



**W**hether or not the Office of Film and Literature Classification ("OFLC") is becoming increasingly heavy-handed and censorious, I leave for others to judge. A matter of specific concern to me, is the octopus-like creep and expansion of the powers of government regulatory bodies such as the OFLC.

I am alarmed because the outstretching of the tentacles reflects a return to the protectionist, paternalistic and monolithic censorship structures of the past. It is also a movement away from the pluralistic, diverse and tolerant value system which Australians have espoused over the last two decades.

## Retrograde action

**I** am dismayed because the turning back of the clock has *not* been the subject of much public discussion and debate. Further, its retrograde action has been positively assisted by the agenda setters of the 1960s, whose social consciences have now been lulled to sleep by advancing age and its often attendant conservatism. The *would-be* agenda setters, now in their early 20's, quite understandably are more concerned with the importance of getting and keeping a job in a tough economic environment, than with focussing their attention on such matters as freedom of speech, and the freedom to impart and receive ideas and information.

In order to illustrate the phenomenon I call "censorship creep", I would like to draw your attention to the recent decision of the OFLC to ban the importation of the

## Janet Strickland argues that censorship creep is taking over

book, *Final Exit*, on the application of the Right to Life movement. I do not believe that it was intended that the relevant legislation would be used to ban access by adults to *Final Exit*, which is a book about euthanasia, not banned anywhere else in the world. I wonder if a book containing information on abortion may be similarly banned.

The OFLC was given the power to censor books and publications on behalf of some of the States when, in 1988, John Dickie became not only the Chief Film Censor, but also the Chief Executive of the Office of Film and Literature Classification. The OFLC claim that they now have the power to censor literature only because the State Attorneys General gave them the power. That, of course, is true. But what has not been made clear is that they *sought* this power. In the last two years they have also sought the power to censor telephone information services, computer games, clothing carrying advertisements, television programs and pay television.

## Consistency and uniformity?

**T**hey have claimed that their experience in interpreting community standards in relation to the classification of film and video has given them the expertise to be able to apply relevant criteria based on community standards in all the other areas just mentioned. They argue there should be consistency and uniformity in the standards applicable to all these different media and art forms. However, no explanation or argument has been given as to why the standards applicable to the content of books, films, television, pay TV, computer games and advertising on clothing *should* be the same.

Content standards should reflect the differences in the needs and expectations of the consumer, the difference in target

audiences, the difference in the ease of accessibility to the product by children, and most importantly, the difference in degree of choice able to be exercised by the consumer. Where there is a maximum choice of program/product by the consumer, where access is restricted to adults only, and where the nature or content of the product/program is made known to the consumer prior to her or his choice, the least restrictive regulatory/censorship structure should apply. On the other hand, where there is easy access by children and least choice of program/product by the consumer, and least warning as to the nature or content of the program/product, the most restrictive regulatory environment could legitimately be imposed.

## Pluralistic Approach

**B**ut, if there is to be a consistent and uniform approach to the setting of content standards, then the most restrictive regime (being that of television) would be imposed. This would result in the program standards for television applying to, for example, films, books, telephone information services and pay TV. We need a pluralistic approach to the setting of content standards which reflect the differences between the various art forms and communication media in the same way, for example, as different program standards apply to radio and television.

In my opinion, attempts by government agencies to impose consistency and uniformity on the marketplace of ideas and communication should be firmly resisted. These values can lead to an increasing intolerance of diversity, unacceptable restrictions on permissible forms of expression, and a rejection of the pluralistic values which, as a democratic society, we have espoused for at least the past couple of decades.

*Janet Strickland is a former Chief Censor.*

## David Haines outlines the policy of OFLC

**F**or some years now the term censorship has been to a large extent misleading. There are a number of films (mostly sexually

explicit videos) and publications (most often pamphlets giving instructions on booby traps to kill or maim, or how to convert an air gun into a rocket launcher)

which we do "ban". However, our approach reflects the basic philosophy of government that adults in a free society should be allowed as far as possible to see what they wish, provided there are safeguards to protect young people and people are not exposed unwittingly to material they may find offensive.

To assist us to reflect current community standards, we have guidelines which are reviewed from time to time, in light of perceived changes in those standards endorsed by State and Territory ministers. In addition to interpreting these guidelines, the Office must take into consideration the particular provisions of State, Territory and Commonwealth legislation as it relates both to videos for sale or hire, films for public exhibition, publications and material for importation.

We at the Office are mindful of our responsibilities in reflecting community standards and jealous of our independence. Nevertheless, it is important to remember that we classify on behalf of the States under their legislation. If Ministers ask us to interpret the classification guidelines relating to violence more strictly in response to their perception of community concerns, then we must be responsive to their requests.

### Consumer advice

In addition to the classification symbols, the Office has, since 1989, assigned an additional consumer advice line which indicates the strongest elements to be found in a particular film. Viewers now have access to the information that a film is, for example, classified M, is recommended for mature audiences over 15 years, and contains, for example, high level violence and medium level coarse language. Armed with this information, those likely to be offended by violence or coarse language can avoid seeing this film. State legislation requiring advertising matter to carry this classification information has been introduced over the last two years. Although it is prominently displayed on videos, it is disappointing that it is often missing or inadequately shown on cinema advertising.

In its 1988 report the Joint Select Committee on Video Material recommended that there should be a Public Awareness Campaign to address what it saw as widespread ignorance in the community about the classification system. Prior to embarking on this campaign, the Office conducted research to establish what the community knew and understood about the system. This research demonstrated that there was a fair degree of awareness of the

classifications, but little understanding of what they meant or how they might be used. It was also clear that the people who were most concerned were parents, particularly those with youngsters under the age of about 13 or 14.

### More censorship?

A number of issues relating both to the classification and refusal of films and publications have received attention in the media over the last 12 months. These have been interpreted in some quarters as an indication that the Office is becoming more censorious. However, the number of cinema films refused registration for importation by the Board has remained fairly constant since the introduction of video legislation in 1984.

## Forum

In the case of the book *Final Exit* an adverse decision was made after careful consideration of legal advice relating to provisions of the *Customs Prohibited Import Regulations*, which make it an offence to import material which instructs in matters of crime. This highly confused situation was resolved after an appeal was lodged with the Film and Literature Board of Review and upheld. The book is now available to adults, and the recommendation that it be declared a prohibited import has been lifted.

### Censorship of literature

Despite an extreme reluctance to become involved with mainstream literature, the Office is required to classify all publications which are submitted. For this reason we found ourselves considering the novel *American Psycho* by novelist Brett Easton Ellis. This was the first book which might be described as literature to be considered by the Office since *Portnoy's Complaint* in 1971. While the Office considered that it was a legitimate literary work, which did not warrant refusal, an unrestricted classification was considered inappropriate because of the level of offensiveness and because it was unsuitable for perusal by minors.

It was with some trepidation that we recently took a call from a journalist enquiring whether *The Bulletin* of that week had been classified by us. The cause of the enquiry was the illustration on the

cover which depicted a youth stabbing a young Burmese with a knife, only feet from the photographer.

I was somewhat nonplussed when I asked a couple of acquaintances who I knew had read that issue whether they had noticed anything about the cover. They replied that they had not, but there was an awful article on revenge inside accompanied by a couple of totally gratuitous and tasteless photographs. One of these of course was a smaller version of the cover which had not excited their attention!

The observation that the Office is becoming increasingly heavy handed is sorely tested by the level of complaint we have received in recent months about the classifications of the films *Silence of the Lambs* and *Cape Fear*, and at the release of *American Psycho* and the edited version of *Henry — Portrait of a Serial Killer*.

### Censorship and violence

Is it our place to respond to perceptions the community has that, for example, violence in society is on the increase and can be attributed to material on film and video? Should these perceptions, which do not appear to be based on factual evidence, be given the same weight in our deliberations as other factors indicative of community standards?

In my view, community standards applicable to films should be measured by the standard of what a reasonable adult would find acceptable within each classification, bearing in mind that each classification gives a clear indication of the age group that the material is suitable for. This does not mean that we are insensitive to the genuinely felt concerns of those who ask that films like *The Last Temptation of Christ* or *Henry — Portrait of a Serial Killer* be banned, but we would not be fulfilling our responsibilities if knee-jerk reactions dictated our decisions.

We live in an age of uncertainty and fear about the future. Older people, in particular, are seeking the certainties of years gone by, they complain that it is no longer safe to go out at night, and seek easy answers by pointing the finger at films and videos. But violence in society is a complex issue and we at the Board do not believe increased censorship is the answer.

*David Haines is the Deputy Chief Censor, Office of Film and Literature Classification.*

## Cathy Robinson examines film censorship

I want to explain why censorship and classification issues matter to the Australian Film Commission ("AFC"). Some of the AFC's most visible activities are investments in specific film and television projects. Recent examples include *Proof*, *The Good Woman of Bangkok* and *Black Harvest*.

### AFC concerns

But we are not just a cash dispenser for filmmakers. Film is about communicating — audience and reception are fundamental to its creation of meaning. Our film culture encompasses the whole environment in which films and television programs are made, distributed and watched. The censorship and classification system is central to that environment because it partly determines whether and in what circumstances audiences are able to watch a film.

Very broadly, the AFC recognises that Parliaments will seek to prohibit or qualify access to certain kinds of films and television programs. However, we believe the focus of censorship and classification policy should be to inform audiences about their viewing choices rather than to circumscribe those choices. Questions of violence, sexuality, racism and others need to be explored by our film and television program makers. Violent, patriarchal and racist societies do not change if those qualities are hidden from our cinema and television audiences.

### ALRC Report

Two significant matters in which we have taken a recent interest are the Australian Law Reform Commission's Report into Censorship Procedure and the recent replacement of the *Broadcasting Act 1942* with the *Broadcasting Services Act 1992*. The ALRC report contains a number of proposals which we welcome. Most importantly, we strongly support the idea of a national film classification system. This should simplify the day-to-day administration of this area and also facilitate potential rule changes. We also support the need for a continuing public awareness campaign conducted by the Office of Film and Literature Classification.

We are not so enthusiastic about some other recommendations. As a general point, I think the Report tilts the balance

between individual freedom and socially-imposed restriction too far in favour of restriction. We oppose the recommendation to expand the classifiable media to include clothing and computer programs and possibly audio material. Although these fall outside the AFC's direct areas of responsibility, they are of concern because they represent substantial changes to censorship policy. No detailed evidence is provided in support of this recommendation. The AFC has real concerns about the further encroachment of censorship requirements into new areas of creative activity.

A second area where we believe the ALRC has gone too far is in its recommendation that radio advertisements for a film or video include a statement of the film's classification and other consumer advice. I support consumer advice in television and print advertising. But on radio such a requirement would create an unnecessary but costly and jarring intervention into programming for the sake of information which most people will see anyway.



### Broadcasting Services Act

The philosophy of the Report is to ask why should we be any less interventionist in one market than in another market selling similar products? A different approach seems to be taken in the new *Broadcasting Services Act*. It asks why we should be any more interventionist in one market than another similar one selling similar products? But, significantly, the legislation's announced enthusiasm for less regulatory approaches is not always

reflected in its provisions. Fortunately, we still have Australian content and children's programming requirements for commercial television.

On censorship and classification issues too, laissez-faire attitudes give way to intervention. While the detail of "Australian content" and "children's programs" standards — some of the things which are to be encouraged — are left to the regulatory authority to sort out, there is lots of guidance about the things which are to be discouraged or banned altogether.

It's not that programs portraying violence, sex or racial vilification or other related issues do not deserve the regulator's and the Parliament's careful attention. Recent ABT research shows viewers are concerned about these issues: 47% are very concerned about violence, 29% about abusive language, 22% about sex scenes and 17% about nudity, although a much higher proportion — 76% — believe that television "doesn't concern them" since they can always turn it off. The level of concern deserves a response, and a careful one. However, the *Broadcasting Services Act* shows no overall sense of program regulation and cultural policy as a set of interventions to create and diversify viewing choices. To me, that reflects a disturbingly limited view of what television should be doing.

### Pay Television

Pay television is forcing us to confront overlaps across cinema, video viewing and free-to-air television. In doing so, we should not rush to a single classification system, if it ignores the fundamental differences between these forms of viewing and the audiences which undertake them.

Further, I am concerned about how the ABA might use its new powers to hear complaints against the national broadcasters, the ABC and the SBS. The ABT had a role only in relation to the commercial broadcasters. Now, the ABC and the SBS, two broadcasters who are most responsible for intelligent exploration of the limits of public taste, may find themselves increasingly unable to make their own judgments about their own audiences.

The ABA cannot help but pull these services towards a singular notion of the television audience. Most monopolies need to be resisted — a monopoly of public taste or community attitudes might be one of the more insidious.

*Cathy Robinson is the Chief Executive of the Australian Film Commission.*

## Marlene Goldsmith argues for restrictions on some material now generally available

**O**n 4 March 1992, I gave notice of motion in the Legislative Council of my intention to bring in a Bill for the Protection of Children from Indecent Materials. Nevertheless, I am a product of the 1960s, an era when we had to fight to read works of literature, and I was part of the fight. Those of us who are products of that time are probably more resistant than most to the tyrannies of censorship.

For me to reach the position represented by my Bill has taken much soul searching. Simply to state that the pendulum has swung too far in the direction of liberty is inaccurate. Rather, in my view there are some fundamental issues that simply have not been canvassed in the censorship debate.

### Responsibility to children

**F**irst, there is society's responsibility to protect its children. David Haines has stated the role of Chief Censor as being a reactive rather than proactive one. That concerns me, because I believe society does have a responsibility to its children. Ideally, that responsibility belongs to parents, but all of us know instances of children watching television until eleven p.m. or midnight.

Second, there is the nature of freedom itself. "Freedom for" must also imply the concept of "freedom from", or the concept is meaningless. A valid question is whether certain materials which a substantial number of people consider to be offensive should be exposed in public places, where they cannot be avoided. Some people do not want to see photos of naked women in demeaning positions displayed in shop windows. These people are entitled to their rights as well. If we expect parents to safeguard their children, how can they when such materials are prominently and publicly displayed?

### Human rights

**T**hird, there is another fundamental human right: the right to physical integrity. The increasing amount of research showing links between, for instance, the availability of pornography and the level of rape in various states and countries ought to be of concern. There are still many who dispute this connection, but it is becoming more difficult to do so. The argument that an open society, where pornography is freely available, is one where rape is much more likely to be reported falls down on two counts. Some

such societies have very low levels of reported, but much higher levels of actual rape (for example, Sweden, where 87.7% of accused rapists are freed by the courts). Where the likelihood of getting a conviction in court is low, reporting tends also to be low. Again, the open society argument does not explain cases where the availability of pornography has subsequently been restricted, to be followed by a drop in rape rates, such as Hawaii in the mid-70s.

Sooner or later, the free speech debate must consider the issue of women's rights, the issue of whether a pornographer's right to make a buck is more important than a woman's right not to be raped. The issue includes male and child rape, and even murder, but female rape has reached such astronomical levels that, in my view, we must address it. Extrapolating from the 1991 Bureau of Crime Statistics figures for reported rape in NSW and estimates by the NSW Sexual Assault Committee, over a lifespan of 75 years, a woman has at least one chance in eight of being raped. I mentioned this to a group I was addressing recently, saying that, on these statistics, three of them in the room would get raped during the course of their lives – and afterwards three of them came forward to confess they already had been raped. One is left to wonder how many did not come forward.

### Debasement of women

**A** major problem in dealing with this issue is the confusion between the erotic and the debasing. It is simple and easy to dismiss those of us with concerns about pornography as wowsers: stick on a label, and you can deride and dismiss the wearer. But the sort of material I am concerned about primarily involves the subjugation of women, with violence rather than sex – or, more dangerously, with violence as sex. The image that finally pushed me to propose my Bill was the *People* magazine cover in February this year showing a naked woman on all fours on a dog collar on a tight leash, with the caption "Covergirl WOOF: More Wild Animals Inside". The message here was about woman's place in the world, as was the message on the following cover of *People*: a photo of a naked woman on her back covered in bruises, with the caption "Lightning Strips Golf Stunnas".

Magazines like *People* and *Picture* specialise in images of naked women as animals, as tables, as objects and things. The language used about women is similarly depersonalising. Publisher

of *People* Richard Walsh has claimed publicly that he is aiming the magazine deliberately at what he calls "the working class male". In my view, his target is a somewhat different one: men of low social status, whose jobs and environment give them little support for their self-esteem, but who need such support. Walsh provides them with someone to look down on. No matter how menial their position, the readers of *People* can reassure themselves that they are above fifty percent of the human race – the female fifty percent. The Ku Klux Klan provides its members with a disturbingly similar feeling of superiority.

In a society where women are demonstrably unequal, we must ask ourselves whether the freedom to publish, promote and sell such magazines is a violation of women's opportunities, and even their right to be treated as human beings. If it is, then how do we resolve this clash of competing rights?

The distinction between word and image is intrinsic to any discussion of "freedom of speech", a notion traditionally linked with words. What of the power of the visual image, whether photographic or increasingly film? Psychological research shows that print is processed by the analytical, rational left side of the brain, but visual material by the holistic, creative right side. Need we be concerned about media that requires no "translation" (as does abstract print), and that are processed with perhaps little input from rationality?

### A shifting debate

**T**he debate has shifted. The world of the 90s is not the world of the 60s. It is about time that all of us started trying to grapple with the issues that confront free speech now: with the meaning of "free speech", and the fact that it does not exist in a vacuum but competes with other freedoms, with our duty to our children, with the rights and opportunities of women, and with the power of the image.

Polarisation into opposite rigidities on this fundamental democratic freedom can only thwart relevant debate and risk a political resolution that is much less than optimal. Nor is it enough to argue, as commentators such as Phillip Adams and Richard Neville have done, that "this is all terrible, and something needs to be done, but we cannot contemplate censorship" (or words to that effect), without suggesting what the "something" might be. My Bill is not about censorship – adults will still be able to buy what they bought before – but so far censorship seems to be the only suggestion on the table.

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## Julie Steiner Gives a Publisher's Perspective

In *Sense and Censoring* Michael Pollack suggests that the "prevention of a person from freely expressing his or her views is violence". The issue for publishers commenced in earnest in 1455, with the first book ever printed using movable type — the Gutenberg Bible. By 1521 the Holy Roman Emperor prohibited the printing, sale, possession, reading or copying of Martin Luther's works.

### Controlled Freedom?

In Australia the subjugation of thought, through stringent censorship and draconian defamation laws has existed throughout 200 years of white settlement. The tenor of Australia's defamation laws was defined by one of NSW's earliest Solicitor-Generals, William Foster, who stressed the need for restraint of free speech: "*Properly maintained, I look upon a free press as the fountain of all good, but when it is allowed to run wild, as it has done too long in the colonies, it is a pest, worse than Pandora's box.*"

This sense of a controlled freedom, of a prescribed liberalism, is an important and unresolved issue in the 1990's. The dilemma over censorship is summed up in Article 10 of the European Convention of Human Rights. It starts off full of good intentions:

*"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information without interference by public authority and regardless of frontiers"*

Then the Convention appears to have second thoughts:

*"The exercise of these freedoms, since it carries with it duties and responsibilities, 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 and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority or impartiality of the judiciary"*

The constraints on free speech are rarely determined by any democratic process and seem, by this convention, to be constraints on the dissemination of a

fact/non-fiction, or the impact of a fiction/an influence.

### The Publisher's Perspective

Book publishers, though losing some influence to the popular and powerful reach of television, radio, cinema and magazines, still have the ability to influence thought and feeling. Their once held monopoly on information has been lost and replaced by a rare monopoly of permanence.

Since the book began, censorship has been with it. The issue for publishers is not only "Are we for or against censorship?" Rather, given that censorship is institutionalised, the questions are how we identify the real issues and debate them in the social context of the 80s and 90s.

### Issues in the 1990s

I would like to identify briefly what I believe to be the 1990s challenges to free expression. Firstly, libel, of which John Lawrence, the President of the AJA wrote in 1983, "*Defamation laws in Australia assume that knowledge is dangerous, that ignorance is safer than information and that there can be an informed society by encouraging suppression*". The need for the public to have a "right to know" needs to be analysed in two parts. The right can never be challenged, but if it is to be protected from falsehood, what is known can and should be challenged.

## Forum

Secondly, obscenity — since the *Lady Chatterly* trial in 1961, moral campaigners have been able to question the effect of fiction on the basis that it may "*tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it*". This is now more often linked to pornography. We have to ask whether pornography is a symptom or a cause of some men's mistreatment of and violence towards women, and whether it differs from eroticism. Ironically D.H. Lawrence wrote that "*even I would censor pornography, rigorously*".

Another issue is the incitement of racial

hatred. In every nation there are terms of abuse for outsiders and foreigners, frequently the first step to greater brutalities. But what are the consequences of trying to prevent people expressing their prejudice in this way? Terrorism, war and lack of control over disclosure, also represent key areas where publishers must take a position. In Western Europe, terrorism has been the pretext for some of the most stringent restrictions.

"Truth is the first casualty of war" is an old saying. Every government censors in wartime. Military language itself euphemises killing. Examples include the Pentagon Papers in 1971, Mrs Thatcher wanting a "good men's war" in the Falklands in 1982 and the CNN coverage of the Iran/Iraq conflict which sorely hindered publishers' access to the truth.

Finally, the 1980s revealed a powerful censorship — the lack of disclosure by banks, governments and business. The official elites were not obliged to disclose information. The 1990s will not easily overcome this social violence.

In summary, censorship never dies, but just changes its form. Times and morality change. History shows us that J.S. Mill's hope in *On Liberty*, that the abolition of censorship was imminent, was a false one. However, the philosophical heirs of Mill must take heart, the boundaries are being challenged, many victories are achieved and ultimately censorship is forced to change its face.

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This forum was an edited selection of the papers delivered at a recent seminar jointly hosted by the Communications and Media Law Association and the Free Speech Committee.

Editorial constraints prevented us from publishing all papers delivered. However, we would like to again thank all speakers for contributing to this extremely successful seminar.