# CAMPAIGN AGAINST CENSORSHIP

'HE DEFENCE OF LITERATURE AND THE ARTS SOCIETY)

PLEASE REPLY TO:-

The Secretary
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COMMENTS OF CAMPAIGN AGAINST CENSORSHIP REGARDING CONSULTATION PAPER ON REGULATION OF R18 VIDEOS

The Campaign Against Censorship remains opposed to the Video Recordings Act (as amended) as an instrument of State censorship. It is noted that, at his Press Conference of 18th July 2000, the Director of the British Board of Film Classification pointed out that other countries (such as France and the United States of America) do not have State censorship and/or classification of video recordings.

The Campaign Against Censorship regrets that this Consultation Paper restricts those responding to a choice of three options defined by the Home Office. CAC rejects Options One and Three outright. It maintains that Option Two is the best of a bad lot. The Government would, however, be better advised to adopt none of these Options, since none are necessary.

In any event, Option Two may contravene the Human Rights Act 1998: Article 8 (Respect for Family Life) and Article 10 (Freedom of Expression). There is no identifiable, significant harm to children from viewing R18 video recordings. Such harm is necessary to make such a change in the law indisputedly justifiable.

The Campaign Against Censorship favours OPTION TWO ie the creation of a criminal offence of showing an R18 video recording to a minor and/or failing to take reasonable care to prevent a child from watching. The whole point of the R18 Category is to encompass material which is unsuitable for children. That is why sale of such video recordings is restricted to Licensed Sex-shops (Section 12 of the Video Recordings Act 1984).

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It is already an offence to supply a video recording to any person who has not attained the the age specified in the certificate (Section 11 Video recordings Act 1984). This is analogous to the prohibition of the supply of intoxicating substances to a person under the age of eighteen (Intoxicating Substances Supply Act 1985) and of the sale of tobacco to persons under the age of sixteen (Protection of Children Tobacco Act 1986). The mischief targeted by these two statutes is allowing under-age persons to gain access to alcohol and cigarettes.

By contrast, the mischief to which the Home Office is now addressing itself is access by children to R18 video recordings (not mere supply, because that is already illegal by virtue of Section 11 of the Video Recordings act 1984). Other countries trust parents and guardians in this respect. The Home Office, however, has no such faith in British parents ! While not accepting that parents cannot be trusted, the Campaign Against Censorship believes that criminalising the showing of unsuitable video recordings to children is preferable to legally denying British adults access to all material deemed unsuitable for minors.

The desired change in the law can easily be achieved by an amendment to Section 11 of the Video Recordings Act 1984. The requisite new subsection is set out in the Appendix to these Comments (see Page 6). This is less likely to violate the Human Rights Act 1998 than option one. Article 10 of the European Convention on Human Rights states that freedom of expression may be subject to restriction only for specified reasons . The relevant one in the context of R18 video recordings is "necessary..for the protection of health or morals". Only children need "protection" from watching unsuitable material. Adults are competent to decide for themselves.

If such legislation is enacted it should apply the existing standard of criminal negligence, so as to ensure that "Inadvertence" would not be sufficient to result in a conviction.

As paragraph 3. 12 of the Consultation Paper states: "if children are specifically protected, adults should enjoy greater freedom to watch what they wish." That would be an entirely beneficial development. It would end the use of the protection of children as a pretext for the imposition of censorship on adults. The United Kingdom is one of the only countries in the whole continent of Europe to suffer State censorship of video recordings. This is unacceptable in a modern democracy and is a breach of the right to freedom of expression contained in Article 10 of the European Convention on Human Rights (incorporated in the Human Rights Act 1998), unless one of the specified exceptions is proved.

The leading case on Article 10 is Handyside v UK A 24 (1976) 1 EHRR 737, where the Court held that the freedom of expression includes ideas that offend, shock or disturb the state or any sector of the population, because such are the demands of that pluralism, tolerance and broadmindedness without which there is no democratic society. As Jacques Lang, French Minister of Culture, stated in 1975 when film censorship was abolished there: 'The State has no right to prevent adults from watching what they want."

Anyway, the control over British video recordings is illogical. It was hurriedly introduced as a result of a moral panic in 1984. As Paragraph 1.12 of the Consultation Paper states this was caused by reports that children were watching "video nasties." Subsequent evidence revealed that this was scaremongering by the tabloid Press and the pro-censorship lobby. Children were shown to have told researchers (out of youthful bravado) that they had seen violent video recordings which did not exist. (See: Martin Barker "The Video Nasties" Pluto Press, London, 1984 p126). The recommendations of the Home Office Williams Report on Obscenity and Film Censorship (Cmnd 7772) were ignored.

In any event the censorship introduced in 1984 (the year Orwell predicted for "The Thought Police") applied only to video recordings and thus ignored sexually-explicit magazines. If it is desired to prevent the British public having access to all pornographic material, the same standards must apply to everything, however published. Printed (as opposed to videoed) illustrations of actual sexual intercourse are now lawfully sold in British sex-shops. This is because of recent test cases where juries have held that in such circumstances the magazines do not contravene the Obscene Publications Act, which proscribes material tending to deprave and corrupt those likely to see it.

Sentencing options should be the existing ones for illegal supply. There is no justification for treating mail order more strictly, especially as it is lawful for adult video recordings in all other European countries. "Grooming" a child for illegal sexual activity should be dealt with under the existing Indecency with Children Act, rather than complicating the easily provable offence of illegally showing a R18 video recording by trying to impute a subjective motive when deciding the appropriate sentence.

By requiring the classifying authority to refuse certification to any unsuitable material which "may" be viewed by a child or young person, OPTION ONE would be a violation of the European Convention of Human Rights. The permitted restrictions of the right of freedom of expression (including protection of children) are strictly construed by the European Court in order to protect that right from unreasonable erosion.

Option One might also force the BBFC to change the liberalised new R18 guidelines (issued on 18th July 2000) by making them more censorious. That would mean reproscribing the type of sexually explicit material which is now being certificated for the first time. Such a step would bring the whole system of classification into disrepute by introducing an illogical stop-go system, dependent on the whims of politicians playing to the grundyist gallery. It would also constitute a vain attempt to buck the world trend of greater, not less, freedom of expression by trying to put the clock back to authoritarianism and State thought control.

Also, the addition of the word "may" would in this context be unworkable. How can the Board be expected to predict what may happen to any video recording ! To be on the safe side the Board would have to refuse a certificate to all material which is unsuitable for children, making the United Kingdom the only country in the world where adults are restricted to viewing only juvenile material !

OPTION THREE is equally unacceptable. It smacks of "jury-tampering" ie restructuring the Video Appeals Committee to achieve different (that is illiberal) judgments to appease pro-censorship writers of letters to the Home Office ! (Paragraph 3.17 of the Consultation Paper). The reference to "general public perception" is misguided. The Paper admits that this is in fact public misconception that the Video Appeals Committee is "unrepresentative and unaccountable."

The Campaign Against Censorship is particularly opposed to any form of of Option Three which transforms the Video Appeals Committee into a mere review body. That would remove the right of appeal and thereby contravene natural justice and possibly the Human Rights Act 1998: Article 6 (Right to a Fair Trial).

The remedy is to educate the public about the Committee's activities including its annual report to Parliament, not to falsely concede that the misconception is well-founded.

The silent majority has no strong views about pornography, having a live and let live approach. Even if, however, the majority of the population of the United Kingdom want more censorship (which CAC disputes) it has no right to impose it. The "brute majority" (as Dr. Jinnah described it) has no right to deprive the minority of its human right of freedom of expression. "If all mankind minus one were of one opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind" (J S Mill "On Liberty" 1859).

In any event the Video Appeals Committee is no more "unrepresentative and unaccountable" than the existing judiciary, who are already appointed by the Lord Chancellor. Piecemeal reform is not the answer. It must await the establishment of the long called-for Judicial Appointments Commission, covering all official adjudicators. Appointment of the Video Appeals committee by the Lord Chancellor is just as inappropriate as appointment by the Home Secretary. The fact that the latter is already interfering with the work of the British Board of Film Classification is regrettable and must cease. (See example of such interference in 1997 cited in paragraph 2.1 of the Consultation Paper).

The United Kingdom is the only country in Europe with a large "black market" in video recordings. This is the direct result of the uniquely strict censorship imposed by the British Board of Film Classification, which forces sexually explicit material underground.

The baleful results of forcing the trade in sexually-explicit video recordings in this country underground were explained to the Press by James Ferman, when he retired as Director of the British Board of Film Classification two years ago. He pointed out that this made a large part of the video trade completely deregulated. Contract, copyright, tax, trade description and all other laws cease to apply when an activity is illegal.

The liberalised new R18 guidelines issued on 18th July 2000 may improve the situation, if they are given time to work ie not altered by Option One.

Child protection, copyright and tax laws cannot be applied to black market sales. This problem can be solved by the creation of the criminal offence described in OPTION TWO of the Consultation Paper and defined below. This would allow the creation in this country of legitimate outlets for sexually-explicit material, as is the case throughout the rest of the Western World. There is no justification for continuing to use video censorship to prolong the policy of "No sex please-we're British !"

AMENDMENT to
VIDEO RECORDINGS ACT 1984
SECTION 11
After the end of subsection (1)
ADD

"(1A) Where a classification certificate in respect of a video work states that it is R18 any person who wilfully shows a video recording containing that work to a child with intent to cause harm is guilty of an offence. Any person who wilfully allows a child to watch a video recording containing that work or wilfully fails to take reasonable care to prevent a child from watching such video recording is guilty of an offence."

CAC favours the sentencing options in paragraph 3.13 of the Consultation Paper ie that the penalty for the proposed new offence would be in line with that for other offences relating to the supply of R18 video recordings.