending upon laws governing cinema and television, differing versions of film on videocassette, and standards applying to cable and satellite. Although advocates for a single-market, centralized Europe may wish to reform this system, indigenous cultures seek to maintain control over their public's viewing of sex, race, religion and politics.

European Community Countries

Belgium

Belgium has left censorship of films completely uncontrolled, with the exception of protective children's laws that provide that films must be passed by commission. Most other European countries, including Denmark, France, and Germany, utilize this type of classification—a system that labels films that are not suitable for children.

If a film is considered suitable for children, it may be submitted to the five-member Ministry of Justice Censorship Board for review. The Censorship Board may approve the picture for children under sixteen, reject it for such showings, or approve it with cuts. In 1989, the Belgian censor banned the film *Batman* for children under sixteen because it was considered too violent for young viewers.³⁰ Although the Board may suggest cuts, the distributor determines if the cuts will be made. If a film is rejected, the distributor may appeal the decision to an Appeals Commission.³¹

Television and videocassettes are not censored. Television channel management determines its own censorship standards. Because the video industry is self-regulating, there is no video censorship.³²

Denmark

Article 77 of Denmark's Constitution guarantees freedom of expression: "Everyone is entitled to publish his thoughts in print, in writing and speech subject to the law. Censorship and other preventative measures may not be introduced."³³ Since 1969, censorship prevails at two levels for age groups under sixteen and twelve. Any film intended to be shown in public to children under the age of sixteen must obtain advance approval. Films are submitted to the Censorship Board where they are classified into three categories: red—open to everyone except seven years and under; green—over twelve years only; and

white—over sixteen years only. The Censorship Board bases its judgment on the likelihood of the film being harmful to children. Approval may be given on condition that producers cut certain sequences. For example, censors regard brutality as harmful to audiences; violence is not permitted in films for children. The censors define brutalizing films as those by which the ability to feel pity toward another is lowered.

In Denmark, *Last Tango in Paris* was permitted for viewers over age sixteen, and *Star Wars* was permitted for those over age twelve. The censors express concern at the increasing trend toward violence in films. A distributor may have to accept cuts in a film to obtain a viewer age limit lower than that decided by the censors. Parental guidance may be suggested for children under age seven.³⁴

For television, no state censorship exists, and standards are at the discretion of channel management. There is no censorship of videos for private use. However, "voluntary" censorship exists through the Distributors Association.³⁵

Nominating Committee Announcement

To: All Forum Members
From: Edward P. Pierson, Chair

I am pleased to announce the formation of our Forum's first Nominating Committee, pursuant to the Bylaws of the Forum Committee on the Entertainment and Sports Industries, whose job will be to nominate one or more candidates for the Election of Officers and Governing Committee Members at Large of this Forum. The election shall be held during our Forum's Annual Meeting in San Francisco on October 14–15, 1995.

The Nominating Committee is comprised of:

David Nochimson
Ziffren, Brittenham & Branca
2121 Avenue of the Stars, 32nd Floor
Los Angeles, Ca 90067

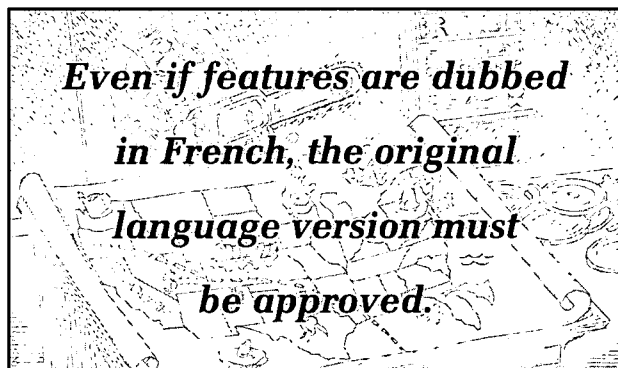
Robert E. Holmes
Sony Pictures Entertainment
10202 West Washington Blvd.
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Mitchell, Silberberg & Knupp
11377 West Olympic Boulevard
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France

The Ministry of Culture reformed the National Control Commission, which is now known as the Classification Commission (Commission de Classification). Since February 23, 1990, its total representation of twenty-six members includes representatives of French ministries (five members); professionals from the cinema industry (eight members); experts in charge of protecting children, young people, and representatives of private associations (eight members); young people ages eighteen to twenty-five chosen by the Minister of Culture (four members); and a president.

The Ministry of Culture provides exhibition visas to French films and to imported foreign films based on the Commission's recommendations. The Ministry may forbid the release of a film, give an "X"



classification for extreme violence or pornography, forbid showings to persons sixteen years old or younger, forbid showings to persons twelve years old or younger, or authorize unrestricted showings. Films may also be forbidden for export. The Commission also approves advertising material. Exhibition visas are only delivered to complete films and to those that have been registered at the Centre National's Public Ledger.

Committees screen the films and refer them to the full Commission only if adverse action seems necessary. When the Commission advises the producer or distributor of its decision, cuts or changes of text may be made for the film to be resubmitted to the Commission. Censorship is severe for narcotics, excessive brutality and violence, and is less severe for non-pornographic sex scenes.

Even if features are dubbed in French, the original language version must also be approved. Exhibition visas are valid for an unlimited period, and must be attached to each print of any film before the film can be exhibited.

Catholic Film Institute (Centrale Catholique du Cinema) also reviews films and issues morals ratings. The mayor of the French town of Les Herbiers suggested *Basic Instinct* be banned after reading in

church publications that the film was pornographic and the owner of the local cinema complied.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 National Board. The most frequently cited reason in these cases is "maintenance of public order."

In 1990, no films were completely forbidden, five were banned to minors under sixteen years, fifty-four were banned to minors under twelve years, and six others authorized cuts or changes. Twenty-six features were given an "X" pornographic classification, and no "X"s were given for violence.³⁷ *Empire of the Senses*, *Pretty Baby*, and *Emmanuelle* were forbidden to those under eighteen. *Star Wars* and *Monty Python and the Holy Grail* were unrestricted.³⁸

For television, films that are rated twelve years or sixteen years can only be shown on national channels after 10:30 p.m. on Tuesdays. Encrypted films on pay-TV channels are not affected. Video is not censored.³⁹

Germany

The German Constitution prohibits censorship. Article V of the Basic Law of the Federal Republic of May 1949 provides that there shall be no censorship, and that everyone has the right to express and disseminate opinions freely in speech, in writing or in pictures within the bounds of public laws, provided one does not injure any person's honor.⁴⁰ Despite this, the German ratings system effectively curtails distribution of higher-rated films.

In Germany, censorship is voluntary and films are classified by a professional review committee, the Voluntary Censorship Board of the German Film Industry (Freiwillige Selbstkontrolle der Filmwirtschaft or FSK). The committee is liberal except with respect to films at variance with the laws of the Constitution, films offensive to religious beliefs, or the depiction of sexual acts or violence when specifically emphasized for commercial purposes. Appeals are reviewed by a nonprofessional committee chosen by the Federation of German Film Associations (Spitzenorganisation der Filmwirtschaft eV (SPIO)). SPIO consists of associations of producers, distributors, and exhibitors, including Motion Picture Export Association of America companies. The decisions made by the appeals committee remain final.⁴¹

The FSK examines all German and foreign films. The film industry set up the Voluntary Censorship Board to prevent misuse of the film industry's freedom from censorship. The Board sets a common standard for what can and cannot be shown in Germany. All producers, distributors, and cinema owners in Germany pledge themselves to participate in the FSK program. According to the principles agreed upon between the film industry and public authorities, FSK's mission is to regulate film showings to avoid adverse effects upon young people. In this regard, the FSK considers the following: themes,

actions or situations that violate moral or religious principles; nationalistic tendencies or racial hatred; and scenes that promote militaristic, imperialistic, or nationalistic tendencies or racial hatred. The Board may prohibit showing pictures to persons under ages six, twelve, sixteen, and eighteen, or clear the picture for showing without restrictions. The Board also specifies films suitable for exhibition on religious holidays. Cuts may be necessary for a film to obtain a desired classification.⁴²

All theatrical feature films are open to post-censorship, even the ones that have already been evaluated. Films that have not been evaluated cannot be released for viewing for those under age eighteen. A very extensive youth protection legislation exists: Films may be shown to children and young adults only if they have been cleared for their respective age groups of six, twelve, sixteen and eighteen. This clearance is based on the 1985 Youth Protection Act, and is exercised by the top state government youth departments (Oberste Landesjugendbehoerden). The YPA requires the appointment to the youth departments of one representative from each state. The FSK acts in the name of the sixteen states.⁴³ According to the FSK, raters are mainly concerned with "the representation of violence and its consequences for the psyche and behavior of young people."⁴⁴

In addition, theatrical feature films that have not been evaluated by the FSK may be subject to post-censorship by the Federal Censorship Agency for Youth-Endangering Written Material (BPS), which is a federal institution. If the BPS considers materials youth-endangering, considerable distribution restrictions such as a general advertising prohibition could result. The German index system defines video as printed matter and consequently subjects it to restrictions on advertising, promotion, and distribution. This post-censorship applies to videos if the cassette has not been cleared by the FSK for children or young adults. Only advertising materials that could be considered youth-endangering must be submitted to the Board for approval.⁴⁵

Teenage Mutant Ninja Turtles II has been decreed off-limits for children under twelve by the same FSK that declared *Turtles I* acceptable for children six and up. In Sweden, by contrast, *Turtles II* can only be seen by children eleven and older.⁴⁶

Greece

Films and publicity material must be submitted to committee censorship. Officially, Greece has no film censorship, and regulations are not strict and have recently collapsed altogether. In theory, films containing violence are restricted to persons over seventeen, and sex scenes are limited to those over thirteen. For these categories, pictures must be screened to obtain a permit. Appeals may be made to higher committees and ultimately to the Directorate of the Motion Picture Industry at the Ministry for Industry.⁴⁷

Film censors in Greece are more restrictive of vio-

lence (as opposed to sex) in classifying a picture for all audiences. Hard-core pornographic films are shown in theaters specializing in such films.⁴⁸

The Greek Orthodox Church also plays a role in censorship. Although *The Last Temptation of Christ* passed the Greek censorship board, the Greek Orthodox Church objected to the film, and also threatened to excommunicate Kazantzaki when his novel was published in 1954.⁴⁹ In 1990, a local bishop threatened to excommunicate those working on the Greek film *The Suspended Step of the Stork* because the film called for abolition of national borders and contained erotic scenes. The Greek government sided with the director of the film, rather than the bishop, who opposes sexual freedom, beauty contests, and women smokers.⁵⁰

Greece does not censor videos. However, penalties are imposed on those who rent videocassettes to minors containing scenes of violent sex and drug abuse.⁵¹

Italy

The Censorship Commission of the Ministry of Tourism and Entertainment provides censor visas for imported films. The Commission consists of nine nongovernmental persons (with alternating groups of eight). The Commission pays special attention to explicit sex scenes in three categories: general admittance, no admittance under fourteen, and admittance for eighteen years and over. Because the Censorship Commission deems immorality and violence offensive, these scenes may be cut, and films that offend public morals may be barred entirely.

Film censors in Greece are more restrictive of violence in classifying a picture for all audiences.

An Appeals Committee exists to hear appeals on adverse decisions, with the final appeal going to the States Council. Local prosecutors use their magisterial powers to sequester films that have passed censorship.⁵²

In 1976, the Italian government ordered all copies of *Last Tango in Paris* burnt, apart from three consigned to the National Film Library and one that went to the Criminal Museum of the Ministry of Justice and Clemency to sit alongside examples of medieval torture. Director Bertolucci was given a two-month suspended jail sentence, and was pre-

vented from voting in Italian elections for five years because of the film. Actor Marlon Brando and the Italian distributors were also given a suspended jail sentence and a fine.⁵³ But times have changed.

A new television broadcasting bill effective in January 1993 forbids films rated for ages under fourteen to be broadcast at any time. Films classified for ages over fourteen may be shown only after 10:30 p.m.⁵⁴ But Italy's unregulated television industry presents much sex and ostentation, sometimes filling commercial airtime with strip-tease shows. One network televises confessions of muggers and other social deviants. Other stations show late-night appearances of transvestites peddling porn videos to viewers who may call and place an order.⁵⁵

Although there is no video censorship⁵⁶ in Italy, *The Last Temptation of Christ* was banned outright.⁵⁷ In Italy, blasphemy is censored more strongly than violence or soft porn.⁵⁸

The Netherlands

The Netherlands Central Censorship Board (Nederlandse Film Keuring Dienst) classifies motion pictures for four groups: suitable for all ages; suitable for children under twelve years; suitable for children twelve years and over; and suitable for ages sixteen years and over. There is no classification for ages sixteen and over. Films scheduled for showing only to persons over sixteen years do not require submission to the Board. The only criteria the censors use is "harmfulness to youth." The Board rarely requires cuts, and censorship in the Netherlands remains liberal compared to other European countries.⁵⁹ Like France, Italy and Spain, the Netherlands avoids cutting because it adversely affects the moral rights of the artists.⁶⁰

Television censorship follows that for the cinema market; there is no censorship of videos.⁶¹

Portugal

Direccao Geral de Espectaculos e do Direito de Auto (DGEDA) is Portugal's censorship body. Regulations require classification only, which is determined by sex and violence. A Classification Commission (Comissao de Classificacao Etaria) screens all products and first divides them into pornographic (soft and hard), and then nonpornographic. The former is given the rating of "forbidden under 18 years of age" and is subject to special taxing regulations. The non-pornographic product is given one of the following classifications: suitable for ages over four years, over six years, over twelve years, over sixteen years, over eighteen years.

Officially, no cutting of films is permitted. Distributors are allowed to request a quality rating for any film, in which case a Quality Commission (Comissao de Qualidade) must screen the film. If the Commission agrees, the film is given the label "Filme de Qualidade" together with its age classification. Films with such labels are exempt from the Release Tax.⁶²

Censorship of television programming material is

at the discretion of broadcast management.⁶³ The Japanese explicit sex film *Ai No Corrida (In the Realm of the Senses)*, which could not get a video certificate in the United Kingdom, was given a 10 p.m. screening on Portuguese television.⁶⁴ Videocassettes are classified by the DGEDA using the same system as theatrical releases.⁶⁵

Spain

The agency in charge is the Junta de Comision de Clasificacion, a part of the Instituto de la Cinematografia y de los Artes Audiovisuales (ICAA). Films are classified by age group: all ages (general

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admission); under age seven not recommended; under age thirteen not recommended; under age eighteen not recommended. The administration deems pornography and violence offensive. All prints must have a classification certificate.⁶⁶

With Franco's death in 1975, forty years of state censorship gave way to a country where sexual art is allowed, although violence is not as acceptable. Spanish filmmakers such as Pedro Almodovar rule the film scene with sexually explicit pictures such as *Tie Me Up, Tie Me Down, Women on the Verge of a Nervous Breakdown*, and *Matador*.⁶⁷

The management at individual channels has discretion over television censorship. At the beginning of each program, a viewing recommendation appears for the general public—for viewers over fourteen years or over eighteen years.⁶⁸ Videocassettes are classified under a system identical to theatrical releases.⁶⁹

United Kingdom

The national government does not have the right to censor motion pictures. Nonetheless, all British motion picture theaters require a license from local government authorities.⁷⁰ The law granting the power to license theaters also gives local government authorities the power to approve, ban, or alter classifications for films. There is no appeal of their decision.⁷¹ Although technically this censorship is vested in local practice, local authorities seldom exercise their power. With very few exceptions, local authorities accept the ruling of the British Board of Film

Classification (BBFC), an independent, nongovernmental group that classifies films and videos, and permits the showing of any film that has been accepted by the Board and has received its certificate.⁷²

The BBFC is a voluntary body, established by the film industry in 1912 on its own initiative to overcome the handicap of the seven hundred separate censorship authorities mentioned above, and to ensure a proper standard in the screen entertainment offered to the public. The BBFC began as an effort to provide uniform guidance to local authorities empowered to license premises for the screening of films.⁷³ The 1909 Cinematograph Act gave local authorities power to impose conditions on film exhibition to protect the public against fire hazards, but authorities soon began to use these powers to censor films. The motion picture industry determined that “it would be far better for the trade to censor its own productions than to see all films at the mercy of an arbitrary authority.”⁷⁴ All films are treated on an individual basis, and the Board may reject pictures or require cuts.⁷⁵ The BBFC judges each film “on its merits,” with precedent, context, and “the evolution of public taste” as considerations.⁷⁶

Section 1(3) of the 1985 Cinemas Act imposes a duty on licensing authorities to place restrictions on the admission of children to cinemas that show works “designated, by the licensing authority or such other body as may be specified in the licence, as works unsuitable for children.” The present classification, endorsed by local councils and by the Home Office, is:

“U”	Universal: suitable for all audiences
“Uc”	Universal: particularly suitable for children (this classification is used for videos only)
“PG”	Parental Guidance suggested: which may be unsuitable for younger, unaccompanied children
“12”	suitable for twelve years and over ⁷⁷ (used for films only)
“15”	suitable for persons fifteen years and over
“18”	suitable for persons eighteen years and over only
“R18” or “club”	suitable for eighteen years and over with restricted distribution in segregated premises only (cinemas and licensed sex shops only).

The BBFC is stringent about its age limits. The Board rated *Mrs. Doubtfire* “12” because of a reference to a vibrator,⁷⁸ and *Schindler’s List* pulled a “15” because it contains extreme violence, nudity, sex, and adult language.⁷⁹ The film *Batman* was banned for children under twelve.⁸⁰ The Board insisted on twenty-five cuts to *Indiana Jones and the Temple of Doom* before it agreed to a “PG” certificate. Exhibitors usually agree to the cuts to exploit the

lucrative teenage market. However, film producers may now be able to assert their *droit morale* under the Copyright Act against exhibitors who agree to cut their work.⁸¹

The United Kingdom’s Protection of Children Act 1978 makes it an offense to have persons under sixteen participate in “indecent” scenes in films, or to distribute or advertise movies containing such sequences. The BBFC applies a strict interpretation of this measure to all films submitted, and requires evidence of age if a teenager performs in an “indecent” scene.⁸² In *Rambling Rose*, a sex scene involving Laura Dern and a minor was cut because the producers didn’t provide evidence that the boy was over eighteen. The scene was deleted even though it was central to the film.⁸³

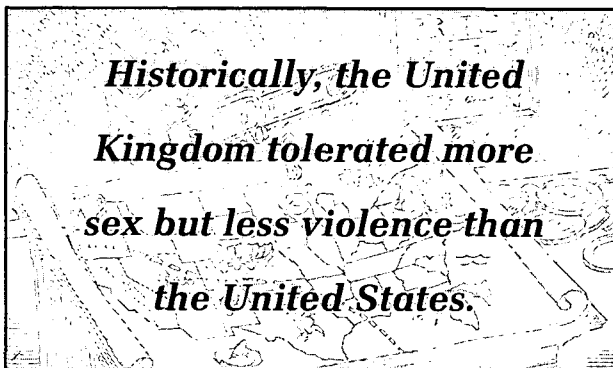
Films and broadcasts are excluded from the provisions of the Obscene Publications Act. Films for video release must be resubmitted after theatrical censorship.⁸⁴ The Broadcasting Complaints Commission was created in 1981 to adjudicate complaints of unfair treatment or unwarranted infringement of privacy.

The Broadcasting Standards Council (BSC), created in 1988, has the responsibility to draw up monitoring standards and a Code of Practice for taste and decency in broadcasting. The BSC has no power of sanction other than to provide recommendations. There is no direct television censorship in the United Kingdom. Broadcasters are largely expected to take into account the BSC’s code while regulating their own program standards. Unlike cinema and video, there is no requirement for films on TV to be classified in the United Kingdom.⁸⁵ Until 1993, the Independent Television Commission (ITC) was the legal broadcaster of ITV and Channel 4 programs. The ITC can demand to preview and make changes in programs considered to breach ITC’s code of programming standards. Since 1993, all commercial broadcasters have been required to ensure that all programs comply with the ITC’s code of program standards. For example, materials unsuitable for children—those containing explicit sexual content, bad language and gratuitous violence—may not be broadcast between 6:00 a.m. and 10:30 p.m.⁸⁶ The ITC monitors compliance and investigates complaints, and has the power to impose sanctions, including fines.

For a film to be released on videotape after its theatrical release, it must be resubmitted to the British Board of Film Classification. The 1984 Video Recordings Act mandated that all videos for sale or rent submit to classification by an authority designated by the Home Secretary.⁸⁷ The Home Secretary appointed the BBFC, which began “exercising a statutory function on behalf of central government.”⁸⁸ Films are subject to the same guidelines as theatrical films, with the exception of videos receiving the “R18” rating, which limits their distribution to licensed sex shops.⁸⁹ Videos must be “suitable for viewing in the

home," which usually engenders stricter censorship.⁹⁰ Problems arise when films rated "12" for cinema then have to be upgraded to "15" for home video, like *Batman*, or when films are cut to maintain family orientation. For example, the four-letter word in *Big* was excised for the film to maintain its family rating.⁹¹ Feature films that are certified in the "18" and "R18" categories do not receive the same immunity from the obscenity law when sold on videocassettes.⁹²

Historically, the U.K. tolerated more sex but less violence than the United States. For example, martial arts weaponry has been a problem for some films while a recent sex video passed censorship because it was deemed educational.⁹³ For scenes depicting violence, the BBFC considers the moral position of the filmmaker toward his own material: Is the sympathy of the filmmaker on the side of the victim or the aggressor? Is the process of violence indulged in for its own sake rather than to tell the audience anything significant about the motives or state of mind of the persons involved? Does the camerawork or editing belie the ostensible moral stance of the film by seeking to enlist or encourage our vicarious enjoyment of the portrayed atrocities?⁹⁴ War films and westerns are viewed as violence "of a relatively conventional and undisturbing nature."⁹⁵ Scenes that "might lead to highly disturbing imagery being planted in vulnerable minds," such as explicit depictions of mutilation, savagery, and sadism, are severely censored in the United Kingdom.⁹⁶ Half the running time of the cuts made by the BBFC in 1985 involved violence.⁹⁷



Although *Rambo III* was screened uncut to adults in America and in many European countries, the BBFC insisted on many cuts before it could be screened for adults only in the cinema or sold as an "18" video. The BBFC feared *Rambo* would inspire "anti-social violence on the streets of Britain."⁹⁸ The Board required cuts "in bloodshed and in glamorization of military weaponry," finding it particularly objectionable that *Rambo* "killed, on the battlefield though never at home, with a deadly efficiency which seemed increasingly out of place in a world struggling towards new, more reasonable means of settling international disputes."⁹⁹

The Board gave *Lethal Weapon*, *Die Hard*, and *The Terminator* "18" certificates because of violence and language,¹⁰⁰ and for theater viewing the Board gave *Reservoir Dogs* an "18" certificate and made no cuts. *Reservoir Dogs* is notorious for a torture scene in which a psychopath played by Michael Madsen dances to "Stuck in the Middle with You" as he slices the face and ear of a bound and gagged policeman. Also, throughout the film, one of the main characters lies dying of a gunshot wound to the stomach, lingering in a growing pool of blood. The BBFC gave Madonna's film *Body of Evidence* an "X" rating, ruling the film unfit for viewing for those under eighteen because of its explicit sex scenes.¹⁰¹ *The Good Son*, a film about a homicidal child, remains uncertified.¹⁰²

The BBFC continues to censor films on video. *The Exorcist*, *In the Realm of the Senses*, and *Straw Dogs* have been refused video certificates because of graphic violence and disturbing imagery. "With video you can import this outside material into your fantasy life, and watch it over and over."¹⁰³

Box-office admissions for 1992 in Britain—led by tickets for the American erotic thriller *Basic Instinct*—were the best in twelve years.¹⁰⁴ It seems some depictions of American sex and violence thrive on the British screen.

Other Western European Countries

Austria

The Austrian Federal Constitution prohibits film censorship. The authorities also interpret the Constitution to mean that they are not permitted to ban a film for exhibition on the basis of its content. The various provincial governments, however, may reject films for juvenile exhibition if not deemed suitable.¹⁰⁵

For example, in Vienna, a Youth Commission classifies films into four categories: limited to adults; limited to persons over sixteen; limited to persons over fourteen; and authorized for all persons. Juvenile age limits and regulations differ in various provinces. Many films are limited to adults, which impacts box office revenue. The authorities also provide that the law does not preclude banning films after the first exhibition if the films are deemed to encourage any unlawful practices prohibited by the Austrian Anti-Morality Law. In Vienna and its province, a Censorship Commission practices censorship, and its decisions sometimes vary between city and provincial areas. Tyrol and Vorarlberg have other censorship organs that are more strict than the Commission in the capital because they are guided by decisions of the ecclesiastic authorities. Effective October 1, 1980, a supplementary censorship law determined that pictures deemed unsuitable for youths do not have to be presented to the Censorship Board as they automatically receive the age limit of sixteen years.¹⁰⁶

The government has established a Rating Board in the Ministry of Education that rates motion pictures

as: “especially worthy,” “worthy,” and “worth seeing.”¹⁰⁷ In addition, a Voluntary Censorship Board administered by the Austrian Film Distribution Association advises whether a film should be shown, whether cuts should be made, or whether it should not be shown (which pertains only to sex pictures).¹⁰⁸

Finland

Every film must be approved by the State Office of Film Censorship that requires a Finnish or Swedish translation of the text when the censorship screening takes place. In addition, the Finnish and Swedish name of the picture must be approved. Censorship is not as strict as in Sweden and Norway; however, the Finnish Committee is particularly concerned with horror, violence, and political criticism. Films are classified as suitable for general public, forbidden under the ages of eight, twelve, sixteen and eighteen, or totally banned. There is also a classification mandating that children three years younger than the specified age group can only attend if accompanied by parents.¹⁰⁹

Separate television censorship regulations do not exist, so management at individual channels uses its own discretion. A January 1988 law forbids the sale of films theatrically rated “18” on videocassette. Films not theatrically released require a professional recommendation. In addition, the Videogram Association operates its own voluntary control board.¹¹⁰

Norway

In Norway, all films must be approved by the Statens Filmkontroll (government censorship board). The following classifications became effective January 1, 1988: for audiences eighteen years and older; for audiences fifteen years and older; for audiences ten years and older; for audiences five years and older (and also for children between the ages of three and five when accompanied by adults).¹¹¹

Certification applies to public exhibition of film and video, but not, at present, to home videocassettes. Practically all U.S. X-rated films do not pass the Board. The Board is particularly concerned with hard-core pornography, horror, and violence. Scenes showing instructions in the use of drugs or narcotics are not permitted. The Board may ban films or require cuts. Six features were banned in 1990, and two were banned in 1989.¹¹²

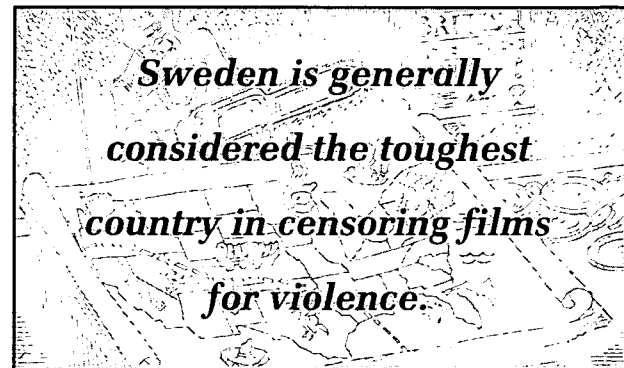
Television standards are at the discretion of a channel’s management, but generally no violence and pornography are allowed.¹¹³ For video, censorship has been proposed under a “private bill.” In general, decisions by the Censorship Committee with respect to theatrical distribution apply to video censorship. Separate laws regarding sex and violence exist.¹¹⁴

The Walt Disney film *The Great Mouse Detective* was banned in Norway for audiences under twelve. The five-member State Film Censorship Board voted unanimously that the film—which was approved for

all audiences in neighboring Finland, Sweden and Denmark—could not even be reedited for children. Disney’s *Fantasia* was also banned in Norway.¹¹⁵

Sweden

The National Swedish Film Censor Board was created in 1911, and is the oldest public institution of its kind in the world.¹¹⁶ The Board must examine all motion pictures. Films cannot show “horrifying character” or conflict with “public morals and law.” Sweden is generally considered the toughest country in censoring films for violence. For many years *The Sound of Music* was banned for children under fifteen.¹¹⁷ Although the Walt Disney film *Beauty and the Beast* might be considered relatively harmless,



some scenes involving violence were cut before the film was shown in Sweden.¹¹⁸

In January 1991, Sweden promulgated a new law for film censoring—classifications by color: white means rejected; yellow is suitable for fifteen years and older; green is suitable for eleven years and older; blue is suitable for seven years and older; red is suitable for general audiences. The new components include a “parental guidance” rule that is used for the eleven- and seven-year age limits. Children under seven years are allowed to see films allowed for ages seven years and older if accompanied by an adult (someone over eighteen), and children from seven to eleven years may see films for ages eleven and older if accompanied by an adult. However, no one younger than fifteen is allowed to see films for ages fifteen and older.¹¹⁹

Another new law has abolished the two advisory boards that the censors used to ban films or when the distributor asked for an AA classification. Presently, the censors may seek the opinion of any expert regarding a ban or classification, and may even choose the expert themselves.¹²⁰

Distributors now have the opportunity to appeal decisions made by censors. The appeal is made to Kammarrätten (the administrative court of appeal) and not to the government as in the past. The court adds two specialists appointed by the government when film censorship issues arise. One of the spe-

cialists is a film expert, and the other is a behavioral scientist.¹²¹

Television standards are at the discretion of channel management. A government Audiovisual Media Committee recommended amendment of cable broadcast legislation to protect viewers from violence, but no decision is expected before 1993.¹²²

Theatrical classification by the National Censorship Committee applies to video. Films not theatrically released do not need to be presented to the Censorship Committee. Distributors may submit such films to the IFPI for "voluntary" censorship, but once submitted, the distributor must abide by IFPI's recommendation or risk loss of membership. There is a criminal law against distribution of home videocassettes with excessive violence.¹²³ In general, Swedes prefer sex over violence. For example, *Sex, Lies and Videotape* was given a "7" rating for the punch delivered near the film's conclusion. In Britain, the film received an "18" rating.¹²⁴

Switzerland

According to federal law, minors under age sixteen are not permitted to enter movie theaters without a responsible adult unless the film is deemed especially appropriate for children. If the age of admission is advertised for those under sixteen, films must be presented to a censorship board. Attendance at films containing sex and violence is prohibited to minors under eighteen.¹²⁵

Parliament adopted legislation, which is applicable to cinema, TV, and videocassette releases, prohibiting exhibition of violent scenes. Distributors usually recommend which films should be restricted. Although the legislation is federal, enforcement is relegated to the various cantons (provinces). In addition, each canton has its own body of censorship legislation.¹²⁶

The Canton Valais censors are generally strict, particularly with regard to excessive violence or pornography. However, it is the responsibility of the exhibitor and the manager of the distribution companies as to what can be shown. These censorship decisions vary from canton to canton.¹²⁷

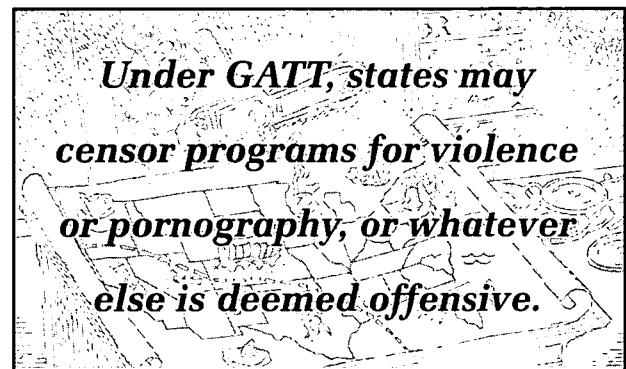
Censorship of television follows the same federal guidelines and canton system as theatrical films.¹²⁸ The same guidelines also apply to censorship of the video market.¹²⁹

The Single-Market and Censorship Harmonization

General Common Market principles dispose of the economic protectionism associated with national borders¹³⁰ to promote free trade, allowing goods to move freely within the European Community (EC).¹³¹ This approach to the free movement of goods was integrated into the EC as established by the European Union Treaty.¹³² The Treaty of Maastricht allows the EC to administer and provide legislation for the political, social, and cultural arenas. Article 128 of

the Treaty accords a limited cultural mandate to the EC to introduce guidelines for the artistic and entertainment industries, including guidelines for distribution of goods and services. However, the EC principle of subsidiarity relegates responsibility for cultural development to each member state.¹³³

The Council Directive on the Coordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Pursuit of Television Broadcasting Activities (or Television without Frontiers Directive),¹³⁴ adopted in 1991, allows audiovisual programs to be freely transmitted throughout the EC, provided the programs observe national legislation in the broadcasting member state. The European Commission has transferred the power to impose a system of classification on national broadcasters to each member state. But the Commission, through DGX, the Directorate General responsible for audiovisuals, information, and communications, will introduce specific measures "to



protect the physical, mental and moral development of minors in programs and in television advertising."¹³⁵

The General Agreement on Tariffs and Trade (GATT)¹³⁶ and the EC¹³⁷ seemingly allow motion pictures to be insulated from the general free movement of goods theme. In addition to acknowledging national cultural differences, this insulation also subsumes doctrines of public morality and safety. Article 36 of the Treaty of Rome provides that the articles eliminating quantitative restrictions between member states "shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security."¹³⁸ Thus, Article 36 allows members to implement national trade restrictions, with these national laws to remain in effect after 1992. The European Court of Justice also postulates that justifications for restrictions include concerns about health and welfare, environment, and public safety.¹³⁹

The Television without Frontiers Directive provides under Article 3 that GATT's provisions must not operate so as to prevent a member state from

maintaining internal quantitative regulations concerning exposed cinematographic films or from meeting the requirements of Article 4, which allows screen quotas for works of national origin.¹⁴⁰ Essentially, states may censor programs for violence or pornography, or whatever else is deemed offensive.

The Convention for the Protection of Human Rights and Fundamental Freedoms provides in Article 10: "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television, or cinema enterprises."¹⁴¹ Article 10 also states:

the exercise of these freedoms . . . may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others . . .¹⁴²

These values listed in Article 10(2) are "a number of exceptions which must be strictly interpreted."¹⁴³

Thus, these vehicles and values continue to provide justification for internal national censorship and classification systems, despite desires to harmonize this arena.

Conclusion

Although national censorship and classification systems could become harmonized in the future, national cultural sensitivities and preferences as to what the public views remain dominant. For European countries, the nature and purpose of continuing censorship involves protection of public morality, health, safety, and security, which is synonymous with the protection of national cultural heritages in this American-dominated field. But whether the European censorship practices will continue to operate as a vehicle for national cultural identity remains to be seen.

Europeans continue to maintain that some form of cultural protectionism is needed to combat the American belief in the customer's "knowing best."¹⁴⁴ Films like *Leatherface: Texas Chainsaw Massacre III*, *Terminator* and *Lethal Weapon* are created ostensibly to appease the American taste for violence. Even independent filmmakers are exploring the violence genre, producing films like *Reservoir Dogs* and *Henry: Portrait of a Serial Killer*.¹⁴⁵ Whether European countries develop a uniform approach to film regulation and censorship or continue to treat these issues nationally, media violence should remain strictly regulated because of its dire social effect. ■

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and attorney in Portland, Oregon. Copyright © 1994 Margaret Moore.

Footnotes

1. The film was one of three films in the last nine years to be banned in Britain. Alison Bass, *Film Sex Ok Violence Is Not, Surveys Find; U.S. Ratings System Has It Backwards, Studies Suggest*, BOSTON GLOBE, Aug. 30, 1993, at 25 [hereinafter Bass].

2. Laurence Earle, *Film/Rushes*, THE INDEPENDENT, Aug. 8, 1991, Arts at 14.

3. Bass, *supra* note 1, at 25.

4. The CARA Voluntary Rating System provides for the following ratings categories:

"G" for "General Audiences. All ages admitted."

"PG" for "Parental Guidance Suggested. Some material may not be suitable for children."

"PG-13" for "Parents strongly cautioned. Some material may be inappropriate for children under 13."

"R" for "Restricted. Under 17 requires accompanying parent or adult guardian." (Age varies in some jurisdictions)

"NC-17" for "No children under 17 admitted." (Age varies in some jurisdictions).

J. Valenti, *The Voluntary Movie Rating System: How it Began, Its Purpose, the Public Reaction*, at 5 (1991) (Motion Picture Association of America) [hereinafter Valenti]. The U.S. rating system, along with the Japanese and Spanish systems, is self-regulatory and completely independent of the government. J. Federman, *Film and Television Ratings: An International Assessment*, at ii (1993) (Mediascope) [hereinafter Federman].

5. Valenti, *supra* note 4, at 5. J. Valenti, *The Motion Picture Industry's Film Rating System*, 7 ENT. L.R., No. 6 (Nov. 1985) [hereinafter *Film Rating System*].

The current CARA Board members include two homemakers, an author and illustrator of children's books, a cabinetmaker, an office manager, a postal worker, an assistant film director, a hairdresser, a social services administrator, a banker, and a preschool teacher. Federman, *supra* note 5, at 37-38 (quoting *CARA Board Members (Full and Part-Time)* (1992) (Motion Picture Association of America)).

6. *Film Rating System*, *supra* note 5.

7. Federman, *supra* note 4, at 4.

8. Bass, *supra* note 1, at 25 (quoting Edward Donnerstein, Professor of Communications at University of California, Santa Barbara).

9. Ed Donnerstein et al., *The Mass Media and Youth Aggression* (1993) (American Psychological Association) [hereinafter Donnerstein].

10. *Id.*

11. Federman, *supra* note 4, at 1.

12. Associated Press poll, cited in Pierce O'Donnel, *Killing the Golden Goose: Hollywood's Death Wish*, BEVERLY HILLS B. J., Summer 1992, at 103.

13. *TV Violence: More Objectionable in Entertainment Than in Newscasts*, TIMES MIRROR MEDIA MONITOR, Mar. 24, 1993.

14. Donnerstein, *supra* note 9.

15. Leonard Eron, *Researcher Links Violence on TV with Aggression*, CHRISTIAN SCIENCE MONITOR, Apr. 7, 1992, at 8. Dr. Eron, chair of the American Psychological Association's

Commission on Violence and Youth, testified before the Senate Committee on Governmental Affairs, Congressional Record, June 18, 1992:

The evidence comes from both the laboratory and real-life studies. Television violence affects youngsters of all ages, of both genders, at all socio-economic levels and all levels of intelligence. The effect is not limited to children who are already disposed to being aggressive and is not restricted to this country. The fact that we get this same finding of a relation between television violence and aggression in children in study after study, in one country after another, cannot be ignored.

Approval of violence is a problem with TV and young kids 10 to 12; it's difficult for them to distinguish between reality and fantasy. They don't really know TV is all made up. . . . Violence begets violence, if there's a lot of it on TV.

Id.

16. *Id.*

17. *Id.*

18. *Id.* Federman, *supra* note 4, at 14 (quoting James Ferman, Director, British Board of Film Classification).

19. Federman, *supra* note 4, at 14.

20. *Id.*

21. Federman, *supra* note 4, at 14 (quoting James Ferman, Director, British Board of Film Classification).

22. Federman, *supra* note 4, at 14.

23. Tyler Marshall, *U.S. Lowers Volume in GATT Film Dispute*, LOS ANGELES TIMES, Feb. 4, 1994, at D3.

24. Paul Presburger & Michael R. Tyler, *Television Without Frontiers: Opportunity and Debate Created by the New*

European Community Directive, 13 HASTINGS INT'L & COMP. L. REV. 495, 501-02 (1990).

25. *Film Production: Signs of European Recovery?*, *Screen Digest* (Second Annual Survey of International Film Production), Apr. 1992, at 5.

26. *Id.* at 3. France and Italy are the biggest producers, with 146 and 119 films produced respectively in 1990.

27. EC: *Don't Block the Blockbuster—Arguments Against Sanctions for US Films*, REUTER TEXTLINE GUARDIAN, June 24, 1992, available in LEXIS, Entertainment Library, Entertainment News File.

28. Telephone Interview with Motion Picture Export Association of America (MPEAA) executive (Mar. 15, 1993).

29. Telephone Interview with Bill Anderson, Director AFMA Research & Publications (Mar. 15, 1993). These materials are current as of the date of this article.

30. *Belgium Cinema Owners Protest Against Batman Ban for Children*, THE REUTER LIBRARY REPORT, Sept. 8, 1989.

31. Motion Picture Export Association of American International Censorship Documents (revised Apr. 1990) [hereinafter MPEAA Documents, revised month, 19__]; AMERICAN FILM MARKETING ASSOCIATION FACT BOOK 11 (Apr. 1992) [hereinafter FACT BOOK]; BELG. CONST. art. 14 and 18.

The fee for censorship review is Fr 1 per meter, except for shorts (Fr 0.50 per meter).

32. FACT BOOK, *supra* note 31, at 14 and 17.

33. Grundloven of 5 Juni 1953.

34. MPEAA Documents, *supra* note 31, revised June 1992; FACT BOOK, *supra* note 31, at 7.

Censorship fee is Kr 0.35 per meter or Kr 9.56 per minute. Hard copy deposit is not required by authorities.

35. FACT BOOK, *supra* note 31, at 11, 13.

36. *Protest March on "Basic Instinct" Ban*, THE REUTER LIBRARY REPORT, June 13, 1992.

37. MPEAA Documents, *supra* note 31, revised Apr. 1992.

A flat fee of Fr 0.10 per meter is charged for the original language version with subtitles. The dubbed version is charged a fee for original version plus fee for dubbed version.

The French constitutional provision guaranteeing freedom of speech is Art. 11: "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." DECLARATION DES DROITS DE L'HOMME ET DU CITOYEN (1789).

CONSTITUTION DU 4 OCTOBRE 1958, PREAMBULE: "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."

38. Home Office Report of the Committee on Obscenity and Film Censorship, Cmnd 7772 (Nov. 1979).

39. FACT BOOK, *supra* note 31, at 14, 17. There is no censorship fee.

40. Article 5(1) of the German Basic Law of the Federal Republic of May, 1949, provides: "Everyone shall have the right freely to express and disseminate his opinion by speech, writing and pictures and freely to inform himself from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films are guaranteed. There shall be no censorship." Article 5(2) provides: "[T]hese rights are limited by the provisions of the general laws, the legal provisions for the protection of the youth and by the right to personal honor."

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41. MPEAA Documents, *supra* note 31, revised Jan. 1992; FACT BOOK, *supra* note 31, at 9.

42. *Id.*

43. *Id.*

44. Federman, *supra* note 4, at 33 (quoting Folker Honge, FSK official).

45. MPEAA Documents, *supra* note 31, revised Jan. 1992; FACT BOOK, *supra* note 31, at 9. The FSK charges DM 2.0–2.5 per meter depending on running time. Hard copy deposit of film is not required by authorities.

46. *Germany Bans Kids from Turtles II Movie*, THE VANCOUVER SUN, Aug. 17, 1991, at C4.

47. MPEAA Documents, *supra* note 31, revised Nov. 1991; FACT BOOK, *supra* note 31, at 2.

48. *Id.* Fees for each film are D 4,800. The procedure takes two to three days. Hard copy deposit is not required. In case of a disagreement with the censor, an initial decision may be appealed to a superior committee, for which a fee of DM 6,000 is charged.

49. Ralph Joseph, *Crowds Rampage At Screening Of "Last Temptation,"* UNITED PRESS INTERNATIONAL, Oct. 13, 1988, available in LEXIS Entertainment Library, Entertainment News File.

50. *Movie Comes Between Greek Church, State*, LOS ANGELES TIMES, Nov. 23, 1990, at P10.

51. FACT BOOK, *supra* note 31, at 2.

52. MPEAA Documents, *supra* note 31, revised Feb. 1993; FACT BOOK, *supra* note 31, at 10. MPEAA companies may process censorship certificates directly at the Ministry or through ANICA. The Rome Censor Board requires Certificates of Origin when a film is presented for review, and these are prepared by MPEAA/New York. The censorship fee is 300 lire per meter, plus a script tax of 500,000 lire.

53. Robin Hunt, *It Takes 4 To Tango*, THE TIMES, Feb. 11, 1993, available in LEXIS, Entertainment Library, Entertainment News File.

54. FACT BOOK, *supra* note 31, at 13.

55. Alan Friedman, *Programmed to Titillate*, FINANCIAL TIMES, Mar. 22, 1989, at 23.

56. FACT BOOK, *supra* note 31, at 17.

57. Peter Dean, *European Video Censors Disagree Across Borders*, BILLBOARD, Oct. 3, 1992, at 1 [hereinafter Dean].

58. *Id.*

59. MPEAA Documents, *supra* note 31, revised Apr. 1992; FACT BOOK, *supra* note 31, at 8. Censorship fee is Fr 300. Hard copy of film required by authorities if film is to be rated in 35 mm format. FACT BOOK, *supra* note 31, at 8.

60. Dean, *supra* note 57, at 1.

61. FACT BOOK, *supra* note 31, at 10, 14.

62. MPEAA Documents, *supra* note 31, revised Nov. 1990; FACT BOOK, *supra* note 31, at 8. Hard copy must be submitted for rating before exhibition.

63. FACT BOOK, *supra* note 31, at 11.

64. Dean, *supra* note 57, at 1.

65. A fee of Esc 7,500 is required. A hard copy deposit is required, but not enforced. FACT BOOK, *supra* note 31, at 14.

66. FACT BOOK, *supra* note 31, at 13. In lieu of a censorship fee, a screening tax for the issue of the classification certificate is levied. This tax is as follows: Pts 312 per reel for first print; Pts 156 per reel each additional print. No hard copy deposit is required by the Commission. However, distributors are obliged to deposit a new 35 mm print of any Spanish film or any reissued film with Cinemateca, the film library in Madrid. *Id.*

67. Karen Krizanovich, *Man on the Verge of a Break*, THE TIMES, Jan. 4, 1992, available in LEXIS, Entertainment

Library, Entertainment News File.

68. FACT BOOK, *supra* note 31, at 16. There is no censorship fee for TV.

69. FACT BOOK, *supra* note 31, at 21. There is no censorship fee for videocassettes. A VHS hard copy deposit is required. Again, the Junta is the agency in charge.

70. Country Councils or Country Borough and Municipal Councils.

71. Essentially, every theater has, in its license, a provision forbidding violations of rulings by the BBFC. A violation can cost a theater its license. MURRAY SCHUMACH, *THE FACE ON THE CUTTING ROOM FLOOR* 278 (1974).

72. Film submission form must be completed and submitted to the British Board of Film Classification and the print booked for screening at least one week in advance. Hard copy deposit of film is not required. Censorship fee for feature films is determined by length of film: £8.60/minute for the first hour, £6.30/minute for second hour, £4.75/minute for the third hour. The censorship fee for trailers is also determined by length, which runs from £40.06 to £52.90; after 5 minutes in duration, the fee is computed as for a feature film. FACT BOOK, *supra* note 31, at 13.

73. In *Mills v. London County Council* [1925] 1 KB 213, the Divisional Court upheld the validity of a condition that "No cinematograph film . . . which has not been passed for . . . exhibition by the BBFC shall be exhibited without the express consent of the council." The grant of a cinema license became contingent upon the screening of certified films.

74. See NEVILLE MARCH HUNTINGS, *FILM CENSORS AND THE LAW* 50 (1967).

75. The Board is financed by fees charged for the review of film.

76. Video Recordings Act 1984: A Guide to Its Implementation and Practical Consequences, at 5 (1985) (British Board of Film Classification).

77. Adopted in 1989, so that the Board could stop children under twelve from seeing films such as *Batman*, *Crocodile Dundee* and *Gremlins*, which it was reluctant to confine to the "15" category but believed would be damaging to pre-teenagers. GEOFFREY ROBERTSON AND ANDREW NICOL, *CENSORSHIP OF FILM AND VIDEO* 444 (1992) [hereinafter ROBERTSON AND NICOL].

78. Jonathan Miller, *Why Not Cut the Censor?*, SUNDAY TIMES, Feb. 20, 1994. However, local authorities have overturned the film censor's decision regarding the film of a divorced father who dresses up as a nanny because they believe the film should not be restricted to teenagers and adults. *Doubts Deepen*, PRESS ASSOCIATION NEWSFILE, Feb. 18, 1994, available in LEXIS, Entertainment Library, Entertainment News File.

79. Jonathan Miller, *Why Not Cut the Censor?*, SUNDAY TIMES, Feb. 20, 1994; *Doubts Deepen*, PRESS ASSOCIATION NEWSFILE, Feb. 18, 1994, available in LEXIS, Entertainment Library, Entertainment News File.

80. *Batman Director Says All Children Could Watch Movie*, THE REUTER LIBRARY REPORT, Sept. 10, 1989, Sunday AM Cycle, available in LEXIS, Entertainment Library, Entertainment News File.

81. The 1988 United Kingdom Copyright Act.

82. ROBERTSON AND NICOL, *supra* note 77, at 458.

83. Telephone Interview with Loren Brennan, corporate counsel Carolco (Apr. 19, 1993).

84. FACT BOOK, *supra* note 31, at 13.

85. *Id.* at 17, 18.

86. Federman, *supra* note 4, at 52. The watershed hour for

cable operators is 10 p.m. *Id.*

87. Memorandum on the Work of the British Board of Film Classification at 1 (1993) (British Board of Film Classification).

88. *Id.*

89. FACT BOOK, *supra* note 31, at 24.

90. Dean, *supra* note 57, at 1.

91. *Id.*

92. ROBERTSON AND NICOL, *supra* note 77, at 445. The DPP has authorized prosecutions against distributors of videocassette versions of *The Evil Dead* and *The Burning*, certified films that have played without objection to audiences over eighteen in cinemas. *Id.*

93. FACT BOOK, *supra* note 31, UK, at 13.

94. ROBERTSON AND NICOL, *supra* note 77, at 457.

95. *Id.* at 459.

96. *Id.* See the U.K.'s Williams Committee test.

97. *Id.* at 459.

98. *Id.* at 459.

99. *Id.*

100. Peter Guttridge, *Are These Films Too Violent?*, DAILY TELEGRAPH, Jan. 22, 1993, at 17.

101. Jeff Reynolds, *People*, UPI, Nov. 24, 1992, available in LEXIS, Entertainment Library, Entertainment News File.

102. Alexander Walker, *So You Want to Be a Censor?*, EVENING STANDARD, Feb. 24, 1994, at 27.

103. *Id.* quoting James Ferman, director of the BBFC.

104. Derek Malcolm, *British Movies: Home Alone, Honors Abroad*, N.Y. TIMES, Mar. 7, 1993 at B22.

105. MPEAA Documents, *supra* note 31, revised Oct. 1991.

106. *Id.*

107. The rating fee is Sch 3, per meter. MPEAA Documents, *supra* note 31, revised Oct. 1991.

108. *Id.*

109. MPEAA Documents, *supra* note 31, revised Dec. 1991; FACT BOOK, *supra* note 31, at 8. The censor fee for the first print of a 35 mm feature is M 4.75 per starting minute, and M 1.19 per minute for additional prints; the minimum charge, however, is M 59.40. For video, hard copy deposit required by authorities in VHS format; censorship fee lowered to M 4 per minute.

110. FACT BOOK, *supra* note 31, at 10.

111. MPEAA Documents, *supra* note 31, revised Sept. 1991; FACT BOOK, *supra* note 31, at 9.

112. MPEAA Documents, *supra* note 31, revised Sept. 1991; FACT BOOK, *supra* note 31, at 9. The censorship fee is Kr 90 per 100 meters. Films imported without subtitles for pre-censorship pay the regular fees. For second prints, the fee is reduced by one-half.

113. FACT BOOK, *supra* note 31, at 11.

114. FACT BOOK, *supra* note 31, at 15.

115. Howard Reich, *Box Office Could Boom for 1987*, CHICAGO TRIBUNE, Oct. 19, 1986, at C28.

116. *Swedish Film Censorship: What It Is; How It Works* (1992) (National Swedish Board of Film Censors). Federman, *supra* note 4, at 35.

117. *Germany Bans Kids from Turtles II Movie*, VANCOUVER SUN, Aug. 17, 1991, at C4.

118. Telephone Interview with MPEAA executive (Mar. 15, 1993).

119. MPEAA Documents, *supra* note 31, revised June 1992.

120. *Id.*

121. MPEAA Documents, *supra* note 31, revised June 1992. Censorship fee is Kr 55 per 50 meters for the first

print and Kr 19 per 50 meters for each subsequent print. Hard copy deposit of film is required by Censor Board, in print or videotape format. FACT BOOK, *supra* note 31, at 8. There is no censorship fee for documentaries.

122. FACT BOOK, *supra* note 31, at 11.

123. *Id.* at 14.

124. Dean, *supra* note 57, at 1.

125. FACT BOOK, *supra* note 31, at 9.

126. *Id.* Censorship fees range from Fr 60–100, varying between cantons. Hard copy deposit is not required.

127. MPEAA documents, revised Dec. 1988.

128. FACT BOOK, *supra* note 31, at 11.

129. *Id.* at 14.

130. Rewe-Zentral AG Bundesmonopolverwaltung fuer Branntwein, 1979 E. Comm. Ct. J. Rep. 649, 26 Common Mkt. L.R. 494 (1979) [justifications for restrictions include concerns about health and welfare, environment, public safety, etc.] [hereinafter Rewe-Zentral].

131. See Treaty of Rome (Mar. 25, 1957); Treaty Establishing the European Economic Community (Mar. 25, 1957), 1973 Gr. Brit. T.S. No. 1 (C,d/5179-ii), 298 UNTS 3(2 BDIEL 45) [hereinafter Treaty of Rome]; art. 8A: "The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty."

132. European Union Treaty, Official European Report, No. 1746 (Feb. 22, 1992). The Treaty of Rome established the "constitution" for the original Common Market Countries. Treaty of Rome, *supra* note 131.

133. Federman, *supra* note 4, at 50.

134. 32 O.J. Eur. Comm. (L 298) 23 (1989).

135. Federman, *supra* note 4, at 51.

136. General Agreement on Tariffs and Trade, opened for signature Oct. 30, 1947, 61 Stat. A3, TIAS No. 1700, 55 UNTS 187, BDIEL 9.

137. Rewe-Zentral, *supra* note 130.

138. Treaty of Rome, 1957 [Treaty Establishing the European Economic Community, Mar. 25, 1957, 1973 Br. Brit. T.S. No. 1 (C,d/5179-ii), 298 UNTS 3(2 BDIEL 45)].

139. Rewe-Zentral, *supra* note 130.

140. 32 O.J. Eur. Comm. (L 298) 23 (1989). Article 4 provides that "member states shall ensure where practicable and by appropriate means, that broadcasters reserve for European works, within the meaning of Article 6, a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services." *Id.*, art. 4(1), at 26–27.

141. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 UNTS 222 (entered into force Sept. 3, 1953).

142. *Id.*, art. 10, sect. 2. See also Handyside Case, 24 Eur. Ct. H.R. (ser. A) (1976) (court referred to the notion of "necessary in a democratic society" as meaning a social need sufficiently pressing to outweigh the public interest in freedom of expression).

United Kingdom has not ratified the European Convention on Human Rights.

143. *The Sunday Times v. United Kingdom* [1979] 2 EHRR 245 at p271 (¶ 49 of the judgment).

144. Tom Walker, *Hollywood Takes Exception to French Block on the Box*, THE TIMES, May 3, 1993.

145. *Reservoir Dogs*' Quentin Tarantino suggests that viewers who do not like violence in films go see *Howard's End* instead. Bill Cosford, *Movie Violence All The Rage*, CALGARY HERALD, Mar. 19, 1993, at G7.