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THE IMPACT OF HOME ENTERTAINMENT TECHNOLOGIES  
ON GOVERNMENT'S ABILITY  
TO REGULATE SEXUALLY EXPLICIT MATERIALS

By

Mike Strathdee

Bachelor of Arts, Wilfrid Laurier University, 1983

THESIS

Submitted to the Department of Political Science  
in partial fulfillment of the requirements  
for the Master of Arts degree  
Wilfrid Laurier University

1989

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## ABSTRACT

This thesis examines the impact of home entertainment technologies (pay TV, home satellite dishes and video cassettes) on the ability of governments and regulatory officials to control sexually explicit materials. Information was gathered through personal interviews, a literature review and a nation-wide mail survey of 400 people selected because of their professional experience or personal interest in the topic.

The first section of the thesis provides an overview of regulation in Western nations, sets out the philosophical case for restrictions on sexually explicit materials from the conservative, liberal, feminist and Christian perspectives and explains the purpose of the study. A definitional section follows outlining the various definitions used for the terms "erotica" and "pornography." The third section looks at relevant issues in the literature, with particular attention to the Fraser and Badgley Reports. An examination of the history and current status of the home entertainment technologies with which the study is concerned follows. This section outlines many of the regulatory challenges posed by VCRs, home satellite dishes and pay TV. A fifth section explains the manner in which the survey was conducted, problems experienced in the study, and survey findings.

Survey results revealed a certain degree of consensus among respondents as to what constitutes "pornography", but little common understanding of the term "erotica." These findings suggest a need for

new terminology. Strong support was found for the hypothesis under study, that technology is making regulation of sexually explicit materials more difficult. Also discovered in the research was: support for a federal government role in regulating sexually explicit materials, and a belief among respondents that neither federal nor provincial governments spend enough money in their efforts to regulate sexually explicit materials. While respondents don't think that Canadians are over-censored when it comes to sexually explicit materials, they tended to disapprove of the use of stringent measures to achieve a greater degree of control over sexually explicit materials, with women being more supportive of regulation than men.

The thesis concludes with a discussion of the lack of will to regulate displayed by a number of agencies, what might change that situation and the restrictions on commercial activity and personal freedoms which would conceivably be necessary in order to achieve a greater degree of control over sexually explicit materials.

## ACKNOWLEDGEMENTS

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CHAPTER ONE  
INTRODUCTION

Background

For Canadians, the notion of regulation of sexually explicit materials(1) is frequently controversial, as federal cabinet ministers who have grappled with the question and unsuccessfully tried to bring in new laws in this area over the past few years will readily admit. While coverage of these legislative efforts in the popular media has created the impression that Canadians are unsupportive of regulation of sexually explicit materials, this is due more to the tactical and public relations abilities of groups opposing regulation and the Mulroney government's overly broad efforts to regulate all sexually explicit materials than it is a reflection of popular opinion. Oleh Iwanyshyn, James Check and Nelson Heapy's survey of 1,071 non-French speaking Canadians in 1985 showed solid support for regulation in certain circumstances. Sixty per cent of respondents advocated banning violent and degrading sex scenes, and a further 32 per cent felt that such depictions should be restricted to persons over the age of 17.

The study also found virtually the same level of support for

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(1) The term "sexually explicit materials" will be used to describe the object of this study, with the exception of materials that exploit children's sexuality. This latter class of materials is commonly understood and described as child pornography. That usage will be retained here. Usage of the term sexually explicit materials should be understood as including both what is known as "erotica" and "pornography." Use of those terms in this discussion should be understood as the usage made by the author being cited. The definitional controversy will be discussed in the next chapter.

restrictions on video cassettes sold or rented for private use as for movies shown in public movie theatres. That finding is significant inasmuch as the place where children will likely be exposed to depictions of explicit sex is in their home, through watching video cassettes, satellite or pay-television or, in some instances, on commercial television. Baldwin believes that such exposure is inevitable regardless of parental intentions, and particularly as commercial television attempts to compete with its successful new competitors.

Children will be exposed to more sex on television. Where parental discipline is used to prevent viewing of these programs, it is likely to break down occasionally, with even more excitement over the special permission or clandestine. Broadcast television, lest its programming seems bland by comparison, is likely to be forced into further liberalities in programming... (Baldwin, 1983, p. 353).

There have also been instances of high school students using computers for educational experiences other than those which teachers planned or approved of, as the London Free Press reported in an article based on an interview with a Toronto police officer. The officer received a computer disc that a high school teacher had seized from a student. The disc, which contained graphics depicting penetration and other sex acts between men and women, was an American program that could be used in Apple computers. (London Free Press, May 31, 1984, p. A2).

Persons philosophically opposed to regulation have taken to arguing that technology has rendered government efforts ineffective, and that any measures that would deal with the situation would not be

tolerated by the Canadian public.

...it would be practically impossible to censor pornography in our society. First, our extensive trade and uncensored contact with the U.S., and the ability to reproduce text and graphic material cheaply and easily (home computers and VCRs, satellite TV dishes, color Xerox reproduction, etc.) would make it necessary to use truly draconian measures to effectively censor media in Canada (Fisher in Lowman, 1986, p. 173).

Other writers take the position that while complete control may be difficult to achieve, placing limits on sexually explicit materials is both possible and desirable.(1) Those two issues - whether sexually explicit materials can still be regulated in the face of technological advances, and whether the public will accept the intrusion on personal freedoms that any such regulation, if possible, might represent - form the basis of this study. Boisterous and sometimes hysterical tirades about the dangers of regulation on the part of civil libertarians and the arts community have so dominated recent public debates on the subject that the reasons changes to existing laws were proposed in the first place have been pushed to the sidelines, and the question of enforceability has not yet been properly addressed.

As a prelude to examination of these issues, this study will review the case for regulation and will outline rather than debate the

---

(1) Mishan writes: "what the law can easily do is to stop sexual obscenity flaunting itself openly in the marketplace. It can make the peddling of pornographic literature difficult and costly. Some pornographic literature and blue films would no doubt continue to be available, but they would not appear openly on sale in rows of shop windows or at curbside kiosks in central parts of the city. As before the war, those whose craving for such items is strong enough would have to go to some trouble and incur costs in order to obtain them" (Mishan, 1980, p. 39).

variety of philosophical arguments put forth in defence of that position. First, however, we turn to a brief discussion of the current state of regulation of sexually explicit materials in North America and Europe.

#### Regulation in Canada

Responsibility for regulation of sexually explicit materials in Canada is divided amongst at least a score of agencies. Eight of 10 provinces have film classification or censorship boards, the federal Customs and Excise Department is responsible for examining materials entering the country, the Post Office is responsible for material entering the country through the mail, and the RCMP, provincial and municipal police forces all play a regulatory role. In Ontario, the Ontario Provincial Police, the Attorney-General's Office and the Metro Toronto Police force have co-operated since 1975 to control sexually explicit materials through Project P, a group of officers specially assigned to that task.(1)

In respect to glossy magazines, there is also a certain degree of industry self-regulation, as advisory councils have been established in Ontario and British Columbia. The powers and roles of these various

---

(1) According to V.C. Craig, Superintendent and Director of the OPP's General Investigations Branch: "Project P is composed of five members of the Ontario Provincial Police and three members of the Metropolitan Toronto Police force. Two investigators are assigned to investigate any complaints regarding the distribution of Hate Literature. During the calendar year 1987, the Pornography Section conducted 258 investigations which resulted in 184 criminal charges. Obscene material valued at \$103,300 was seized (Craig letter, September 15, 1988).

bodies, particularly the film boards and Customs, will be discussed at greater length in a subsequent chapter.(1)

#### Regulation in the U.S.

Prior restraint of films in the United States disappeared in 1965, a decade before the introduction of commercial video cassettes.(2) While the censorship boards may have disappeared, censorship still exists in the U.S., in the form of classification systems that restrict the showing of "R" and "X" -rated films to

- 
- (1) "The British North America Act (now superceded by the Canada Act) gives the federal government the power to make criminal law and the provinces the power to enforce that law. The federal government has the power to regulate postal service, broadcasting, and the like. Provinces have power over 'social and cultural matters'; they can thus enact legislation pertaining to places of amusement, theatres, liquor sales, etc. Provinces may delegate powers to municipalities, under the 'Municipalities Act'" (Ridington and Buffie, 1984, p. 29).
- (2) "In the U.S., the Fourteenth Amendment led the Supreme Court to strike down a prior censorship regime very similar to the Canadian censor boards in 1965 (Freedman vs. Maryland 380 U.S. 51). The court found that to preserve due process of law, the censors could not ban a film prior to its public exhibition. Since that decision, prior censorship has ceased in the U.S. Now if a local authority objects to a film, a complaint must be filed with a circuit court. The authority must then assume the burden of proving that the film is offensive and must be cut or banned..." (Dean, 1981, p. 206) One state censorship board, in Maryland, somehow survived for another 16 years, and was disbanded in 1981 when the state legislature refused to renew its charter. "This board, which successfully prevented Maryland residents from viewing I am Curious-Yellow, had been the only functioning state censorship agency over the past 15 years. Its demise, the retiring chairwoman warned, was "just another step toward our becoming lovers of pleasure rather than lovers of our fellow man. America is degraded." Having long lobbied to halt the board's operations, the MPAA (Motion Picture Association of America) was pleased. "This removes a staining blot on the Constitution," said Jack Valenti. "It makes Maryland, the fabled Free State, a free state at last, along with the other 49" (de Grazia and Newman, 1982, p. 147).

people over a certain age, and of laws that limit where R rated films may be shown. This system may be private, that is, operated by the Motion Picture Association of America, but self-regulation of certain aspects of the industry continues to take place long after formal government regulation has disappeared. (MacMillan, 1983, p. 289)(1) Action against sexually explicit materials in the U.S. often proceeds as a result of the lobby actions of feminists and other groups that mobilize public opinion to have an ordinance passed in a particular city, or launch individual or class action civil suits against the producers or distributors of the materials. Justice Department researcher Daniel Sansfacon, who prepared a report on pornography for the Canadian Special Committee on Prostitution and Pornography (hereafter known as the Fraser Committee), believes that concerns about sexually explicit materials in the U.S. have resurfaced in the 1980s. A new civil rights approach has developed which focusses on exploitation and degradation caused by some sexually explicit materials, materials which he says have become more gross and violent in recent years. He points to the emergence of video cassettes as one

---

(1) de Grazia and Newman argue that the existing forms of private censorship constitute unchallengeable barriers. "Today, even a producer's ideas may be curtailed by the industry's rating and classification system (the Code and Rating Administration). If a producer wants to reach the largest audience, and that one includes minors, he or she must not only satisfy, but anticipate the system's judgement of whether the film is suitable for youths because of sex, violence, or some other possibly harmful ingredient. These private sorts of censorship have never been recognized by the American legal system because they are impressed on the film's creators and disseminators not by "state action," but in the "private" sphere - by persons and organizations deemed legally incapable of violating anyone's constitutional rights" (de Grazia and Newman, 1982, pp. xviii-xix).



of the reasons for the renewed debate, and concern about children being exposed to materials entering the home. (Sansfacon, 1984, p. 43).

### Regulation in Europe

During the late 1960s and 1970s, laws governing sexually explicit materials were liberalized in the Netherlands, Sweden, and Denmark. That trend was not nearly as prevalent in more conservative nations such as England, Wales, Australia, New Zealand, France and West Germany.(1) The shift in patterns of regulation regarding sexually explicit materials is not merely a pendulum-like phenomenon, or a tidal surge of conservatism rushing in followed by a wave of liberalized attitudes sweeping everything in the opposite direction. There have, to be certain, been some cyclical actions and reactions, but concerns and issues surrounding regulatory questions have become

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(1) In England and Wales, cinemas are licensed to show particular categories of films. The British Board of Film Censors, a non-governmental body formed by members of the film trade, also classifies videos and has the power to ban a particular title (Fraser, 1984, pp. 231-233). In Australia, the Commonwealth Film Censorship Board has the power to ban and classify films. Importation of sexually explicit films is regulated by Customs. Various Australian states also classify "all pornographic material destined for public distribution," using eight classifications for films and videos including an "X" rating (Ibid., pp. 235-238). A censorship board in New Zealand has the power to classify, restrict, cut, and ban films and videos (Ibid., p. 240). It is worth noting that Australia and New Zealand, which Fraser notes as being the most successful nations in the world in controlling sexually explicit materials, are also the most geographically isolated from the production centres of these materials.

more sophisticated.(1) Fraser explains the change this way:

To some extent at least, a distinction has developed between pornographic material which is violent and degrading on the one hand, and that which is merely sexually explicit on the other, with the former attracting the legal sanctions, or at least stiffer legal sanctions than the latter (Fraser, 1985, p. 255).

Concerns about child pornography and children's uncontrolled access to sexually explicit videos have led to the implementation of new legislation in many countries, including some which had abandoned almost all regulation of sexually explicit materials.

...the overall picture seems to be one of systems struggling to balance within the law, a recognition that society's attitudes toward sex and sexuality have changed in the direction of greater tolerance of visual representations of a wide range of sexual activity on the one hand, and on the other that relaxed attitudes have encouraged some in the pornography industry to glorify and profit from the portrayal of violence and degradation, especially of women, and the sexual exploitation of children. The process of reform is being complicated by the technological breakthroughs, such as the home video explosion (Fraser, 1985, p. 256).

---

(1) Kiedrowski and van Dijk, in their study of pornography and prostitution in five European nations for the Fraser Committee, made the following observations: "In the late seventies, it appears that the debate on pornography was reopened to a certain extent. Contrary to the situation in the previous decade, several concerned groups now demand from the government more stringent prohibitions and, or, prosecution policies. ....pornography is condemned by many feminists as sexist and discriminatory against women. Secondly, feminist authors have, in particular, criticized the distribution of materials depicting sex with young girls and sadistic acts. The new criticism against pornography was aggravated by the recent increase in the sales of video films of a sadistic nature" (Kiedrowski and van Dijk, 1984, (p. 122).

## The History and Justifications for Censorship

In Canada, most efforts to regulate sexually explicit materials, either by provincial film boards or by federal customs officials, have taken the form of prior restraint.(1) For this reason, it is appropriate to undertake a brief discussion of the history of prior restraint, or censorship, as it is popularly, and most often disparagingly, referred to.(2) The word censorship is derived from the Latin term *censura*, which means to tax, to value or to judge. The concept is based on the Roman idea of social and legal justice, as Olga and Edwin Hoyt explain:

...censor in ancient Rome was one of the magistrates acting as census takers, assessors, inspectors of morals and conduct. If a citizen failed to maintain a standard of civic duty, a *nota censoria* was placed on the rolls opposite his name (Hoyt and Hoyt, 1970, p. 9).

- 
- (1) Prior restraint refers to official restrictions on speech imposed in advance of publication. Subsequent or post restraint involves the imposition of post-publication penalties (MacMillan, 1983, p. 411).
  - (2) Feminist writer Susan Cole, who does not rule out the idea of use of state action to control sexually explicit materials, posits that the word censorship is so emotionally charged that its use distracts attention from central issues. Cole writes: "It would probably be useful if we were to stay away from the word 'censorship' and replace it with the more acceptable 'regulation.' Regulation is actually a more accurate term for what should be done with the pornography industry and speaks more eloquently to the fact that only an infinitesimal amount of pornography could possibly fall under the rubric of art, which we are least likely to want to restrain. The rest is not art, it is product, and there is nary a product on the market that is not regulated in some way or which does not have standards to which the product must comply. So, when we say the product must not celebrate violence against women and suggest that the censor must administer that guideline, we are seeking to regulate in the same way as we say that white bread can contain only so much preservative or that a lot of hot dogs can contain only so much cereal" (Cole, in Ridington, 1983, p. 36).

Governments throughout the centuries have used political censorship to maintain their power, nations at war have invoked military censorship to prevent assistance to the enemy, and the church has historically used religious censorship to control reading materials that it felt might tend to undermine the faith. Censorship, primarily for political and religious reasons (Ibid.), has existed for as long as there has been written communication. Contemporary censorship outside communist nations and countries at war has shifted more to the popular and cultural level, but it still takes numerous forms, both overt and subtle, preventive and punitive. (Ibid.) Thelma McCormack describes censorship as a form of social control, an evaluative system that assigns approval and disapproval. Like other forms of social control, censorship serves as an incentive and a deterrent to certain behaviors and the expression of certain attitudes, she states (McCormack in Singer, 1983. p. 210).(1)

A commonly raised anti-censorship argument is that government cannot legislate morality. Political Scientist Harry Clor says that such arguments are specious, and fall apart on close examination. Clor states that the statute books of most nations contain numerous laws which constitute attempts to enforce compliance with moral norms. He cites laws against brothel keeping, pimping, incest, bigamy, polygamy,

---

(1) Hoyt and Hoyt write: "Today, the meaning given to the term 'censorship' varies from the very specific to the very broad. Psychoanalytically speaking, the censor is the psychic agency that represses unacceptable notions before they reach consciousness. In the wider social sense, however, censorship generally refers to official prohibition or restriction of any type of expression believed to threaten the established order" (Hoyt and Hoyt, op. cit., p. 9).

euthanasia, cruelty to animals, duelling, gambling, narcotics, public indecency and obscene publications, among others. (Clor, 1969, p. 176)(1) Even a staunch opponent of censorship such as Arthur Schlesinger Jr., who sees censorship as rooted in fear, zealotry and fanaticism, admits that freedom of expression in the realm of sexually explicit materials is not absolute. In an otherwise unrelenting polemic against censorship in the preface to a New York Public Library compendium entitled "Censorship 500 Years of Conflict." Schlesinger writes: "even the libertarian must reluctantly allow that there is a point at which liberty passes into license - as, for example, the sale of hardcore pornography to children." (Schlesinger in The New York Public Library, 1984, p. 9). Author D.H. Lawrence, whose novel Lady Chatterly's Lover was frequently banned in the early part of this century, allows for action against some sexually explicit materials in his 1929 pamphlet "Pornography and Obscenity."

...even I would censor genuine pornography, rigorously. ....you can recognize it by the insult it offers, invariably, to sex, and to the human spirit. Pornography is the attempt to insult sex, to do dirt on it (quoted in New York Public Library, 1984, p. 117).

Access to, or production of, sexually explicit materials, then, is not an absolute right, but must be viewed in relation to competing values. Some writers argue that this presumed right of access is

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(1) Clor advances two justifications for the censorship of sexually explicit materials. "that its unrestrained circulation endangers values and qualities of character that are indispensable for responsible citizenship and decent social relations; (and) that in society's effort to preserve values and qualities that are important to it, there is a legitimate role for the law. These presumptions are not unreasonable" (Clor, 1971, p. 109).

over-valued, and that sexually explicit materials are an under-regulated commodity. Sharon Nelson argues that in relative terms, they are virtually unregulated because arguments about freedom of expression cloud the fact that sexually explicit materials are a commodity produced for profit. She writes: "In a country where controls and restrictions of the production, importation, distribution and sale of commodities are the norm, pornography is the exception" (This Magazine, February, 1985, p. 10).(1) Kristol gives several examples of how competing values have led to government regulation.

Liberal opposition to censorship must be qualified with the realization that government control in many forms is accepted and seen as both necessary and positive. We have no problem contrasting repressive laws governing alcohol and drugs and tobacco with laws regulating (i.e. discouraging the sale of) alcohol and drugs and tobacco. Laws encouraging temperance are not the same thing as laws that have as their goal prohibition or abolition. The idea of restraining individual freedom, in a liberal way, is not at all unfamiliar to us (Kristol in Cline, 1975, p. 53).

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(1) It is arguably somewhat absurd to talk about the question of freedom of expression in the context of a multi-billion dollar North American industry, particularly with reference to the major film studios. Phelps suggests that the ownership structure of the media means that internal censorship will exist. "The commercial cinema with its enormous financial investment and oligopolistic distribution and exhibition structures will never be a vehicle for true freedom of expression. I cannot feel that official censorship is the greatest barrier between the film-maker and his public - nor do I agree that the sort of changes recommended by many 'liberal' observers will necessarily improve the situation" (Phelps, 1975, pp. 15-16).

### Why have controls on sexually explicit materials? Four views

Broadly speaking, various degrees of controls on sexually explicit materials are philosophically justified from at least four basic ideological perspectives: conservative, liberal, feminist and Christian. These categories are not mutually exclusive and there are some common elements. They are, however, sufficiently discrete to warrant individual discussion as a means of outlining the range of views among those who favor regulation.

In a brief prepared for the Caplan-Sauvageau Task Force on Broadcast Policy entitled "Broadcasting and the Charter of Rights," Kathleen Mahoney and Sheila L. Martin outline the conservative, liberal and feminist views of freedom of expression as they relate to broadcast media and sexually explicit representations. They point out that the right of free expression is often curtailed when it conflicts with other rights and fundamental freedoms (Mahoney and Martin, no date, p. iii). Just as those who have sought to limit free expression have historically and philosophically been required to justify the intent, terms and effect of the restriction, a legal justification is now called for under the Charter of Rights and Freedoms (Ibid., p. iv). Prior restraint of information or images is not allowed for in the Broadcasting Act, but other mechanisms, such as the possibility that equality principles will be impaired if freedom of expression is unregulated, or the quest for balance and fairness in broadcasting are invoked by Mahoney and Martin. Program regulations directed against violent pornography, they say, can arguably be justified on the grounds that the unregulated broadcasting of violent pornography

creates a social imbalance in broadcasting, causes harm to society and is a form of unlawful sex discrimination against women (Ibid., p. v).(1)

### The conservative approach

For conservatives, any expression that poses a threat to the organizational structure of a society can be justifiably regulated or censored. Under this view, any activity that causes feelings of intolerance, indignation and disgust in the community can be justifiably curtailed (Ibid., p. X).

Part of the harm the conservatives identify from the unregulated depictions of sexual activity is the alteration of attitudes toward sex and toward each other, and the creation of a society where loss of privacy, infantile sexuality and promiscuity become the norm (Ibid., p. 4.3).

### The liberal approach

Mahoney and Martin take the position that the focus of obscenity law has shifted, initially away from the conservative view and toward the liberal view and later toward the feminist view, as we shall

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(1) For Mahoney and Martin, the concept of harm is explained as follows: "harm to society which may result from unregulated expression is greater than the harm which may result from its restriction.... e.g. criminal law prohibition against obscenity and hate propaganda, the Broadcasting Act prohibition of obscene, indecent or profane images.... As both the concept of harm and the balancing process between competing rights involve large subjective elements, the debate in any individual case will centre on whether there is sufficient harm to warrant government intervention" (Ibid., pp. viii-ix).



discuss shortly. For the liberal, measurable harm or a "clear and present danger" must be established in order to justify a limitation on speech. Liberals generally see little or no role for the law in dealing with sexual expression, except when measurable, recognized harm can be attributed to the expression or in cases where limited public air waves or channels are used (Ibid., p. xi). It must be noted that "liberals differentiate between public and private sexual expressions allowing some forms of public sexual expression may be curtailed if they cause psychic offence to others" (Ibid., p. 4.7). Liberals will allow for the censorship of material depicting real abuse, such as sexual expression including real sexual assault, torture or murder, or sexual expression involving children. But "legislation must therefore be narrowly defined and only target the specific harm which meets the clear present danger test" (Ibid., p. 4.9). Mahoney and Martin further argue that while obscenity provisions in the Criminal Code are based on the conservative philosophy, judicial interpretations that adopted and determined a community standards test showed an acceptance of some aspects of liberal thinking. They believe that judicial thinking has evolved from acceptance of the liberal outlook to incorporate feminist concerns about equality rights (Ibid., p. xii).

## Feminist concerns

One widespread feminist position on sexually explicit materials asserts that:

if certain forms of sexual expression undermine women's constitutionally guaranteed rights to equality, they are harmful and can be legitimately curtailed. Feminists claim that sexual expressions which qualify as pornography damage women's rights to equality and physical security. Such expressions cause a public, generally widespread idea that women are inferior and entitled to only a limited role within society (Ibid., p. xi).

To support their claim that laws governing regulation of sexually explicit materials are shifting to reflect feminist concerns, the authors point to the protection granted to equality rights and gender rights under the Canadian Charter of Rights and Freedoms (p. xii). Under the charter, the government is required to establish that a proposed limitation is "reasonable."<sup>(1)</sup> In discussions of limiting sexually explicit material feminists distinguish between "pornography", which they believe causes public, generalized harm by making all women its victims (Ibid., p. 4.12), and "erotica", which

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(1) Reasonableness has been defined as follows: 1) Is the object of the legislation a reasonable objective in the advancement of the common good? 2) Is the legislative programme reasonably appropriate to the furtherance of the object of the legislation? 3) Is the infringement reasonably necessary to the success of the legislative program? 4) Is the infringement too great a price to pay for the presumed benefit to be obtained from the legislation? (Ibid., p. 2.6)

they believe to be healthy and necessary (Ibid., p. 4.14).(1) A discussion of the definitional debate over what distinguishes the terms "erotica" and "pornography" follows in Chapter Two.

### Christian concerns

The diversity of opinion to be found amongst Christian denominations on many issues precludes the making of a definitive statement in this area. This discussion will outline recent positions taken by major bodies within what can be broadly classed as the Christian church in order to highlight the views of a constituency that has been vocal and active in discussions about changes to laws governing sexually explicit materials. Christian concerns about sexually explicit materials are linked to a belief that some sexually explicit representations have a negative impact on people's perceptions of sexuality and their attitude toward sexuality. U.S. writer Victor Cline summarizes those concerns as follows:

The Judeo-Christian sexual ethic has always taken a position that fidelity and responsibility are vitally important. Pornography is generally seen as a direct assault on this position, suggesting a letting down of sexual standards; licentiousness, an abandonment of reason to libidinal impulse; an attack on the family and the bonds of loyalty, love, self-discipline and restraint which hold it together (Cline, 1974, p. 253).

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(1) That is not to suggest that feminists are the only ones to make that distinction, as we shall demonstrate in Chapter Six. As is the case with many groups sharing a particular world view, feminists are divided on the question of regulation of sexually explicit materials, and of the appropriateness of specific responses to that question. For an anti-censorship perspective, see Burstyn (Ed. 1985), Women Against Censorship. Thoughtful rebuttals of the arguments put forth in that collection have been made by Glass (1987), and Cole (1986).

Dr. Suzanne Scorsone, Director of the Office of Catholic Family Life at the Archdiocese of Toronto, in a submission to the Fraser Committee, wrote that "pornography has a strong impact on images of sexuality, attitudes toward sexual activity and behaviour. It is not cathartic; rather it creates attitudes and desires, while presenting powerful suggestions about how they can be satisfied." (Scorsone, 1984, p. 1) Submissions by other church groups to the Fraser Committee echoed these concerns. The Anglican Diocese of Toronto said that "pornography victimizes women by portraying them as mere objects, and degrades men by portraying a stereotype of aggression. Pornography increasingly uses children as subjects, and increasingly depicts and incites to violent behavior" (Fraser, op cit., p. 65). Addressing a Fraser Committee hearing in Ottawa, the Canadian Conference of Catholic Bishops said that "pornographic material... makes us inclined to accept violence, to downgrade and even deny the dignity of other people, and to unleash our tendencies to dominate others" (Ibid.,

p.68).(1) Another Christian denomination, the United Church of Canada, in its task force report on pornography, took a line of argument that incorporates feminist concerns with the basic belief that the mind, body and spirit are interrelated and cannot be separated.(2) For many Christians, certain sexually explicit materials express messages that are contrary to the Christian view of humanity in general, and of sexuality in particular.

Pornography negates sexuality as an expression of love and a form of intimate communication between equal human beings. It focuses merely on parts of the body (mouth, buttocks, anus, breasts, vagina, penis), ignores mind and spirit, and turns human beings into objects. (Ibid.)

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(1) These concerns about the effects of sexually explicit materials overlap somewhat with the conservative's philosophical concerns as expressed by Mahoney. Christian concerns in this area can, however, be viewed as being more encompassing than the conservative's concerns, and as enunciated by Scorsone, these concerns transcend the conservative concerns to discuss material that many conservatives might not consider to require regulation. Scorsone writes: "Even consensual sex, as portrayed in the media, can be destructive of Canadian societal values. Group sex or any other form of sexual act could be, in theory, consensual, militating against the valuing of sexual expression as part of a loving, permanent, marital commitment. Depiction of explicit, consensual sex would lead to an expectation that any woman will consent, leading further to coercion in real man-woman relationships. Even depiction of loving, even marital, sexual intimacy in full, explicit detail would be contrary to the standards of most Canadians and would ultimately dehumanize sexuality itself, as viewers are desensitized to this profound and fundamental part of their own personalities" (Ibid.).

(2) The report states that "In relationships, we are called to affirm the worth and dignity of ourselves and others. Our human interaction should be an integrated wholistic experience that includes body, mind and spirit. Sexuality is one human interaction that expresses and enhances mutuality; in positive sexual exchanges there is full consent, mutual respect and shared commitment, as well as physical pleasure for those involved" (Division of Mission in Canada, The United Church of Canada, Pornography Kit, p. 1).

Christians also argue that since people are made in the image of God, an attack on humanity through some "unnatural" sexually explicit depictions is an attack on God.(1) In summary then, arguments to support the regulation, and in some cases, censorship of sexually explicit materials have been put forth from a variety of philosophical perspectives. Conservatives argue that any activity that poses a threat to society by causing feelings of intolerance, indignation or disgust can be justifiably restrained. Liberals, for the most part, set down more stringent guidelines, saying that those who would regulate sexually explicit materials must establish measurable harm or a "clear and present danger" to justify the limitation on speech that such regulation would represent. Some feminists see sexually explicit materials which qualify as "pornography" as an attack on women's equality rights under the Charter of Rights. They argue, however, that other sexually explicit depictions known as "erotica" are healthy and deserve protection. For their part, many Christian denominations argue that many sexually explicit depictions represent an assault on the Christian view of sexuality and values such as fidelity, commitment, responsibility and the family. For these reasons, most Christians support regulation and censorship of sexually explicit depictions.

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(1) "Pornography is one disfiguration of the divine goodness. In pornography, parts and functions of the human body are presented as unrelated to the whole person's humanity. The body is isolated and alienated from spirit and love, mutuality and trust, resulting in "objectification" - usually the objectification of a woman. Her humanity is masked, and she may become the victim of contempt, hatred, and even violence. Pornography is an assault on women's full humanity and therefore on the image of God in her" (Ibid., p. 7). For some Christian groups, the same line of reasoning would be taken on any sexually explicit depictions, including erotica.

## Statement of the Problem

The problem that this study will address is the effect that technology may be having on the ability of government and regulatory bodies to regulate sexually explicit materials, given the sophistication, affordability and mass consumption of home entertainment devices which receive, record and/or playback sexually explicit movies and images. In Canada, some provincial governments have not yet established agencies or regulatory frameworks to deal with these new forms of home entertainment which fall within their jurisdiction. Mr. O.G. Hooper, Chairman of the Alberta Motion Picture Censor Board, writing in response to a request for information about his board's activities, admits that since "it has not yet been determined if Alberta has a role to play in reviewing videotapes which are sold or rented for home exhibition, or what that role might be... it is possible that movies which have been banned from exhibition in our theatres may be obtained in video stores" (Hooper letter, Oct. 6, 1986). A further problem is caused by the fact that even where provincial standards for video cassette regulations exist, they vary widely from one province to another. While Ontario, Manitoba and Saskatchewan agreed in 1985 to interprovincial standards for video cassette classification, legislation to support that agreement had not been passed three years later. Furthermore, video cassettes rejected in those provinces can easily be obtained by mail or courier from Quebec, where laws are much more liberal in this regard, or in British Columbia, one of the most liberal provinces in Canada with regards to

sexually explicit materials. As a consequence, B.C. is also the home of some of the country's largest distributors of sexually explicit video cassettes.(1)

The lack of co-ordination of provincial policies and the use of the mail and couriers to distribute contraband material is not the only national dimension to the question of controlling sexually explicit materials. The use of satellite dishes by about 300,000 Canadian homes to receive U.S. programming gives the problem an international, even global, dimension. While the Canadian Radio Television and Telecommunications Commission (hereafter CRTC) publishes lists of approved signals that Canadian dish owners are allowed to receive, court action against people caught receiving unauthorized signals has been rare, and federal Communications minister Flora MacDonald recently suggested that the matter is a non-issue in Canada, to be dealt with by U.S. copyright holders as they see fit. No official consideration has been given to the feasibility of jamming signals which emanate principally from the U.S., and a CRTC official says that no meetings have been held with the agency's U.S. counterpart, the Federal Communications Commission (FCC), about dealing with the transborder flow of sexually explicit programming such as American Triple Extacy over the airwaves. American observers have suggested that an international treaty could address this situation, but that prospect is unlikely in the short term, given the United States' laissez-faire stance on international

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(1) Fraser and other commentators argue that Quebec and B.C. have the most liberal outlook on sexually explicit materials of any jurisdictions in Canada.



communications in general, and on transborder data flow in particular.

The approach to be taken to this area of inquiry can be clarified by posing several questions. To what extent are advances in home entertainment technology hindering the ability of governments and regulatory agencies to control sexually explicit materials? What attention and priority have decision makers afforded this situation? What, if any, actions have been proposed or undertaken in this regard? What effect would increased efforts to control sexually explicit materials have upon the home entertainment industry and upon personal freedoms? If Canadians were to agree that they wanted their government to regulate sexually explicit programming which enters Canada via satellite, would they support action that blocked not only the signal in question, but also other, non-offending transmissions that they wished to receive? The widespread availability and low cost of home movie cameras allowing people to make their own video cassettes has evoked some concern in the U.S. about the production of child pornography and other sexually explicit films. Seizures of home made child pornography have become a regular occurrence in the U.S. (See O'Brien, 1983). Would Canadians support laws requiring that movie camera owners obtain licences or register their cameras in order to facilitate police efforts to track down producers of child pornography? Is it possible that Canadians, living in a nation that was founded on the principles of "peace, order and good government", might be more inclined to trade liberty for security than Americans, who cherish "life, liberty and the pursuit of happiness"? Or would the intrusions and tradeoffs that would be necessary in order to stem

the flow of sexually explicit materials into Canada, and into living rooms across Canada, require extending the state's powers further than Canadians are willing to allow? These questions will be probed in this study by examining data collected in a questionnaire that was mailed to selected regulators, interest groups and industry officials in all parts of Canada.

The usefulness of this study can be demonstrated in several fashions. While a plethora of works have argued the merits of regulation versus free expression, and vice versa, very little attention has been paid to how regulation might be carried out, and virtually no work has been undertaken examining technology's effects on the regulatory process. Furthermore, most existing works on the regulation of sexually explicit materials predate the changes that have taken place in home entertainment during the 1980s, changes that have altered both the nature and scope of the problem. At best, some of these works make passing reference to the burgeoning industry based on videotaped, broadcast and narrowcast sexually explicit materials.

Moreover, this study is of contemporary relevance. In the U.S., the 1986 report of Attorney General Ed Meese's Commission on Pornography constituted the second official study released by the White House within 16 years. Twice within the Mulroney government's first term of office in Canada, justice ministers attempted to pass legislation (Bills C-114 and C-54) designed to restrict severely the

sale, importation and distribution of sexually explicit materials.(1)

Also, any study touching on the impact of home entertainment technologies is particularly relevant to Canada. Some of the first pilot pay TV tests were carried out in Etobicoke, Ontario in the 1960s (Woodrow and Woodside, 1982, p. 31), and Canadian cable systems were developed earlier and enjoyed much greater market penetration than their American counterparts. As Allan Gottlieb, then Canada's ambassador to the U.S., has noted, "the main selling point of the cable has been its ability to transmit U.S. television signals into Canadian homes as clearly as signals produced by local Canadian stations (Americas Society, 1984, p. 3). Canada has been described as the world's most "wired" nation (Woodrow and Woodside, 1982, p. 5) and Vancouver is likely the most "wired" city in the world, with 88.15 per cent penetration enjoyed by the city's seven cable television franchises (Roman, 1983, p. 154).(2)

What makes Canada a particularly attractive market for home satellite dishes is the fact that about one-fifth to one-quarter of the population will never be able to receive cable because of its geographic location. As the price of satellite systems continues to

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(1) The commencement of this study predated the Mulroney government's bills. Neither of these pieces of legislation are addressed in this study. They do not touch on the central matters under discussion, and Bill C-54 died on the Order Paper, as did its predecessor. The lengthy definitions which formed the basis of Bill C-114 and C-54 will be included in an appendix to the following chapter.

(2) A 1987 Statistics Canada survey indicated that 67 per cent of all households in Canada have cable TV (Kitchener-Waterloo Record, October 3, 1988, p. C1).

drop, they will become an increasingly attractive form of home entertainment for Canadians who can't subscribe to cable television. If current patterns continue, satellite systems which currently retail for between \$1,200 and \$4,600 will be no more expensive than a stereo system within a decade. As these systems become affordable and are widely purchased (at a current rate of about 30,000 installations a year), control problems will become more visible. The development of the home VCR and satellite dish industries, and the problems related to the control thereof, will be discussed at length in Chapter Four. We turn now to a discussion of technology, particularly home entertainment technologies that have been used for distribution of sexually explicit materials.

### Technology

In the preface to her book, The New Television Technologies, Lynne Gross points out that while an engineer would view technology as the inner workings of equipment, the social sciences view technology as a system or method of applied science (Gross, 1983, p. xi). Technology has always provided building blocks to industrial advances, according to Peter Lyman. Electricity was the earliest building block, and since World War II, electronics has been the driving force. New building blocks include miniaturization, which enables small devices to do the work of bulky, expensive ones, greater storage capacity, applicable to all audio-visual material and information and data of all kinds, higher transmission capacity which affects all entertainment and information delivery, and switching capacity, which

enables the user to interact with the remote source of entertainment and information services (Lyman, 1983, pp. 3-4). These developments have not, however, been achieved without creating some problems in their wake.

In the optimistic view, the new communications technologies project a net social gain - in quality of entertainment, in the cultural level, in convenience, in conservation of resources, in education, in knowledge of public affairs, and in freedom of choice. There are, however, economic and perhaps social costs that must be monitored to maintain that gain (Baldwin and McVoy, 1983, p. 357).

Apart from the economic benefits provided by new technologies, their social impact must be considered.

...each technological change (high-speed presses, telegraph, telephone, color printing, radio, television etc.) has made differences in the way in which people interact with one another and their world environment. It is important to contemplate the differences that may result from the newest wave of technology in the continuing effort to understand our milieu and in the need to manipulate the communication tools toward our deliberate purposes instead of ourselves being manipulated, unaware....Children are perhaps most vulnerable to communication impact because they are relatively unformed, but also because they are more accepting of new technologies (Ibid., pp. 351-352).

And technology affects not only us, but the manner and extent to which

our leaders can act.(1) In Canada, technology has clearly exacerbated problems that arise from the lack of a coherent communications policy. McPhail states that the rate at which technological innovations are advancing almost precludes the possibility of policymaking, given the ossification of some enabling legislation.

Some of the contemporary Canadian communications services are still regulated on the basis of the original Railway Act established at the turn of the century - this in an era of laser technology, optic fibres, and instantaneous, world-wide database systems (Thomas L. McPhail "The Future of Canadian Communications" in Singer, 1983, p. 74).

Indeed, some researchers go so far as to suggest that "the history of federal communications regulation is one of recurrent crises as the bureaucracy scrambles to overtake technology" (Babe, 1974, p. 143).

Technology has revolutionized entertainment, leading to geometric growth in the home entertainment industry in general, and the adult entertainment/sexually explicit materials industry in particular.

By far the most significant event in adult film history was in 1976 when Sony unveiled the video cassette machine. The home video cassette machine meant that "local standards" were reduced to an audience of one. Anyone was free to choose what type of material he/she would like to see.... The spreading of cable systems widened the availability even further (there are currently 4,500 separate cable systems in operation) "Adult Movies" New York: Publications International, 1982, pp. 9-10 (quoted in Yukon Status of Women council and Media Watch Yukon Brief on

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(1) "Technology redefines the limits of power of governments and governmental agencies so as: a) to create voids in certain fields that are interdependent with areas that are well defined in terms of jurisdiction so as to create anomalous results, and b), to create overlapping areas of jurisdiction such that conflicts appear, both between levels of government and among governmental agencies, again so as to produce anomalous results" (Babe, 1974, p. 85).

Pornography, presented to the Special Committee on  
Pornography and Prostitution, June, 1984, p. 5).

Moreover, technology will likely change our understanding of what is considered to be entertainment, as new developments expand "adult" entertainment to encompass all the senses.(1) The involvement of all senses with sexually explicit materials with the aid of new technologies would greatly expand the boundaries of personal sexual freedom. Mishan, however, is not convinced that techno-sex freedom will represent a gain for society, nor that the benefits will outweigh the risks involved.

...just as rapid technological innovations entail unforeseeable ecological and health hazards, so also can rapid 'cultural' innovation produce unforeseeable social hazards. No civilization, as far as we know, has ever left the choice of sexual morals or propriety wholly to the discretion of the individual (Mishan, 1980, p. 57).

Some technological advances may be put to negative uses by deviants, as in the case of collectors of child pornography.(2)

For example, an engineer used his home computer, built with an electronics kit, to maintain a file of hundreds of customers. The list included customers' names and addresses as well as personal

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- (1) Soble argues that: "The pornographic camera, the pornographic sound recorder, and possible future taste and smell recorders magnify sensual experience and become the (new) human eye, ear, tongue, and nose .... the magnification of the senses by technology implies only that as pornography advances, the sensual intensity of pornography will increase" (Soble, 1986, p. 120).
- (2) Microwave ovens, a novelty in Canadian homes 15 years ago and now a mainstay of most kitchens, provide an example of how a basic home improvement can lead to problems for law enforcement officials. Microwave ovens have greatly simplified the cocaine refining process, and they give dealers of the illicit substance easy access to a low-cost laboratory (Reuter News Service, June 6, 1988).

preferences in child pornography. A second database provided an inventory of every pornographic photograph and film title available from syndicated members. Also discovered were an extensive photographic laboratory, a bedroom equipped with spotlights, and videotape cameras and equipment for duplicating pornographic pictures and films. (Burgess, 1984, p. 66).

Mishan suggests that government can't even stay abreast of the problems related to sexually explicit materials, let alone control the industry.

Beyond the torrent of erotica are some opportunistic businessmen, in the U.S. and abroad, some of them backed by money from organized crime.. They keep a watchful eye on the shifting tastes of their customers - with good reason, for it is a \$1 billion-a-year low-overhead business where profit margins run up to 10,000 per cent. Watching them is a host of largely baffled government officials, local, state and national, who can hardly stay informed about what's new on their beat, let alone control it. ...mail order houses abound, with some 200 firms in Los Angeles alone changing their corporate names as fast as the postal officials strike (Mishan, 1980, p. 36).

This problem of the limits of government/regulatory understanding and control is central to this discussion. Regulatory response to changes in the sexually explicit materials industry has been tardily reactive at best, and absent altogether in many instances. The question of the content of sexually explicit programming, either broadcast via satellite or pay-cable or narrowcast via home video cassette, will be touched on in a subsequent section of the thesis. Our attention turns next to an examination of the notion of regulation.



## Regulation -Definition and Explanation

In an extensive examination of regulation as it pertains to broadcast communications, Liora Salter, Chairman of the Department of Communications at Simon Fraser University, suggests that regulation should be viewed as one of a number of possible governing instruments or means by which governments implement their policies (Salter, 1985, p. 6). Salter argues that regulation has its own particular character, and regulatory agencies possess a number of identifiable common characteristics.

Regulation involves a formal (and usually legal) designation of authority to a specific body (tribunal, officer or other body.) The regulatory activities are separated out from the daily activities of a government department even when the same governmental officials perform regulatory and non-regulatory roles. Although some regulatory bodies can be said to be quasi-judicial in the legal sense of the term, the formal designation of regulatory authority to a recognizable body provides a structure within which decisions can be viewed as quasi-judicial in effect (if not in law,) and within which a process of arbitration of interests can take place (Ibid., p. 7).

Other characteristics that Salter sees as common to regulatory bodies are that they are simultaneously inside and outside the government, and that the effect of dividing regulatory authorities from the mainline functions of government is to create a separate zone of governance.

While regulatory procedures vary considerably within Canada, regulation is best described as a process of negotiation, and regulatory decisions are usually negotiated ones (Ibid., p. 9).

Regulatory agencies are reactive, not pro-active in their orientation to policy implementation, Salter writes. "Regulatory authorities make policy either explicitly or implicitly through a series of case-by-case decisions that reflect a consistency of approach.... In regulation, policies can be implemented only through stimulating the actions of others - those in the regulated sector" (Ibid., p. 10). Regulation can be distinguished from other aspects of policy administration because only regulation is designed to highlight the rule making and rule-applying aspects of policy implementation (Ibid., p. 11). While many public corporations are regulated, regulation is oriented to the market and to private enterprise (Ibid.).

Uses of regulation include providing a social welfare safety net, achieving a redistribution of resources, or achieving a value or quality of service. It is this third objective, which could be applied to either the coverage of a political campaign or abusive programming, that is of interest for the purposes of this discussion (Ibid., p. 28). Salter points out that, for historical reasons, public broadcasting in Canada is a value. It is difficult to conceive of a government that did not enact value-based legislation, she writes (Ibid., p. 36). Salter also sketches out the manner in which regulation tends to be carried out in Canada.

The conventional view of regulation is that it is conducted by an independent agency or tribunal with both quasi-judicial and administrative powers. This agency has an arm's length relationship with government. Its commissioners are appointed. It is served by a technically expert staff. It conducts hearings, usually involving lawyers and cross-examination. Its deliberations are a matter of public record, as are its decisions. Some rules of procedure are given, and some procedures must be followed or a

decision can be appealed. Courts and legislatures oversee the regulatory process and set guidelines for policies to be implemented within it or rules for ensuring a proper assessment (Ibid., p. 40).

Salter admits that her picture describes some, but not all regulation in Canada. Her analysis involves the CRTC, and applies only partially to the provincial film classification boards or Department of National Revenue agencies. The attitude taken by regulators can affect their role, Salter says. CRTC chairman Andre Bureau sees his agency as performing a supervisory, rather than regulatory role (Ibid., p. 55). When it comes to regulation of sexually explicit materials, Bureau's CRTC, several other federal agencies and provincial governments have taken a laissez-faire, hands-off role that can scarcely be described as regulatory.

#### Delimitations of Study

While a fledgling sexually explicit materials industry has developed in Canada over the past 15 years, the overwhelming majority of such materials, be they print, satellite transmissions or video cassettes, are clearly imported, beamed or smuggled in from the United States. For that reason, while this study deals principally with existing regulatory patterns and problems in Canada at the national and provincial levels, references to the United States will be used where appropriate for historical reasons or illustrative purposes. Concerns about hate literature, and printed material in general, deserve separate treatment and lie outside the scope of this study. Usage of the term home entertainment shall be understood to include

video cassettes, pay TV, satellite dishes and satellite master antenna television. This last technology, often referred to as SMATV, is used to provide a wide range of TV channels to urban multi-unit dwellings.

### Purpose and Objectives

The purpose of this study will be to explain the difficulties that technological advances in the area of home entertainment are causing with regards to the regulation of sexually explicit materials. The specific objectives of the study are the following: 1) To describe the extent to which home entertainment technologies are making regulation of sexually explicit materials difficult or impossible. 2) To examine the attitude of regulatory officials, industry officials and interested parties (i.e. members of pressure groups) toward the regulation of sexually explicit materials and the priority given to regulation. 3) On the basis of the foregoing, to suggest options for future regulation and discuss the consequences of such actions for individual freedoms.

A definitional chapter will outline various definitions that have been posed for the poorly understood terms "erotica" and "pornography." Chapter Three will give an overview of issues in the existing literature, with particular attention to the Badgley and Fraser Committee reports. Chapter Four will discuss the history and development of VCRs, satellite dishes and pay TV, the home entertainment technologies with which this discussion is concerned. It will outline the problems related to the control of sexually explicit materials that these devices have posed, and examine the regulatory

response (or non-response) to these challenges. Chapter Five will explain the methodology used for a cross-Canada mail survey which serves as our data base. Chapter Six will examine the survey results and discuss any inferences that can be made from the results. Chapter Seven will present conclusions and reflect on the third problem presented at the outset of the study, namely, that increased efforts to control sexually explicit materials will only succeed at the expense of personal freedoms.

## Chapter Two

### PORNOGRAPHY AND EROTICA

For the purposes of this study, the term "sexually explicit materials" is used, and should be understood as including both what is known as "erotica" and "pornography." Several considerations support this approach. First of all, it can be argued that some of the regulatory concerns surrounding pornography are also applicable to erotica, particularly as they relate to protection of minors. Secondly, part of this study involves a mail questionnaire directed at groups with widely divergent views on the appropriateness of regulation of sexually explicit materials. Many of the producers of these materials, in particular, take offence to the term "pornography", which they see as having pejorative connotations. Their preferred descriptive phraseology, "adult entertainment" or "adult sophisticate materials", has little, if any, clearly understood meaning. The use of the term sexually explicit materials, therefore, can be viewed as an effort to avoid offending the population being surveyed (which would adversely affect the response rate) while still retaining some sense of what is being discussed.(1) Finally, use of the term sexually explicit materials allows this study to bypass a conceptual analysis and definitional controversy that has raged for decades over the question of what constitutes pornography, and how that can be distinguished from erotica.

The U.S. Presidential Commission of the late 1960s, which had the

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(1) On this topic, see Kaite, (1984, pp. 8-12).

study of the problems of "pornography" as its mandate, resolved a conceptual conundrum by referring instead to "sexually explicit materials" (McKay and Dolff, 1984, p. 17).(1) The Fraser Committee also noted the definitional problem the term pornography has posed for legislators. The Committee's final report notes that:

...the very wealth of popular applications for the term pornography points to one very interesting dilemma for those who seek to legislate in this area. Almost everyone could say of pornography, in company with Justice Potter Stewart of the U.S. Supreme Court, "I know it when I see it." However, because it depends on the standards and sensibilities of the viewer, such a subjective approach to the definitional task would be doomed to failure in the courts (Fraser, 1985, pp. 49-50).

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(1) Numerous social science researchers have noted the confusion surrounding the term "pornography" without feeling the need to be explicit about what they mean in their usage of the term. For instance, Donnerstein, Linz and Penrod (1987), in The Question of Pornography, note in their introductory chapter that "the kinds of depictions encompassed by the term vary widely and depend upon the political and religious orientation of those who use it" (Donnerstein, Linz and Penrod, 1987, p. 1). Rather than attempt to clarify that situation, those researchers grouped sexually explicit materials (or stimuli, in the jargon of the researcher), into six categories. The six categories are paraphrased as follows:

1) Nonviolent, low-degradation sexually explicit stimuli (e.g. depictions of mutually consenting sexual activity); 2) Nonviolent, high-degradation sexually explicit stimuli (materials involving "the debasing depiction of women as willing recipients of any male sexual urge (excluding rape) or as oversexed, highly promiscuous individuals with insatiable sexual urges."); 3) Violent Pornography (defined here as depicting sexual coercion in a sexually explicit context); 4) Nonexplicit sexual aggression against women (less explicit than the preceding, but still containing the recurring notion that women derive positive benefit from sexual abuse); 5) Sexualized explicit violence against women (less sexually explicit but violence contains images of torture, murder and mutilation); 6) Negative-outcome rape depictions (in which there is no indication that the victim enjoys being raped, which the authors say is the case in most forms of violent pornography) (Ibid., 1987, pp. 3-5).

That is not to say that the dismissive approach adopted by sociologist Thelma McCormack must be accepted. In McCormack's view:

There is no consensus about what pornography means as a distinctive genre (the profane), how it differs from graffiti and other forms of [the] profane. Nor is there any agreement about what it means philosophically or socially (McCormack, 1984, p. 33).

A standard usage in the U.S. is the term indecency. In July of 1978, the U.S. Supreme Court defined indecency as "non-conformance with accepted standards of morality" (Morality in Media Brochure, p. 5, no date). There is no question that emotion and political biases color various interpretations of the term pornography. Even McCormack admits that certain features can be delineated in what is crudely lumped together as pornography.

...it deals with sexual taboos and dominant images, inscribed into everyday practice and it portrays characters who possess only one dimension, a sexual/genital one (quoted in Kaite, 1984, pp. 8-9).

The federal Badgley Committee on Sexual Offences Against Children and Youths (termed the Badgley Committee, as it was chaired by Dr. Robin Badgley of the University of Toronto) may have fallen into the trap outlined by Fraser when it took its definition of pornography from Webster's Third New International Dictionary, defining it as "the depiction of licentiousness or lewdness; a portrayal of erotic behaviour designed to cause sexual excitement" (Badgley, 1984, p. 1080). The term pornography has no meaning in Canadian law, due in no small part to the confusion and varied understandings that surround the term. But while obscenity is referred to in Section 158 of the



Criminal Code.

the term pornography, which literally means "the depiction of the sale of women's bodies", has become the preferred word for use in describing the kind of material which now seems to be concerning women's groups, churches, teacher's organizations, and other community groups in Manitoba and elsewhere in Canada (Ridington and Buffie, 1984, p. 3.1).

Part of the rationale for recent legislative efforts to define pornography lies in the recognition, in Canada as well as in the U.S., of the bankruptcy of the term "obscenity".(1) Lane Von Sunderland expanded on that notion, and on Margaret Mead's suggestion that

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(1) Section 159 (8) of the Criminal Code states that "any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene". Undue exploitation consists of material that violates current community standards. In a landmark decision of October, 1983. Judge Stephen Borins stated: "In my opinion, contemporary community standards would tolerate the distribution of films which consist substantially of scenes of people engaged in sexual intercourse. Contemporary community standards would also tolerate the distribution of films which consist of scenes of group sex, Lesbianism, fellatio, cunnilingus, and anal sex. However, films which consist substantially or partially of scenes which portray violence and cruelty in conjunction with sex, particularly where the performance of indignities degrade and dehumanize the people upon whom they are performed exceed the level of community standards" (Ridington and Buffie, 1984, p. 3.2). According to Canadian law, a pornographic publication is not necessarily legally obscene, whereas an obscene publication is invariably pornographic (Badgley, 1984, p. 1080). Even prior to the Fraser Committee, the federal government had struggled with the relevance of the Criminal Code section related to obscenity. Former Liberal Justice Minister Mark MacGuigan proposed the following change: "a dominant characteristic of the matter or thing is the undue exploitation of any one or more of the following subjects, namely: sex, violence, crime, horror or cruelty, through degrading representations of a male or female person in any other manner" (Ibid.). Of note in the MacGuigan proposal is the inclusion of the notion of degradation, which reflects feminist pressure on legislators.

pornography is "designed to stimulate sexual feelings independent of the presence of another loved and chosen human being." For Sunderland, pornography has two elements. 1) It contains an explicit or implicit teaching that the pursuit of sensual stimulation is the proper end of human activity; this pursuit is divorced from the other aspects of the human relationship such as love and human understanding. 2) It appeals, not to reason or human sensitivity, but to passion or lust; thus the format of pornography is disassociated from or overshadows the truly human aspect of sexual relationships (Sunderland, 1973, p. 86).

For Fraser, a work could be considered pornographic if it combined sexually explicit content with the apparent or purported intent to arouse sexual desire (Fraser, op.cit., p. 53).(1) The committee went a step further in delineating two types of pornography.

One sort of material is the merely sexually explicit, characterized by both sexual content and an assumed or apparent intention to stimulate sexually the viewer. Missing from this sort of pornography is any appreciable amount of violence and degradation. Again showing the sexual content, but this time in combination with violence, degradation or abuse, is the second category of pornography (Ibid., p. 59).

The notion of degradation has become a frequently cited, if murkily understood, element of modern definitions of pornography.

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(1) That definition is similar to the working definition adopted by the Williams Commission of Great Britain, which wrote that: "a pornographic representation is one that combines two features: it has a certain function or intention, to arouse its audience sexually, and also a certain content, explicit representations of sexual material (organs, postures, activity, etc.) A work has to have both this function and this content to be a piece of pornography" (Ibid., p. 52).

Feminist writer Helen Longino describes pornography as:

...verbal or pictorial material which represents or describes sexual behavior that is degrading or abusive to one or more participants in such a way as to endorse the degradation (quoted in Ridington, 1983, p. 8).

Writing for the Manitoba Department of Culture, Heritage and Recreation, Ridington and Buffie adopt a definition used by the Toronto Area Caucus of the National Association of Women and the Law, one of the few that both incorporates and seeks to define the notion of degradation.

Any material or part thereof which seeks to sexually stimulate the viewer or consumer by the portrayal of violence against, or the degradation of, human beings, is degrading and violent pornography. For the purposes of this section, violent and degradation include the murder, assault, bondage, infliction of pain upon, or mutilation of any human being, simulated or not (Ridington and Buffie, 1984, p. 3.3).

Bill C-114, the Mulroney government's first ill-fated attempt to alter the laws regulating sexually explicit materials in Canada, was roundly criticized by feminists and others for failing to distinguish between pornography and erotica. (That question will be touched on later in this discussion.) Unpalatable as the legislation was to feminists, it did incorporate their concern that degradation be recognized as an element of pornographic material.

Degrading pornography means any pornography that shows defecation, urination, ejaculation or expectoration of one person onto another, lactation, menstruation, penetration of a bodily orifice with an object, one person treating himself or another as an animal or object, an act of bondage or any act in which one person attempts to degrade himself or another (Lowman et al., 1986, p. 25).

The notion of coercion and violence is seen by some feminist writers as being central to an understanding of pornography. Writing for the National Association of Women and the Law, Jilian Ridington offers the following definition:

Pornography is a presentation, whether live, simulated, verbal, pictorial, filmed or videotaped, or otherwise represented, of sexual behavior in which one or more participants are coerced overtly or implicitly, into participation; or are injured or abused physically or psychologically; or in which an imbalance of power is obvious; or implied by virtue of the immature age of any participant or by contextual aspects of the representation and in which such behavior can be taken to be advocated or endorsed (Ridington, 1983, p. 9).

Other writers have argued that pornography has more to do with power and victimization than it does with sex.(1) American feminist writers Andrea Dworkin and Catherine MacKinnon, who restrict their usage of the term pornography to sexually explicit representations involving females, incorporate the notion of power and victimization in their discussion of the term. For them, pornography eroticizes hierarchy, sexualizes inequality and makes dominance and submission sex. "Pornography in this view is a form of forced sex, a practice of sexual politics, an institution of gender inequality" (MacKinnon, 1985, pp. 18-19). Dworkin and MacKinnon define pornography as:

...the graphic sexually explicit subordination of women through pictures or words that also includes

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(1) "It is produced by powerful people, though it may be consumed primarily by the weak. Anti-pornography groups are made up of people with little power - women and a few males, people who recognize their victimization and who for political or moral or personal reasons want to fight back ("Pornography and Censorship - asking the cat to guard the canary" in Briarpatch, May, 1984, p. 18).

one of the following: i) women are presented dehumanized as sexual objects, things, or commodities; or ii) women are presented as sexual objects who enjoy pain or humiliation; or iii) women are presented as sexual objects who experience sexual pleasure in being raped; or iv) women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt; or v) women are presented in postures of sexual submission, servility or display; or vi) women's body parts - including but not limited to vaginas, breasts and buttocks - are exhibited, such that women are reduced to those parts; or vii) women are presented as whores by nature; or viii) women are presented being penetrated by objects or animals; or ix) women are presented in scenarios of degradation, injury torture, shown as filthy or inferior, bleeding, bruised or hurt in a context that makes these conditions sexual (MacKinnon, 1985, pp. 1-2).

Still other writers sub-categorize what they see as pornography on the basis of what is depicted. In The Porn Merchants, a study of the links between organized crime and the producers and distributors of sexually explicit materials, Gary Potter outlines a distinction between "soft-core" and "hard-core" pornography.

Soft core pornography consists of books, magazines, films or videotapes containing visual depictions of nudity, sexual acts or simulated sexual acts but not actually showing penetration. Hard core pornography consists of books, magazines, films or videotapes containing visual depictions of actual or simulated sexual acts, graphically displayed, usually in closeup, showing genitals and penetration (Potter, 1986, pp. 15-16).

It is in the distinction described by Potter that the most commonly-argued battle in the realm of sexually explicit materials occurs. What he refers to as "soft-core", some describe as erotica. Others, such as Andrea Dworkin, line up with Potter in taking the

position that erotica is merely a sub-category of pornography.

Feminists have made honorable efforts to define the difference, in general asserting that erotica involves mutuality and reciprocity whereas pornography involves dominance and violence. But in the male sex lexicon, which is the vocabulary of power, erotica is simply high-class pornography: better produced, better conceived, better executed, better packaged; designed for a better class of consumer (Dworkin, 1981, preface).

A slightly less militant expression of the same point of view is provided by Sara Diamond, who wonders whether erotica can be truly said to exist.

There is great divergence on what is valued as erotic material amongst women as well as men. Some women take the view that where the entire visual arena of sexual representation is so male dominated, there is no space for women to experience visual pleasure. Others set very strict guidelines for acceptable images (natural relationships, loving, equal exchange, etc.) Others feel that criteria of equality and loving exchange are as restrictive to the exploration of their full sexual potential as are the standard misogynist images (Diamond "Childhood's End: Some Comments on Pornography and the Fraser Commission" in Lowman et al, 1986, p. 146).

Margaret Laurence, who believed that erotica does exist, viewed the absence of coercion as a key distinction. She defined erotica as "the portrayal of sexual expression between two people who desire each other and who have entered this relationship with mutual agreement" (Fraser, 1985, p. 57). Similarly, Gloria Steinem sees erotica as consisting of sexually explicit depictions that allow for equal choice and equal power, while pornography involves force or unequal power and

coercion.(1) But even Steinem's comments tend in the same direction as Diamond's, and she admits that the distinction she describes may be more theoretical than real. "It's almost futuristic to debate what is and what is not truly erotic when... the number of pornographic murders, tortures, and women hating images are on the increase in both popular culture and real life" (Ibid.).

The Williams Committee of Great Britain came to the conclusion that "the erotic is what expresses sexual excitement, rather than causes it" (Report of the Special Committee, 1985, p. 57). That definitional distinction has supporters among opponents of censorship as well, as Murray Hausknecht demonstrates in defining the term in his article "The Problem of Pornography: No Censorship. "

By pornography I mean any written or visual representation of sexual behavior - explicitly and vividly presented - whose sole intent is sexual arousal. By "erotic writing" or "erotica" I mean an explicit representation of sex, within a context in which it is treated as part of the human experience and in which the sexual material is not used solely to stimulate arousal. (Throughout, it is to be understood that what is said about "writing" applies also to movies) (Hausknecht, quoted in DiClerico and Hammock, 1980, p. 280).

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(1) Steinem writes: "erotica is rooted in 'eros' or passionate love, and thus in the idea of positive choice, free will, the yearning for a particular person. (Interestingly, the definition of 'erotica' leaves open the question of gender.) 'Pornography' begins with the root 'porno', meaning 'prostitution' or 'female captives', thus letting us know that the subject is not mutual love, or love at all, but domination and violence against women. (Though of course, homosexual pornography may imitate this violence by putting a man in the 'feminine' role of victim.) It ends with a root 'graphos', meaning 'writing about' or 'description of' which puts still more distance between subject and object, and replaces a spontaneous yearning for closeness with objectification and voyeurism. The difference is clear in the words. It becomes evermore so by example" (Steinem "Erotica and Pornography A Clear and Present Difference" in Lederer, 1980, p. 37).

Bill C-54, the Mulroney government's second attempt to pass a new law governing sexually explicit materials, provides a definition of erotica.

...erotica is a visual matter, a dominant characteristic of which is the depiction of a human sexual organ, the female breast or human anal region in a sexual context or for the purpose of the sexual stimulation of the viewer (Toronto Star, Saturday, May 23, 1987, p. B1).

The preceding discussion is meant to be representative rather than exhaustive. For a more detailed overview and listing of works in this area, see McKay and Dolff, 1984, pp. 15-28.

#### Conclusion:

There are definable elements within what is roughly termed pornography: namely, sexually explicit content and the intent, implied or otherwise, to sexually stimulate the viewer. Political and philosophical considerations very much color the understandings that various segments of society have of what constitutes pornography. For some it is a combination of violence or degradation with sexually explicitness. For a minority of others, sexual explicitness in and of itself can be viewed as pornographic. Degradation is increasingly becoming a central element in determining what is pornographic, recent federal government bills on the subject being prime examples of that trend. Once symbolic considerations (such as radical feminists' allusions to implicit representations of power) are introduced into the definitional mix, it becomes more difficult to make the



distinction between "pornography" and "erotica" which most people insist does exist.

Clearly, there is a need for new, more specific terminology to describe the material under consideration. Just as the term "obscenity" is agreed to be virtually bankrupt, so too have the terms "pornography" and "erotica" been stretched to the point where it is impossible to arrive at commonly-understood meanings.(1) Our attention turns next to the relevant literature in this area.

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(1) Some would argue that this problem raises issues of social order and society as a whole, a question which deserves separate study.

## Chapter Three

### LITERATURE REVIEW

This chapter provides an overview of the literature regarding sexually explicit materials relevant to this study. The chapter is divided into five sections. The first discusses surveys in a broad range of disciplines including collections and articles spanning feminist, conservative and liberal perspectives. Two sections summarizing the major Canadian studies related to sexually explicit materials, namely, the Badgley and Fraser Committee reports, make up the bulk of the chapter. A fourth section lists the available literature in the area of sexually explicit materials and technology, focussing mainly on an executive summary of a 1984 report written for the Manitoba government, one of the few studies in this area. A concluding section cites relevant contributions contained in an anthology of commentaries on the Fraser and Badgley reports.

Much of the academic literature on the subject of sexually explicit materials is to be found in disciplines other than political science. The works of psychologists, sociologists, historians, philosophers, legal scholars and criminologists dominate this field.(1) Canadian studies on the subject of sexually explicit materials in Canada are relatively recent. As the Committee on Sexual Offences Against Children (hereafter the Badgley Committee) discovered

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(1) For example, anthropologist Jack McIver wrote Porn Row (1986), a case history of a U.S. sex shop, after spending months working in the shop. Anecdotal and impressionistic, the book contains an academic's insights into a lurid and seedy sub-culture.

when it attempted to develop a picture of the range and volume of sexually explicit materials available in Canada, researchers in this area need not worry about replicating each other's work.

...the Committee found that there was virtually no complete or reliable documentation for Canada about the dimensions of the pornography trade, the circulation and accessibility of this material, its production and the making of child pornography. What the Committee did find was a small assortment of scholarly treatises dealing mainly with particular social, legal or moral aspects of pornography. Most of these were general reviews drawing upon secondary sources, typically detailing experience abroad (Badgley, op. cit., p. 1081).

In The Porn Merchants, (1986) criminologist Gary Potter cogently outlines the links between organized crime in the United States and the distribution channels that supply sexually explicit materials to U.S. and Canadian mass markets. Potter, a U.S. criminologist, became exposed to the "pornography industry" while doing research on organized crime in Philadelphia. His study of gambling, drug trafficking, labor racketeering, loansharking and other vices yielded little evidence that these businesses were centrally controlled, save in one instance. "The exception was the pornography industry, which gave every appearance of being tightly controlled, vertically integrated and highly structured" (Potter, 1986, p. i). Potter contends that this industry suggests a pattern of racketeering and "as such, it should be subject to the same enforcement weapons used against other activities of organized crime."

Estimates of the size of the industry in North America given by Potter range from \$2.4 billion to \$6 billion a year, and sexually

explicit video cassettes gross upwards of \$10 million a year (Ibid., p. 18).(1) Providing charts to indicate distribution networks throughout the United States, Potter also shows the connections between Cleveland businessman Reuben Sturman, organized crime figures and two Toronto companies. Sturman's Sovereign News supplies Crown News of Cleveland and Crown affiliates in Camden, New Jersey and Toronto (Ibid., p. 92). East Coast Vending Co. and Cinematic Vending Company of Toronto are also controlled by Sturman. Potter says (Ibid., p. 132).

Studies of U.S. sex shops led Potter to note that profits range from 100 per cent to upwards of 1,000 per cent, (Ibid., p. 149), that shops are frequently connected to sales of material depicting violence and material depicting children (Ibid., p. 154), and that these shops are frequently tied in with other vice operations.

it is also quite obvious that violence, intimidation and extortion are common means of maintaining order within the pornography industry (Ibid., p. 100).

Given that almost all sexually explicit materials in Canada are produced in the U.S., many of these production companies have clear ties to organized crime, and some even control Ontario distribution

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(1) Other writers' estimates are much higher than these figures, and Rimmer (1984, p. 34), in a survey of X-rated videotapes, estimates that the adult video cassette business is worth between \$300 million and \$600 million a year.

companies, Potter's findings have some relevance for Canadian readers.(1)

Feminist studies of the philosophical and practical concerns posed by the omnipresence of sexually explicit materials constitute the most rapidly expanding literature on the topic. Andrea Dworkin's Men Possessing Women (1981) and other works she has done along with Catharine A. McKinnon, Laura Lederer's Take Back the Night anthology, Varda Burstyn's Women Against Censorship, as well as articles by Susan Cole and Jilian Ridington are representative of the variety of these viewpoints. As these works are not directly related to the specific topic under study, they will be discussed only in passing. Lederer (1980) edited what is perhaps the central collection of U.S. feminist and radical feminist essays on the subject. Take Back the Night includes articles by Susan Brownmiller, Helen Longino, Gloria Steinem and Andrea Dworkin and other less known feminists. Lederer summarizes the feminist analysis of pornography as "the ideology of a culture which promotes and condones rape, woman-battering and other crimes of violence against women" (Lederer, 1980, pp. 19-20). The value of some of the essays in the collection lies in their illumination of extreme feminist perspectives on the subject.

Burstyn (1985), who denounced censorship from the pages of Penthouse Forum (a publication not otherwise noted for interviewing feminists), edited a collection of articles by anti-censorship

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(1) Those findings contrast with the views of Fraser Committee researchers Dolff and McKay (1984), that "there is a surprising lack of evidence regarding the role of organized crime in the production, distribution and marketing of pornography in Canada" (Dolff and McKay, 1984, p. 94). On the same subject, see also Scott, (1985), pp. 25-26.

feminists. The articles deal with concerns that censorship will inevitably lead to the suppression of individual liberties and limitations on sexual expression and activity (read non-heterosexual). They also present a school of thought which argues that spending too much energy on debates over sexually explicit materials diverts attention away from "serious" issues facing women.

In Ideology and Public Policy - The Case Against Pornography (1988), Dany Lacombe studies the views of various interests through interviews with Ontario Censor Board (now Film Classification Board) chairman Mary Brown, officers with Project P. Nancy Pollock of the Presbyterian church-based Canadians for Decency, officials with the Canadian Coalition Against Violent Entertainment (CCAIVE), civil libertarians and the Ontario Film and Video Appreciation Society (OFVAS), which has mounted successful court challenges against the powers of the Ontario Film Classification Board. Lacombe examines the biases contained within the Fraser Report, faulting it for ignoring the concerns of homosexuals and socialist and Marxist feminists. This anti-censorship socialist feminist critique is most valuable for its description of the views held by the various interests listed above.

A recent French language work that warrants English translation because some of the issues it deals with are not dealt with in English language texts is Richard Poulin and Cecile Coderre's La Violence Pornographique-La virilité démasquée (1986). Poulin and Coderre, sociologists at the University of Ottawa, state that no one can be psychically untouched by the consumption of pornography, which they see as being the antithesis of sexual liberty due to its brutal

treatment and objectification of women. They study the symbolism and violent imagery contained in mainstream magazines such as Playboy and Penthouse as well as in more hard-core publications. A study of the terms "obscenity", "erotica", and "pornography" concludes with a lengthy definition of pornography which focusses on the commercial nature of the product and what is represented in the images.(1)

Because it is (an) industry and (a) business, pornography is merchandising the sexual appropriation of women, it's a capitalist exploitation of the patriarchal oppression of women. It is not defined by its hardness or softness because oppression, and even more so the exploitation of oppression, can only be violence, coercion and alienation (translation mine) (Poulin and Coderre, 1986, p. 46).

The book contains a review of the literature on the effects of pornography, as well as sections on sexual coercion and the exploitation of children. Some of the figures in the book are rather dated (they range from 1980 to 1982), but are still useful because they give a breakdown of various aspects of the sex industry in Quebec. The authors conclude that the fight against pornography isn't a question of censorship but of the survival of millions of women and children.

Catharine A. McKinnon, a U.S. writer who has campaigned to have municipal human rights ordinances passed to protect women's rights,

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(1) The original French text is as follows: "Parce qu'elle est industrie et commerce, la pornographie est une marchandisation de l'appropriation sexuelle des femmes, c'est une exploitation capitaliste de l'oppression patriarcale des femmes. Elle ne se définit pas par sa douceur ou sa dureté, car l'oppression et encore plus l'exploitation de l'oppression, ne peut être que violence, contrainte et alienation."

takes the view that censorship may be necessary to facilitate women's freedoms. Writing in Harvard Civil Rights-Civil Liberties Review, she says that:

Classically, opposition to censorship has involved keeping government off the backs of the people. Our law is about getting some people off the backs of other people. The risks that it will be misused have to be measured against the risks of the status quo. Women will never have that dignity, security, compensation that is the promise of equality so long as pornography exists as it does now. The situation of women suggests that the urgent issue of freedom of speech is not primarily the avoidance of state intervention as such, but getting affirmative access to speech for those to whom it has been denied (MacKinnon, 1985, p. 68).

Leo Groarke, drawing on John Stuart Mill's concept of liberty to justify "liberal" censorship, makes a case for censorship when sexually explicit materials cause public harm. Violent pornography, he argues, causes public harm(1) because it encourages people to disrespect those rights on which liberal societies depend. Groarke quotes Joel Feinberg's argument that Mill "would not have wiped from the books such crimes as tax evasion, smuggling and contempt of court, which need not injure any specific individuals except insofar as they weaken public institutions in whose health we all have a stake"

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(1) Psychological studies exploring various aspects of the question of "harm" in the narrowly defined sense are a maze of contradicting results, claims and counter-claims. The major Canadian summary of literature in this area from a "no-harm" perspective is The Impact of Pornography: An Analysis of Research and Summary of Findings, a 1984 study conducted by H.B. McKay and D. J. Dolff for the federal Justice Department and the Fraser Committee, which includes an annotated bibliography and description of methodologies employed in various studies. David Scott's 1985 work, Pornography - Its Effects on the Family, Community and Culture, presents an opposing viewpoint.



(Groarke, in Queen's Quarterly, 1983, p. 1113). In Groarke's view, mere sexual explicitness is not grounds for censorship but any material that "(1) depicts (verbally or pictorially) sexual acts which involve physical harm or the violation of an individual's rights or in which (2) such acts are presented in a way that encourages, condones or makes light of the acts in question" (Ibid., p. 1115) could justifiably be prohibited.

Expanding on that notion in a paper entitled "On Liberty, Liberty and Censorship" (1987), Richard Vernon points out that even for John Stuart Mill, different types of liberty were not defended in the same way, and freedom of trade is subject to the calculus of costs and benefits (Vernon, 1987, p. 269). Vernon writes,

...violent pornography is so unmistakably distressing that one is tempted to feel that the principles which inhibit censorship are an irrelevance and a burden - perhaps an obsolete relic of an age when pornography was a gentleman's bad habit, less bad than others he might have, and not a multi-million-dollar industry generating severe moral pollution (Ibid., p. 268).

Randall Martin makes similar arguments in his "Censoring Pornography" (Policy Options, Nov. 1986, pp. 9-13). In weighing concerns about prior restraint against the social harms presented by more extreme sexually explicit representations, he takes aim at concerns raised by opponents of Bill C-114 when it was introduced by Minister of Justice John Crosbie, and supports the use of prior restraint to control some materials. Martin writes: "There is a place for the censor in society. This place should not be occupied in a spirit of power triumphant but one of considerable trepidation,

motivated by love and the desire to protect the weak against exploitation" (Martin, 1986, p. 13). Martin's argument that use of prior restraint is appropriate, yet need not lead to censors running roughshod over all expression, was examined in greater depth by American writer Victor Cline in his 1974 anthology, Where do you draw the line? An Exploration into Media Violence, Pornography and Censorship."

Cline challenges simplistic anti-censorship arguments and probes the reality that governmental restrictions are accepted in many areas as being both necessary and justifiable, particularly as they relate to expression and freedom of speech. Cline summarizes 36 significant arguments expressing reasons for opposition to censorship (Cline, 1974, pp. 3-7), then provides a list of 18 U.S. Supreme Court-approved limitations on freedom of speech. As Norman Podhoretz admits in his essay, "Living with Free Speech", which is contained in the volume:

When I am forced to think seriously about freedom of speech and the problems it presents, I initially find myself getting depressed. I tend to take an absolutistic position on freedom of speech, roughly on the grounds that restricting it seems on the whole to entail more odious consequences than letting it entirely run wild. Yet I know ... the absolutist position is highly vulnerable on a theoretical plane - and it is increasingly hard to defend wholeheartedly in the face of certain concrete results (Ibid., p. 79).

Cline's tome is divided into five sections: Censorship versus Freedom of Speech, The Law, Violence in the Media, The World of Pornography and Erotica, and Where do you draw the line?, a concluding section in which he argues that the choices faced by society are not merely censorship versus total licence.

A third alternative does exist - a limited, rational type of control endorsed by the majority in our society and subject to adjustment, modification or repeal at any time through the processes of democratic government (Ibid., p. 348).

In a summary of the report of the 1970 U.S. Presidential Commission on Obscenity and Pornography, Cline argues that the moral antecedents of the commissioners predetermined the outcome.(1) Ernest van Den Haag, in an essay entitled, "Democracy and Pornography", suggests that strict proof of direct harm caused by sexually explicit materials should not be a pre-requisite to discussions of whether restrictions on such materials are justifiable.

It is silly to insist that unless criminal sex acts can be traced directly to consumption of pornography by the criminal, pornography must be harmless. Lack of evidence for harmfulness is not evidence for harmlessness. . . . the influence of pornography is usually diffuse and often indirect, as is the case of manners or religion (van den Haag in Cline, op cit., p. 264).

For Cline, the question of controls on sexually explicit materials isn't to be decided on whether harms exist, but on the seriousness of harm, and the impact on children.

The issue is, are the harms sufficient or serious enough to cause us to want to censor or restrict erotic materials for adults? Most people agree that children probably wouldn't be benefited by some of those materials and it shouldn't be sold

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(1) That criticism can be equally levelled at the 1986 U.S. Attorney General's Commission, which rushed through its work and did little, if any, real research before coming to the opposite conclusions reached by its predecessor 16 years earlier. For a detailed examination of the methodological flaws of the 1970 Commission, see Lane Von Sunderland The Obscenity Commission, Methodology and the Law: A Case Study of the Commission on Obscenity and Pornography, 1973.

to them; that is not the key issue of course. However, when adults obtain it, somehow children do also (Ibid., p. 255).

In writing those words more than a decade ago, Cline enunciated what has become, because of the proliferation of video cassettes and satellite dishes, one of the central concerns related to sexually explicit materials - access by children.

Reo Christensen, writing in the same volume, suggests that sexually explicit materials can be justifiably restricted where used primarily for commercial entertainment rather than education (Christensen in Cline, op. cit., p. 312). He states that if opponents of censorship insist on pointing out that the case for restrictions on sexually explicit materials rests upon "unprovable viscera", they must recognize that many of the principles and suppositions upon which Western society is founded are similarly based (Ibid., pp. 311-312). Christensen also argues that enforcement problems should not be used as a reason for abandoning regulatory efforts.

Enforcement is admittedly difficult. We have not been able to prevent drunken driving, either, or supermarket theft, or income tax evasion, but we do not proceed to make them legal. Instead, we seek more effective enforcement measures (Christensen in Cline, op. cit., p. 314).

Authors such as Peter MacMillan, who in his 1983 work Censorship and Public Morality argues that there is no justification for obscenity laws for adults, fail to admit, or deal with the reality that placing no restrictions on sexually explicit materials for adults often results in children having easy access to those materials as well. That deficiency in the literature should be remedied, as many

other writers who oppose placing restrictions on the availability of sexually explicit materials for adults recognize that an exception must be made in the case of children.

Arguments about pornography and its effects apply only to adults and not to children. Our lack of knowledge about its effects on children combined with the plausibility of arguments that they are at greater risk from pornography than adults favor retaining the present restrictions on children's access to it. Similarly, the use of children in pornographic movies can and ought to be prosecuted... (Hausknecht in DiClerico and Hammock, 1980, p. 283).

Even this widely-accepted idea, however, is viewed by some as being a problematic social construction. There are those who argue that the notion of childhood and the innocence attributed to children, is not reflective of reality.(1)

A lack of commonly agreed reference points and values poses problems for researchers in this area. This absence of common grounds for discussion has meant that the debate over sexually explicit materials has more often been a series of shrill monologues that talk past each other but never meet, than true dialogue.

To find blasphemy offensive, you would have to believe in God. To find pornography offensive you would have to believe in women. But it is obvious that our cultural atheists do not share a frame of reference with the feminist critics in which the accusation that pornography is a 'blasphemy' of women would be meaningful. Worse still, they do share a frame of cultural reference in which it is acknowledged that there are still some believers around, a framework in which the myth of the existence of women is still culturally prevalent

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(1) On that subject, see Curtis, (1988). Curtis, in the introductory section of a paper dealing with sexual assault in Ontario schools between 1846 and 1907, points to the frequency with which students have falsely accused teachers and other staff members with sexual assault, charges that were found to be politically motivated.

enough to add the spice of blasphemy to the debunking of the myth (Kappeler, 1986, p. 24).

This problem of lack of a common frame of reference is exacerbated by the failure to agree what is being discussed, let alone what is valued, as is demonstrated by the examination in Chapter Two of the definitional controversy that has raged around the terms "pornography" and "erotica" for years.

#### Badgley Committee - summary

The Committee on Sexual Offences Against Children and Youths was the first major study of sexually explicit materials in Canada, even though this was not the primary focus of Badgley's work. Badgley dealt with a variety of issues, including sexual abuse of children, the law, police and child protection services, health and correctional services, juvenile prostitution and child pornography. The Badgley Committee was appointed by the Minister of Justice, the Attorney-General of Canada and the Minister of Health and Welfare in December of 1980. Badgley delivered a two-volume, 1300 page report in 1984.

Only 209 pages of that final text, a section entitled "pornography" that covers chapters 47 through 55, is relevant to the study at hand. However, the nature and uniqueness of the research conducted by Badgley makes this report the best starting point for those with an interest in the subject. That research includes a legal review, an examination of historical crime statistics, a review of previous research in Canada and elsewhere, a survey of police chiefs

across Canada and a 1983 Gallup poll of 2,008 people 18 years of age and older living in 210 communities across Canada.

On the subject of production and accessibility of child pornography and accessibility of other sexually explicit materials, Badgley examined two questions. The incidence and prevalence of sexual exploitation of children by way of child pornography was explored, as was the question of access by children and youths to sexually explicit materials. In a chapter on provincial regulation, Badgley examined the powers and functions of provincial film boards and the scope of municipal bylaws employed to control sexually explicit materials. The committee concluded that policies of provincial boards vary widely from one part of the country to another, that sexually explicit scenes depicting violent assaults have been shown in most parts of Canada, and that movies dealing with themes of child sexual abuse and exploitation have been shown in most provinces (Badgley, 1984, p. 1133).

Provincial disinterest in enforcing regulations governing sexually explicit materials has negatively influenced enforcement of federal regulations in certain parts of the country, the committee discovered.

...the evidence suggests that it is provincial policy that plays a decisive role in determining whether the obscenity provisions of the Criminal Code are relatively tightly enforced or whether, comparatively, a laissez-faire stance prevails with respect to distribution, sale and display of sexually explicit matter (Ibid., p. 1156).

In some jurisdictions, police must consult with a crown attorney or agent of the provincial attorney-general before taking any action, a

state of affairs that removes decision making authority from the police.

In the Committee's view, the policies of the provincial Attorney-General with respect to obscenity prosecution may impinge upon the practices of other agencies involved in regulating pornography. In some instances, this impact results in de facto compliance with an Attorney-General's policy, even when the agencies in question have federal jurisdiction. In several provinces, Customs officials contacted by the Committee reported having encountered problems as a result of the Attorney-General's position. In addition, RCMP initiated obscenity prosecutions, both in contract and non-contract provinces, may be stayed by order of the Attorney-General (Ibid., pp. 1156-1157).

Some provinces have effectively discouraged police action against sexually explicit materials by requiring that any action be based on a public complaint. In one province, a complaint must be received in writing and the complainant must be prepared to testify in court (Ibid., p. 1157). Badgley also notes that few police forces in the country have specialized units trained and assigned to deal exclusively with sexual offences or the control of sexually explicit materials (Ibid., p. 1160).

Badgley's findings on the importing and seizure of child pornography in Canada point to a problem for those who favor increased regulatory efforts vis-a-vis sexually explicit materials. Between 1979 and 1981, child pornography accounted for only one per cent of the 26,337 sexually explicit items seized by Customs at border crossings (Ibid., p. 1171). Badgley acknowledges that child pornography makes up a very small portion of sexually explicit materials entering Canada. On the basis of those figures, some may argue that child



pornography is a relatively minor problem that warrants little regulatory attention. But Badgley points out that this information may be misleading, as the RCMP were given a list of 266 Canadian customers of a major U.S. child pornography producer during one investigation (Ibid., p. 1171). Badgley believes that the 330 seizures between 1979 and 1981 are not representative of the amount of child pornography entering the country, and that the Customs detection rate is very low.(1) Badgley cites a number of problems faced by regulators to support this view.(2)

Of particular interest is Badgley's prediction that while videotapes represented a small percentage of all seizures, this medium

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(1) Figures provided by Intelligence Division of the Customs Operation Branch of Revenue Canada Customs and Excise in a letter dated October 24, 1988 stated that 105 of 4,635 seizures in 1987 involved a category of pornography that the department described as "child sex." Of those 105 seizures, 26 were of books, 31 were magazines, two were comics, six were brochures, one was an advertisement, and 39 were video cassettes. (letter from G. Rochon dated October 24, 1988) From this information we may infer that video cassettes have become, if not the most popular medium used by producers of child pornography, at least an increasingly popular medium for that purpose.

(2) The committee had this to say about problems impeding detection of child pornography: "On the basis of the evidence available... it is clear beyond reasonable doubt that a number of crippling problems beset the detection mechanisms currently in operation. These problems include: variable interagency co-operation and communication, vague Customs guidelines for seizure that lead to inconsistent enforcement... the routine non-inspection of first class mail and the assignment of too few inspectors to examine massive volumes of other types of mail... In addition, the consumers of child pornography have developed sophisticated importation techniques to guard against detection of the material, whether out of a dread of having their identities discovered, or as a means of protecting an expensive investment. Taken together, all of these factors indicate that the seizure success rate with respect to child pornography is very low" (Ibid., pp. 1171-1172).

could lead to a major enforcement problem with respect to the regulation of sexually explicit materials.

Video cassette duplicating equipment is not inordinately expensive, nor is it difficult to use...a substantial amount of time is required to video tape a video tape unlike a magazine, whose contents may be inspected in a few seconds. Thus, even if a pornographic video cassette is found on the person of an individual entering the country, the Customs inspector will seldom have the time to review its contents in detail (Ibid., p. 1174).

Badgley concluded that current enforcement efforts are adequate to deal with the limited commercial distribution of child pornography in Canada. This conclusion was tempered with the suggestion that the proliferation and low cost of audio-visual equipment would lead to enforcement officials being faced with a situation of a different magnitude (Ibid., p. 1184). The committee viewed the child pornography problem as primarily involving importation, individual production and small group exchanges. Badgley admitted that no foolproof method exists to control importation, but suggested that much more emphasis should be placed on enforcement and co-operation with other nations' efforts (Ibid., p. 1196).

After conducting a content analysis of several sexually explicit magazines, the committee determined that regular, discernable features exist which would allow government to devise precise laws to regulate these materials.

...it is evident that an operational definition of some of the salient features of pornography can be developed, one which is based on the listing of the portrayal of specific sexual behaviors and acts. A definition incorporating the elements documented could serve as the basis for the framing of statutes whose purpose is to limit the

accessibility of matter of this kind to children and youths (Ibid., p. 1240).

Badgley also found strong support for restricting access of children and youths to sexually explicit materials.

...while it was found in a nationally representative sample that Canadians were divided in relation to whether accessibility to pornography should be restricted, there was considerable unanimity that children and youths should not be exposed to the types of sexually explicit depictions described in the findings in this section (Ibid., p. 1240).

Research conducted by the committee indicates that the reality of the situation is that children are frequently able to obtain and view such materials.(1) People who expressed opposition to children viewing sexually explicit materials are not necessarily opposed to such materials being available to adults. In fact, some of those expressing concern about children's access are themselves consumers, which raises the question of whether they would be willing to sacrifice their own viewing interests in order to prevent their children from being exposed to such materials.

Interestingly, in its analysis of the results, the committee noted that "over three in four persons (77.3 per cent) who didn't oppose the sale of pornography altogether felt that only persons age 18 or older should be permitted to purchase this matter" (Ibid., p. 1268). The committee's survey discovered that three in five males

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(1) "Pornographic material is not just accessible, but readily accessible to children and youths in all parts of Canada. As documented in the findings of the nationally representative sample of the Canadian people, this practice stands in sharp contrast with the expressed wishes of most Canadians" (Ibid., p. 1259).

(59.4 per cent), and one in three females (30.8 per cent) had purchased a sexually explicit book, magazine or other material once. Many of these people were underage when they made these purchases.

Excluding persons who had never bought these materials, one in six males, (17.0 per cent) and one in 17 females (5.8 per cent) had been under the age of 15 when they made their first purchase of pornography. These proportions rose respectively to two in five males (41.2 per cent) and one in five females (21.6 per cent) who had made such purchases before they had reached age 18 (Ibid., p. 1261).

#### Fraser Committee - summary

Following closely on the heels of the Badgley Committee, the Special Committee on Pornography and Prostitution in Canada (hereafter the Fraser Committee or the Fraser Report) is the primary source document in the rather limited literature on sexually explicit materials in Canada. Struck in June of 1983, this seven member committee (four lawyers, a sociologist, a criminologist and a writer) headed by Vancouver lawyer Paul Fraser, presented a two volume, 753 page report 20 months later. The committee held public meetings in 22 centres across Canada, undertook extensive meetings with government departments and regulators, and made recommendations in the form of draft legislation. Research commissioned by the committee included a National Population Study of 2,018 Canadians conducted in June and July of 1984, and four empirical studies related to sexually explicit materials within Canada: one concerning provincial film censor boards; one addressing the production of pornography in Canada; a content analysis of triple-X and "adult" videos; and an analysis of how

selected newspapers across Canada have covered pornography as an issue. The committee presented its recommendations as draft legislation to have the effect of bringing clarity and certainty to the law (Fraser, 1985, p. 11).

Slightly less than half (340 pages) of the report deals with sexually explicit materials and related concerns. The committee's work in this area was divided into four sections: Pornography as a Social Issue; Pornography and the Law; Legal and Social Reactions to Pornography in Other Countries; and Recommendations. With respect to sexually explicit materials, the committee's terms of reference were to consider the problems of access to pornography, its effects and what is considered to be pornographic in Canada, to consider the experience and attempts to deal with these problems in other countries, including the United States, European Economic Community and selected Commonwealth countries such as Australia and New Zealand. The committee was also asked to consider alternatives, report findings and recommend solutions to the problems associated with pornography in Canada (Ibid., pp. 5-6).

The committee recognized the risks involved with presenting so many recommendations as possible draft legislation. "No doubt some of it has been less than perfect. However, we hope that it will form at least the basis for further discussion and ultimately, for an overdue reform of the law" (Ibid., pp. 11-12). Fraser's prescient prediction of the criticism that was to come so closely mirrors the subsequent national debate as the Mulroney government introduced Bills C-114 and C-54 that it makes one wonder why they didn't devote more effort to

suggestions (or warnings) of what the government could and could not reasonably expect to persuade the Canadian public to accept.(1)

The committee's report and recommendations are indelibly stamped with a strong feminist influence. The final report rejects the conservative focus on sexual immorality as a basis for laws governing sexually explicit materials, and argues the need for the development of a theory which views pornography as an assault on human rights (Ibid., p. 27). Harm is defined by the committee not just in the context of direct injury to an individual, but in a broader sense which posits that impairment of a fundamental social value can be seen

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(1) The committee wrote: "Those of conservative mind will consider us too libertarian in our view that the bulk of pornography should be regulated rather than banned. Some feminists too may feel we have circumscribed the pornography which is to be prohibited too narrowly. Liberals for their part may find our movement outside the traditional boundaries of harm untenable. It is our belief that, given the complexities of this area, and the conflict of philosophies to which it gives rise, our approach represents a rational, fair and realistic balancing of the interests involved, and a significant advance over the present state of the law" (Ibid., p. 260). Realization that this "rational, fair and realistic balancing of the interests involved" was likely to be shelved and forgotten was not long in coming. In an article entitled "The Fraser Report: good ideas gathering dust", Joan Riggs lamented this inevitability. Riggs writes: "The Fraser Report... has hardly been acknowledged by the federal government. Is the Report, then, merely a political pacifier hinting at the promise of change, or is it a body of knowledge upon which to build sound legislation reflecting public concern?" (Riggs in Perception, September-October 1985, p. 27)

as a harm meriting legislative control (Ibid., p. 264).(1)

Fraser's final report also notes the feminist critique which suggests that institutional reform is needed as badly as legal reform and that the system needs to be changed in the direction of gender equality before problems associated with sexually explicit materials can be resolved.

...many witnesses emphasized that it was not only the actual laws that need to be changed, but the administration of the laws. Many believed that the proliferation of pornography is not unrelated to the fact that our society, including its entire justice system, is controlled by men (Ibid., p. 75).

Fraser takes the view that the Criminal Code has an important role in defining what material may be available within a society. As that relates to sexually explicit materials, Fraser states that some pornography constitutes hate literature.

In the view of the Committee, there are magazines, films and videos produced solely for the purpose of entertainment whose depiction of women in particular, but also, in some cases, men and young people, demeans them, perpetuates lies about aspects of their humanity and denies the validity of their aspirations to be treated as full and equal citizens within the community (Ibid., p. 103).

The committee explains common usage of the term pornography as

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(1) The committee explains its formulation of harm as embracing: "not only direct, demonstrable harm to an individual, but also an element of social harm. In essence, we see two forms of harm flowing from pornography. The first is the offence which it does to members of the public who are involuntarily subjected to it. The second is the broader social harm which it causes by undermining the right to equality which is set out in section 15 of the Charter of Rights and Freedoms" (Ibid., p. 259).

being split into two main perceptions: one which regards sexually explicit depictions per se as pornographic, and one which reserves that label for materials which combine violence or degradation with sexuality. Fraser chooses not to attempt to define erotica, but rather to "be limited, and clear about what we seek to expose to a criminal penalty, so that the 'chilling effect' of our recommendations on genuine erotic expression will be minimized" (Ibid., p. 58). Fraser is quite clear, however, on the need to control "violent pornography."

...despite the differences of opinion as to what should be considered pornographic, there was consensus in this area: the question of what should be done about violent pornography. A large majority of presenters expressed strong concern about the prevalence of violent pornography and urged that government controls be strengthened to ensure that such material is kept off the newsstands and is prohibited on television (Ibid., p. 63).

As much as it served to provide information about Canadians' attitudes towards sexually explicit materials, the National Population Survey underlines just how little work has been done in this area, and raises as many questions as it answers. The survey suggests that over two million individuals in Canada bought at least one "adult entertainment" magazine during the previous year,<sup>(1)</sup> with male purchasers outnumbering women by a ratio of three to one. Some 32 per cent of those sampled (which would represent six million people) flipped through such a magazine at least once during the previous year. What is particularly interesting for the purposes of this study

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(1) Users tend to be typically young, unmarried and are more likely to live in Ontario and the West than in the Maritimes or Quebec.



is the finding that 12 per cent of Canadians had purchased or rented "adult" videotapes during the previous year (Ibid., p. 91). Given that per capita VCR ownership was only 12.9 per cent then and has since risen to 60 per cent in 1989, it is probable that that figure greatly under-states current consumption patterns.

Two-thirds of Canadians said that everyone has the right to view sexually explicit materials in private, but based on results from that same survey, Fraser found that Canadians are quite evenly divided on the question of what is acceptable and what is unacceptable. Forty-five per cent of those surveyed said that sex magazines are unacceptable in our society, compared with 35 per cent who disagreed. Fifty-nine per cent of respondents saw pornography as a problem in Canada, though not as important as other social and economic issues. Two-thirds of respondents (67 per cent) said that sexually explicit magazines are degrading to women. Thirty-eight per cent of respondents said that magazines containing sexual violence should be banned, and 59 per cent said government should take the lead role in controlling sexually explicit materials. Three-quarters of respondents said that action should be taken on violent sexual material and material to which children might have access. However, no consensus was found on what action should be taken, a finding that reflects perhaps the ambivalent and paradoxical attitudes Canadians have towards the issue. Further support for this viewpoint can be implied from the fact that only one per cent of respondents saw pornography as a major problem in Canada (Ibid., pp. 104-105).

On the question of harms being directly attributed to sexually

explicit materials. Fraser argues that existing evidence is insufficient to allow for a conclusion one way or another.

The Committee is not prepared to state, solely on the basis of the evidence and research it has seen, that pornography is a significant causal factor in the commission of some forms of violent crime, in the sexual abuse of children, or the disintegration of communities and society. Pornography may, indeed, be a prime factor in each of the undesirable consequences mentioned, but based solely on the evidence we have considered, we cannot at this time conclude that such is the case (Ibid., p. 99).

Fraser notes that research that has been conducted to date is so inadequate and chaotic that no consistent body of information has been established.(1)

Arguing against the establishment of a national film classification board, the committee recognizes that the advent of videotape means that there are problems associated with provincial jurisdiction. The major problem posed by separate systems of video classification is that the most permissive standard becomes the de facto national standard.

...clearance in the most permissive jurisdiction can be, in effect, clearance for national purposes

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(1) Some writers such as political scientist James Q. Wilson go so far as to argue that definitive resolution of such questions is doubtful because of the limitations of science. Wilson, in an article entitled "Violence, Pornography and Social Science", debunks the myth of verifiable harm by examining the limits of social sciences and demonstrating the impotence of science in measuring or recording harm. Wilson writes: "In the cases of violence and obscenity, it is unlikely that social science can either show harmful effects or prove that there are no harmful effects. It is unlikely, in short, that considerations of utility or disutility can be governing. These are moral issues and ultimately all judgements about the acceptability of restrictions on various media will have to rest on political and philosophical considerations" (Wilson in Cline, op. cit., p. 307).

if the films are videotaped and then made available for private as opposed to public usage. It is, in our view, inevitable that entrepreneurs will take advantage of the differences in standards between provinces by using the most permissive jurisdictions as clearinghouses for films destined for national distribution as videos. Mail-order houses based in these provinces will offer material to a national market (Ibid., p. 329).

The most effective means of countering this problem, Fraser suggests, is to place additional emphasis on the initial Customs clearance (Ibid., p. 330). The committee also urges all provinces to establish classification systems for video cassettes intended for home use (Ibid., p. 338).

The committee was particularly dismayed by what it saw as the lack of political will and low priority given to Customs' efforts to regulate sexually explicit materials, and recommended that the federal government give higher priority to the control of the importation of pornography.

We were advised that greater emphasis has been given by the federal government to the enforcement of the rules and regulations that apply to automobiles and clothing than to the enforcement of Tariff Item 99201-1. This ordering of priorities is, in our view, unacceptable. Surely it is more important to prevent the entry into Canada of a number of magazines that offend Tariff Item 99201-1 than it is to ensure that an article of clothing reveals its place of origin (Ibid., p. 293).

That lack of political will extends into other agencies such as Canada Post, whose status as a Crown Corporation may have some bearing on the fact that its role in regulating sexually explicit materials is entirely passive. Co-operation and information sharing between the

post office, Customs and the RCMP is merely a one-way flow into the post office, a situation that Fraser deems unacceptable. The committee recommended that:

The Postal Service should assign policy and administrative priority to the effective control of distribution of pornographic material by mail. We further recommend that the postal service actively participate with the RCMP and the Customs service in gathering and exchanging information and data to better co-ordinate effective investigation and enforcement techniques to control the distribution of pornographic material by mail (Ibid., p. 299).

In urging that greater resources be made available for Customs to do its job, Fraser also recommended the closing of what has been seen to be a major loophole in the joint clearance and classifications used by Customs and provincial boards respectively.

In order to prevent the possibility of allowing the entire Customs inspection system to be frustrated by the unauthorized copying of material pending ultimate Customs clearance, we conclude that film and video recordings to be classified should remain in the control of Customs until the clearance process is complete. Specifically we think that the practice followed in Quebec of allowing an importer to have custody of the material for classification should be stopped (Ibid., p. 294).

The concern that Fraser refers to is the practice of allowing importers to keep possession of a copy of the film/video for a period of 60 days while a decision is made as to whether it should be allowed into Canada and what its classification should be. That, argued some of the witnesses making submissions to the committee, is ample time for enough copies of the material to be made and distributed across the nation that Customs and provincial classification decisions could

be rendered effectively meaningless.

One area where the committee was clearly out of its depth was with respect to satellite transmissions of sexually explicit materials. With no literature to draw on, and no evidence that serious efforts were made to rectify that situation, Fraser chose to rely on presumably anecdotal information presented at the public hearings. Conversations with a handful of home satellite dish dealers or industry representatives would surely have made the committee reconsider and revise the recommendations it put forth in this area. Documents obtained from the federal Justice Department under the Access to Information Act reveal that policymakers were advised to reject the suggestions out of hand, as we shall show in Chapter Four. One recommendation related to scrambling and descrambling technologies is a misguided suggestion for several reasons.(1)

Firstly, Canadians are leaders in scrambling (encryption) and descrambling technologies, which makes research directed at inventing something that already exists seem pointless. Secondly, scrambling of signals is little deterrent to dish owners who wish to receive a signal, particularly if there is commercial gain involved, as is the

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(1) Fraser proposes that: "The CRTC should conduct the appropriate research into and promote appropriate public discussion about technology capable of scrambling and descrambling satellite signals in order that there can be a measure of practical control over the transmission and reception of satellite signals" (Ibid., p. 303).

case with screening sexually explicit signals.(1) Within a few months after some major U.S. satellitecasters scrambled their signals in 1986, sales of descrambling boxes began to soar in Canada. One U.S. satellite service specializing in sexually explicit programming (American Triple Extasy) even advertises an Edmonton telephone number that Canadians who wish to subscribe to the service can call in order to have their descrambling boxes turned on to that signal (for a monthly fee.)

Another recommendation comes closer to the heart of the problem, but is almost as unlikely to be acted upon. The committee's suggestion that "Canada should take the initiative to immediately open discussions on the international regulation of both public broadcasting signals and private signals emanating from fixed satellite services" is insightful and utopian at the same time. Any action on this question will definitely have to arise from bilateral negotiations. The U.S., however, is unlikely to be a willing or interested partner in such negotiations, given its predilection for free flow of information worldwide.

#### New Communications Technologies

Research on new communications technologies and their impact on

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(1) Do-it-yourself descrambling kits became popular in the U.S. in the early 1980s, as Baldwin and McVoy relate. "As the incentive for stealing pay services increases, more subscribers will be tempted to purchase bootleg descramblers (which can be designed and built by an average TV repairperson.) In fact, designs for descramblers have already appeared in Popular Electronics and Radio Electronics, two major electronic hobbyist magazines" (Baldwin&McVoy, 1983, p. 53).

regulation of sexually explicit materials in Canada is virtually non-existent. The Caplan Sauvageau Task Force on Broadcast Policy makes only a passing reference to the First Choice-Playboy pay TV controversy, and all but ignores satellite television. Most information on the subject was located through passing references in articles (See Gross, 1986, Lyman, 1983, Baldwin and McVoy, 1983), or texts on pay and satellite television, video cassettes, or new communications technologies in general. The only exception that this research has uncovered is the Communications Technology and Film Classification Study conducted by Julian Ridington and Erna Buffie for the Manitoba Department of Culture, Heritage and Recreation. A 77-page executive summary of the report released by that provincial government department is divided into three sections.

The first section is a short list of recommendations made by the researchers, who were guided in their work by the departments of the Attorney-General, Culture, Heritage and Recreation and the Manitoba Film Classification Board. Items studied by the researchers included videotapes and Rock Videos, Broadcasting (pay Television), Television Reception from Foreign Satellites, Video Game Software, Compusex and Erotic Phone Services. Only the recommendations that are germane to this study will be mentioned here. The report suggested that the Manitoba Film Classification Board should classify all videotapes for public showing, a recommendation that was acted upon quickly by the provincial government. A further recommendation, however, that the board also classify all videotapes intended for private viewing, has not been acted upon, as the government decided to await the outcome of

discussions with the provinces of Ontario and Saskatchewan about the establishment of a joint inter-provincial classification body.

On the question of broadcasting and satellite reception, the report more clearly articulates concerns expressed by the Fraser Committee, and suggests:

7.1 that concerns regarding programming content be expressed during federal provincial conferences; and through communications between the Provincial Minister responsible for telecommunications policy and the Federal Minister of Communications. (and)  
7.2 that concerns regarding pornographic programming from foreign satellites be brought to the attention of the Federal Government to negotiate international agreements to control such signals (Ridington and Buffie, 1984, p. 7).

The section of the report on classification of video cassettes studies the costs and benefits of various options for video cassette classification. The section on pornography and the new communications technologies provides a feminist definition of pornography, as the authors acknowledge, examines the aforementioned new communication technologies, outlines the opinions of various sectors of society on censorship, explains the web of government initiatives and jurisdictions at all three levels of government, and proposes options for regulation. Much of this material in the executive summary is similar to that contained in the Fraser Report. One of several areas where this report goes beyond what is presented in Fraser is in detailing federal government and CRTC attitudes at the time of the First Choice controversy and in explaining concerns surrounding foreign satellite transmissions.

Monitoring of satellite reception and enforcement is a difficult matter crossing jurisdictional lines. The Manitoba Film Classification Board does



not censor but classifies film material based on community standards. The Vice Division of the Winnipeg Police Department cannot act unless there is a complaint. Sargent Clark Peckover of the Winnipeg Vice Squad maintains that the monitoring would not be possible with present police staffing levels (Ibid., p. 10).

The report also notes that it would be difficult to collect evidence in any cases involving satellite programming, and suggests that control be extended over public showings of satellite programming through changes in the Liquor Licence Act.

Businesses serving liquor could be required to post notices listing the entertainment which will be shown live or received from satellite. They could also be required not to show or present entertainment which is violent or which degrades women, or which depicts coercive sex, as a condition of obtaining and retaining a liquor license (Ibid., p. 40).

The author admits the impracticality of the recommendation, that it would be difficult to obtain evidence and carry out enforcement. However, the report goes on to suggest a focus on education in combination with other initiatives, and recognizes the control problems posed by these new media.

There are few options for regulating pornographic, obscene and violent content displayed by new technologies which are directly available to the provinces. Successful regulation of such material would require federal initiatives and international covenants. However, some changes in provincial legislation, and in law enforcement and customs procedures at the provincial level could have an effect (Ibid., p. 3.44).

In that statement, the report cuts to the heart of the problem: while the new technologies present challenges that can largely be

resolved only at the national and even international level, provincial and municipal officials who attempt to effect some measure of control have very few tools with which to do so. Those problems will receive closer attention in Chapter Four.

#### Reviews of Canadian studies

Analysis of the findings of the Badgley and Fraser reports is contained in Regulating Sex (, (1986) an anthology which reprints the federal government's official response to the reports and contains 11 articles related to various topics studied by the committees. For example, Norma McCormick, a member of the Badgley Committee, addresses specific criticisms of Badgley's work and the critics themselves. Fraser Committee member John McLaren, in a piece entitled "The Fraser Committee: The Politics and Processes of a Special Committee", describes the players, playing field and rules that accompanied his work. McLaren admits that time pressures (he argued that the committee should have had at least 36 months to do its work rather than the 20 months it was given) and political imperatives imposed by the federal government meant the committee was not able to canvass all important issues and didn't have as complete a background picture of some areas as it would have liked (McLaren in Lowman, 1986, pp. 44-45).

Neil Boyd's "Sexuality, Gender Relations and the Law: The Limits of Free Expression" is the article which is most germane to this discussion. Boyd makes the case that an emphasis on violence and sexually explicit depictions overlooks the problems and injustices contained in advertising and soft-core pornography. He states that

"pornography" is by its very nature destructive of society.

Although pornography is about sexuality and violence, it is also about fidelity and collective commitment - the extent to which sexual self interest defines social life. Pamela Johnson has described the early Nazi use of pornography as political propaganda: "to make the individual conscious only of the need for personal sensation.... The Nazi scheme was the deliberate use of pornography to the end of social castration. The theory was, and it is worth considering that - permit all things for self-gratification and you are likely to encourage withdrawal from any sort of corporate responsibility" (Boyd in Lowman, op. cit., p. 127).

Boyd rejects arguments which state that while sexually explicit materials may advocate subordination of women, they do no real harm. "I am inclined to find a rather thin line between the advocacy of subordination and the advocacy of hatred or violence," he writes (Ibid., p. 136).

Anti-censorship feminist Sara Diamond, in "Childhood's End", writes that the costs of censorship include maintaining and perpetuating sexism and patriarchy. She recommends laws to improve the socio-economic status of women as a long-term solution to the problems symbolized by some sexually explicit materials. Similarly, William Fisher's "The Emperor Has No Clothes: On the Fraser and Badgley Committees' Rejection of Social Science Research on Pornography" rules out the use of censorship to achieve social change. Fisher argues that censorship of itself models dangerous, antidemocratic behavior.

## Conclusion

Literature on sexually explicit materials in Canada is scattered over a wide range of disciplines, primarily other than political science. Feminist analyses, both from pro- and anti-regulation perspectives, have dominated the literature in recent years. Little work has been done in Canada other than the Fraser and Badgley Reports. These federally-commissioned efforts raise as many questions as they answer and point to the need for more work in several related areas. Both reports make reference to potential control problems posed by new home entertainment technologies, but do not probe these concerns.

Written requests to regulators, provincial and territorial governments across Canada for information they have gathered or studies conducted on this subject area yielded only one document - a report written for the Manitoba Departments of the Attorney-General, Culture, Heritage and Recreation and the Manitoba Film Classification Board. Surveys conducted by Gallup, James Check and others do not explore most of the questions raised either by Badgley and Fraser or by the Manitoba government report. This deficiency in the literature was one of the factors which led this researcher to conduct the survey described in chapters five and six. Our attention turns next to the development of VCRs, satellite dishes and pay TV.

## CHAPTER FOUR

### VCRS, SATELLITE DISHES AND PAY-TV

As recently as the early 1970s, a discussion of sexually explicit materials would have centred around books, magazines and perhaps the odd 8mm stag film. Over the past 15 years, that has changed dramatically, with the advent of the home video cassette recorder, satellite dishes for the home market and pay TV on a wide scale. The discussion of VCRs, satellite dishes and pay TV which follows outlines the development of these media and the extent to which they have become vehicles for the distribution of sexually explicit presentations.

#### Videocassettes

An understanding of the development and impact of video cassettes is useful when discussing sexually explicit materials in a modern context, particularly since the emergence of video cassettes as a dominant vehicle for home entertainment.(1) As of 1986, the combined income generated by video cassette sales and rentals in Canada exceeded revenue generated from movie house admissions. North American revenues have been estimated at \$3.5 billion, up almost 40

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(1) In some studies, the term videotape has been used to refer both to video cassettes and videodiscs. Conversations with officers at Project P in Toronto and overall research have led the author to conclude that at this time, videodiscs have not become a popular medium for the transmission of sexually explicit materials, likely because the consumer market for videodiscs (which, in their current form, can neither be recorded on nor erased) failed to develop as anticipated due to the enormous popularity of video cassettes. Accordingly, this discussion shall be restricted to video cassettes.

per cent over the previous year.(1) This discussion will examine the development of the home video cassette, show how the video cassette has acted as a vehicle for greater accessibility of sexually explicit materials, and examine the problems this development has caused for regulators.

Videotape was first developed commercially by Ampex corporation in the 1950s. A decade later, RCA and Ampex introduced the first commercial videotape recorders. Sony introduced a smaller, three-quarter inch tape in 1972, which became the industry standard. Video cassette recorders first appeared on the consumer market in 1974. By 1981, 3 million or 3.8 percent of U.S. homes had VCRs, with five to six per cent penetration predicted by 1982.(2) While VCR sales in the early 1980s were proportionately greater in Canada than in the U.S., it is interesting to note that between 1979 and 1984, VCR sales in the U.S. "virtually doubled every year" (Nordicity Group,

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(1) Estimates for 1986 put revenue from rentals and sales at close to \$500 million, about \$50 million more than box office income. (Globe and Mail, Dec. 22, 1987, p. B6) Industry officials also put the number of VCRs in North American homes at 50 million, and say 1988 growth will be in the 35 per cent range (Ibid.).

(2) By comparison, 2.1 per cent of Canadian homes had VCRs in 1981 (Nordicity Group, 1985, p. 4). While Lyman was incorrect in predicting that the large choice of TV channels in Canada would lessen the demand for VCRs, his lack of prescience may perhaps be excused on the grounds that he could not possibly have foreseen the extent to which the price of a home unit would tumble. A 1987 Statistics Canada survey showed that 45 per cent of Canada's more than nine million households now have VCRs, up from 35 per cent in 1986 and 6.3 per cent in 1983. Some 48 per cent of Alberta homes have VCRs (Kitchener-Waterloo Record, Nov. 6, 1987). A July, 1987 study by the A.C. Nielsen Co. revealed that 50.9 percent of the estimated 88.6 million homes in the U.S. with televisions have VCRs (Kitchener-Waterloo Record, Oct. 27, 1987, p. C2).

1985, p. 3). Predictions of universal VCR use by the turn of the century, that "home recording will be as common in the home as taking snapshots was just a few short years ago" (McCavitt, 1983, p. 8), may seem exaggerated, but rapid VCR penetration has been a reality through the 1980s.

A 1985 CBC study predicted that penetration will continue to increase, and that 60 per cent of Canadian homes will have VCRs by 1990. That study estimated that the Canadian home retail video industry grossed \$500 million in 1985 from rental and sales of pre-recorded cassettes, and projected 1990 revenue of \$1 billion (CBC, 1985, p. 36). Canadian Business magazine provides an even more thorough picture of VCR penetration into Canadian homes by noting that some 950,000 home units were sold in 1984, more than 20 times the sales of only four years earlier. The article projects that 80 per cent of Canadian homes will have VCRs by 1995 (Canadian Business, Jan 87, p. 77). In 1984, a Canadian video industry executive estimated the industry's worth at \$300 million annually based on 2,500 Canadian video retailers each doing an average of about \$150,000 worth of sales and rental business (London Free Press, May 31, 1984 p. A1).

Video cassettes were used to distribute sexually explicit films in North America several years before they became widely used as a means of bringing big-budget Hollywood releases into thousands of livingrooms. Even when popular titles became widely available, sales of sexually explicit films continued to outpace the box office

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(1) "Retailers reported selling as many as 50 or 100 video tapes of films like Deep Throat and Slaves of Love for every movie like Patton or Citizen Kane" (Linedecker, 1981, p. 31).

hits.(1) David Scott, A U.S. psychologist now living in Toronto, has examined the economics of sexually explicit materials on videotape and found that sexually explicit videos played a major role in the birth of the home video market, and that since that time, the video industry has become a reliable source of income for the producers of sexually explicit materials.(1) McCavitt (1983, p. 85), writing about VCRs, noted that "the X-rated movies seem to be the most popular material for home consumption."(2)

Similarly, Black, Woodrow and Woodside, writing in the early 80s, observed that "the largest single category of pre-recorded video cassettes sold in the United States for use in the home today is pornographic materials" (Woodrow and Woodside, 1982, p. 86).

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- (1) "A decade ago, 80 percent of the videos rented in retail outlets were soft-core pornography. These rentals accounted for most of the income of this fledgling industry, in part because organized crime moved headlong into the video business just weeks after Sony put the first video cassette recorder on the market in 1975. Five years later, in 1980, soft-core pornography accounted for 40 percent of rentals. Today it accounts for one-sixth of the vast market of video store rentals nationwide and it generates almost one quarter of these stores' gross income. Dollar volume for pornographic videos has steadily risen to 1984 levels of \$360 million in rentals and \$40 million in sales" (Scott, 1985, pp. 24-25).

Rimmer's X-Rated Videotape Guide provides an even higher figure. Rimmer quotes a 1982 Los Angeles magazine article as estimating that 1.2 million video cassettes were being sold annually at a retail value of \$600 million, and projected sales of 10 million copies per year by 1990, based on steadily increasing VCR sales (Rimmer, 1984, p. 3).

- (2) John Kiely, a film reviewer for the Kitchener-Waterloo Record, writing about Family Viewing, a film that analyzes the impact video has had on society, describes video as "being the first medium developed, it would seem, exclusively for sex" (Kitchener-Waterloo Record, Jan. 12, 1988, p. C1).



Production of sexually explicit video cassettes is a highly profitable industry that grew exponentially through the first half of the 1980s. One writer estimates that such tapes, which sell for between \$70 and \$100, but are more commonly rented than purchased except in the case of hard core material, comprise 50 per cent of the home sales market and gross over \$100 million a year in North America alone (Potter, 1986, p. 19).

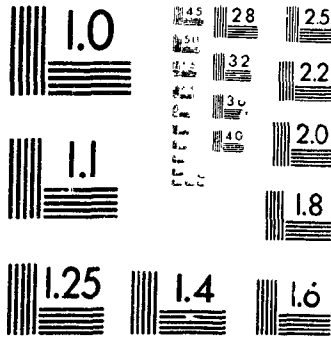
A Canadian study puts that figure much lower, but the fact that its data were obtained through a survey of general video retailers makes comparisons difficult. The Nordicity Group's 1984 survey of a sample of 150 video retail outlets showed that "adult" films form a significant part of a video retailer's total rental business, accounting for 20% nationally but 30% in Quebec" (Nordicity Group, 1985, p. 44).(1)

That study included neither mail order houses that specialize in sexually explicit materials, nor any estimates of under the counter or black market sales. It is also interesting to note that the rental figures for "adult" cassettes were proportionately much higher than the number of such titles available in stock would tend to suggest. Only one X-rated tape - Bo Derek's *Bolero* - is listed in the Video Station chain's listing of its top twenty rentals for February, 1985

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(1) Former Ontario Film Review Board Chairman Mary Brown, interviewed for the video "Pornography in Canada", noted that a study of films screened by the board over seven years determined that 28 per cent of the 3,000 to 4,000 offerings viewed annually were "porns." Using the Nordicity Group's 20 per cent estimate as a guideline, we can estimate that "adult" videos generated nearly \$100 million in Canadian sales and rentals in 1986.

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**MicroD**

(Ibid., p. 76). One conclusion that might be drawn from that fact is perhaps that while sexually explicit tapes as a category are regularly rented, no single tape among those carried by a store such as the Video Station is consistently a top seller. Only 298 or 10.9 per cent of the 2,732 titles officially available in retail stores in early 1985 were described as "adult".

While there appear to be a limited number of distributors of sexually explicit video cassettes, the product is widely available, not only in stores that specialize in sexually explicit materials, but also from general video stores and even variety stores that carry a small selection of video cassettes. The U.S. Attorney General's Commission suggests that "as many as 50 per cent of all video retailers carry some material that would be considered pornographic" (U.S. Attorney General's Commission, 1986, p. 288). A content analysis of single 1983 issues of 11 nationally distributed sexually explicit magazines by the federal Badgley Committee showed the growing market for sexually explicit video cassettes. The report noted that of 145 advertisements for "pornographic matter" in the magazines studied, 31 per cent were for films and videotapes, and went on to suggest that "... the market for these products can be expected to expand sharply as audio-visual equipment becomes cheaper and is more widely purchased" (Badgley, 1984, p. 1236).

Other writers have documented the importance being given to video cassettes by major companies seeking to boost their share of the market for sexually explicit materials. Lyman argues that many companies see video cassettes as the natural extension of their

magazine operations. Hearst, Time Inc., and Playboy have planned cassette productions parallel to their print or cable operations, and one company has launched "New Look", a joint venture video magazine four times a year (Lyman, 1983, p. 117). Major studios are also distributing the titles put out by independent producers of sexually explicit video cassettes. MGM/UA Home Entertainment, for instance, distributes Playboy titles (Nordicity Group, 1985, p. 16). The enormous profit margins in the industry make this interest understandable from a business point of view. The duplication and distribution market in Ontario is such that some entrepreneurs have recovered what was thought to be a three year investment within six months. In 1984, Take One Video of St. Catharines, for example, was grossing between four and five thousand dollars a month on "adult" rentals, which represented 40 per cent of its total revenue (Canadian Business, Nov., 1984, p. 47).

This widespread use of video cassettes to distribute sexually explicit materials has led some people to ponder the social impact that the new technology is having on attitudes towards sexuality. Writing about the impact of new electronic media, John Robinson suggests that "the sales records of X-rated tapes make one wonder whether the VCR will challenge the automobile in terms of changing sex habits" (Haugh, Gerbner and Byrne, 1981, p. 67). And, one might add,

the entire concept of what constitutes home entertainment.(1) Robinson's comment about VCRs changing sex habits may be overstated, but others have worried about the impact readily available sexually explicit videos will have on changing attitudes, particularly in desensitizing children.

The presence of pornography in 'family-oriented' stores, and its inclusion in tapes selected for the home, legitimates the pornography, and allows children to grow up accepting pornography. Children are aware of the 'adult' tape and may be tempted to view it - or, in some cases, to be deliberately exposed to it by unaware, unconcerned or abusive parents (Ridington and Buffie, 1984, p. 3.16).

In its 1985 annual report, the RCMP's Criminal Intelligence Service said video cassettes continue to be the most popular medium for distribution of pornographic material, with print and film ranking second and third respectively (RCMP, 1985, p. 25). The report noted the profitability and growth of this industry, and emphasized the difficulty federal officials have in controlling the "video-porn" business.

In many instances, original tapes are smuggled into Canada and copied. The copies are not subject to Customs control, only to the provisions of the Copyright Act, which provides for small fines that neither concern nor deter those engaged in distributing video-porn material (RCMP, 1985, p. 29).

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(1) Richard J. Munro heralds an age of total privacy and choice in home entertainment. "You may one day view a movie that no one else will ever see because you yourself directed it along lines that appealed especially to you. That includes not just compressing or expanding sequences but choosing them according to your taste. You could have 100 hours of film, stills and graphics from which to put together your own 40 minute or two hour show" (Haigh, Gerbner and Byrne, 1981, pp. 38-39).

The Badgley committee argued that "the videotape medium constitutes a potentially major problem with respect to enforcement of the laws designed to regulate pornography" (Badgley, 1984, p. 1174).

The Fraser Committee went further, stating that the detection of illicit videos has become a major challenge for Customs officials.

Customs is aware that large quantities of empty tape boxes have been shipped from the U.S. to destinations in Canada. The empty boxes are themselves not in violation of the Tariff. The covers advertise known pornographic titles. The advertised tapes have not been included in the shipments. One of the inferences that can be drawn is that the actual tapes have been relabelled with false titles and have reached Canada undetected. The relabelling of tapes is a common service to Canadian customers who wish to avoid a Customs declaration (Fraser, 1985, p. 154).

Former Revenue Minister Pierre Bussieres, who was responsible for the administration of the Customs Tariff, admitted that Canada Customs is having limited success in controlling the flow of videotaped pornography. According to Bussieres, "It is very difficult to exercise any surveillance ... especially when the title of a video cassette is changed" (Ridington and Buffie, 1984, p. 3.34).

The surveillance of which Bussieres speaks is limited at best, and one Customs official told Fraser that because of the high volumes of traffic at border towns, only five per cent of materials brought by individuals into Canada is checked by customs officers (*Ibid.*, 1984,

p. 3.34).(1) The Fraser Committee concluded that the low rate of inspection is a function "of both the time and available resources as well as assigned priority" (Fraser, 1985, p. 153). This raises the question of the degree to which lack of political will is a factor in the inefficacy of efforts to regulate sexually explicit materials. Be they legal or illegal, sexually explicit videos can be easily obtained by those who wish to do so. Even videos that have been banned, such as the notorious snuff film, "I Spit on Your Grave", in which a woman tortures and murders four men who raped her, can still be obtained, as one writer notes with glee:

...thanks to the invention of the video cassette, the story of Jennifer Hills will always be told somewhere - hopefully, those who understand her story will appreciate it as well (Barker, 1984, p. 55).

Donnerstein, Linz and Penrod (1987) note with concern that many young children are among those who have seen the film.

A recent report on the viewing patterns of 4,500 children in England and Wales (countries that have declared many of the sexually violent films that receive an R-rating in the United States to be obscene) indicates that by the ages of 7 and 8, 6.5% of boys in those countries have seen the movie I Spit on Your Grave. The percentage climbs to nearly 20% by ages 13 to 14. Comparable data for the United States are not currently available. One can probably safely assume that if 20% of preadolescent males have seen a film declared liable for prosecution, and thus relatively scarce

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(1) "There are approximately 400 ports of entry and 12 regional administrative Customs offices in Canada, staffed by between 2500 and 3000 Customs officers. Eighty million individuals entered Canada in 1983, half were visitors and half were returning Canadians. During the period March 31, 1982 to April 1, 1983, approximately 6.5 million commercial shipments and approximately 13.5 million pieces of mail entered Canada" (Fraser, 1985, p. 153).

in Great Britain, a much large number of preadolescents have probably been exposed to such films in the United States. (Donnerstein, Linz and Penrod, 1987, p. 180).

A recent example of technology undermining regulators involved the movie Blue Velvet, which received several different ratings across Canada, but was banned in New Brunswick.(1) As filmmakers lobbied the New Brunswick government to reverse the ban on Blue Velvet, newspaper writers noted that video cassettes will make the issue academic.

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(1) The Ontario Film Review Board, considered the most conservative in the nation, passed the film. However, Chairman Anne Jones told a Toronto audience that she was very disturbed after going to see the film with another board member, and said that if she or the member that accompanied her had been on the Film Board panel that cleared the film, they would have called for cuts before approving its release.



Ironically, Blue Velvet will be distributed on video tape in April and since there's no classification system for video sales and rentals in New Brunswick, people with video cassette recorders will be able to see the movie (Kitchener-Waterloo Record, Jan. 17, 1987 p. E5).

The ease with which tapes can be duplicated adds to the difficulties regulators face in trying to control sexually explicit videos. High speed systems exist that can produce hundreds of copies of cassettes at a rate of 12 seconds to duplicate an hour-long program, as Sigel explains:

Furthermore, no mastering whatsoever is required. A program just shot can be instantly replicated. There are also few economies of scale .... Thus, 10 copies can be created just as easily as 1000 copies, although multiple recorders can be used for extremely large runs (Sigel, 1980, p. 157).

Video One Canada, a major West Coast distributor of sexually explicit video cassettes, gained a close working relationship with VTR Productions (a subsidiary of Standard Broadcasting and one of the three largest video cassette duplicators in the nation) by acquiring CTA Video Distributors, a firm closely tied to VTR. V.R's 46,000 square foot Don Mills duplicating facility has 1,200 one-half inch machines capable of duplicating 6,000 video cassettes an hour. The building is large enough to accommodate up to 2,000 such machines (Nordicity Group, 1985, p. 29). The compact nature of video cassettes makes distribution easy and efficient.

...video cassettes are delivered to video stores by trucks and are then picked up by consumers who come to the stores on foot, in a car, or perhaps even by bicycle. Although the pick up and carry method of distribution is not as glamorous as microwave, coaxial cable, or broadcast transmission, it is often the most effective and

least expensive means of distribution (Gross, 1986, p. 21).

Those problems will be exacerbated by the advent of new 8mm video cassettes. The cassettes, which can be adapted to play in a standard VHS machine, measure 95mm wide, 62.5mm high, and 15mm deep, smaller than standard audio cassettes (8mm Video Council, New York, 1986). As that version begins to carve out a share of the home market, the Korean Samsung firm is preparing to introduce a 4mm video cassette (Toronto Star, Jan 11, 1987, pg. C6). Samsung has also developed a machine that can take two video cassettes at once and record from one to the other. Major Hollywood studios are fighting to keep the machine off the North American market, but once it arrives, the replication and distribution of video cassettes of any description, including banned sexually explicit tapes, will become a cottage industry.

Canada Customs plays a major role in efforts to control the entry of sexually explicit materials into Canada. Since the vast majority of these materials enter Canada from the United States,(1) the 3,000 mile long Canada-U.S. border becomes the focal point of this activity. Section 205(1) of the Customs Act empowers customs officers to seize illegally imported goods. Some 7,700 importations of "indecent or immoral" material were made under the Customs Tariff between 1978 and

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(1) A profile of the Canadian "adult entertainment" industry in Canadian Business magazine states that 90 per cent of print and video material available in Canada comes from the United States. (Canadian Business, November, 1984, p. 47)

1982.(1)

Even when the effect of the customs appeal process is considered, it is apparent that a large amount of pornographic material is excluded from Canada because of the customs regulations. In a six month period in 1984, in 223 appeals involving 1,083 items, only 61 of these appeals were successful or partially successful (Lahey, METRAC, 1986, p. 60).

From those figures, it appears that when Customs does make seizures, most of the seized material is banned. But the open border that exists between Canada and the U.S. makes detection difficult, and that problem is increased when officers on opposite ends of the country make different decisions about the same material.(2) The 1983 Badgley Committee said it was informed "of numerous examples across the country in which regional decisions were inconsistent not only

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(1) Figures released by the Intelligence Division of the Customs Operations Branch of Revenue Canada Customs and Excise suggest that the overall number of seizures has risen sharply since that time. In 1987, Customs officials made 4,635 seizures of "pornography." The majority of seizures (2,575) involved video cassettes, with a total of 5,075 videos being seized or detained. Broken down by category, 466 seizures involved video cassettes depicting sex with violence, 39 involved child sex, 156 involved videos depicting incest, 21 involved videos depicting bestiality, four involved videos depicting necrophilia and one involved material described as hate propaganda. Three-quarters of video cassette seizures fell under a category described as "Other", which was described on a chart provided by Revenue Canada Customs and Excise as follows: "Most of this material was portrayals or descriptions of acts of buggery." (letter from G. Rochon, October 24, 1988) The RCMP acts in a secondary role to enforce the Customs Act. That federal agency made 1,297 seizures between 1979 and 1984 (Lahey, Metrac, 1986, p. 60).

(2) A B.C. Customs inspector refused to clear the October, 1986 issue of Playboy containing a "Wendy O" pictorial that featured the punk rock singer tied up in parachute cords, thereby suggesting bondage. Some 24,000 copies of the magazine were withheld at that border point. But 500,000 copies of the magazine were cleared at another crossing (Lahey, METRAC, 1986, p. 62).

with those made in Ottawa, but also with those made in the same office; in some instances, an official has been inconsistent with his or her own rulings concerning the same magazine title" (Badgley, 1984, p. 1143).

Clear evidence exists that many videos enter the country, and are sold nation-wide, without ever having been cleared by Canada Customs.

Red Hot Video... advertises itself as Canada's leading supplier of 'adult videotapes' and claims that its features are "uncut and sexually explicit." Its 1984 audiovisual catalogue lists 295 titles. The Pacific Region of Canada Customs advises us that it has never received an application by Red Hot Video to clear material under the Customs Tariff. The source of the company's supplies is apparently unknown, yet it is clear that most, if not all, of their products are produced outside of Canada (Fraser, 1985, p. 154).

Red Hot Video's practice of operating a nation-wide, toll-free telephone line 24 hours a day allows Ontarians and others to order "uncut, Triple-X videos" that would never be permitted into the country by Canada Customs nor approved by the Ontario Film Classification Board.

Because of a prohibition on sending obscene material by mail, most tapes are shipped by way of courier, which means red-hot business for Loomis Armoured Car/Courier Service Limited in Western Canada, and for competitor Kingsway Transports Ltd. in Ontario, Quebec and the Maritimes. Red Hot prefers to send its unmarked boxes to a home address, but advises that if a customer wishes to take delivery at the courier's office, he should ask for a box from Kelowna, B.C., and not use Red Hot's name (Canadian Business, Nov., 1984, p. 47).

Ontario police have begun to crack down on some of these B.C. distributors. Cool Blue Video of Victoria was fined \$10,000 in August,

1987 after Halton Regional Police ordered 22 videos, including such titles as Soft Places, A Star is Porn, Once Upon a Madonna and Like A Virgin. A provincial court judge was told that the videos, delivered by courier and Canada Post after police responded to an advertisement in the Hamilton Spectator, included scenes of women with their hands tied over their heads, foreign objects being used in sex and group sex with up to eight people (Kitchener-Waterloo Record, August 26, 1987, p. D8).

Another enforcement problem that stems from provincial sovereignty is the fact that in some provinces, distributors are allowed to retain possession of videos during the period in which Customs is making an assessment as to whether they will be allowed into the country. Critics argue that such arrangements defeat Customs efforts because copies can easily be made. In B.C., New Brunswick, Ontario and Saskatchewan, Customs has negotiated a system of continuous control whereby Customs forwards films destined for public viewing directly to the provincial classification board.

After the board has reviewed and rated the film and made any cuts, it is returned to Customs for appropriate action, namely, release or prohibition by the importer. An important feature of the arrangement is that the film remains under continuous Customs control. Under the arrangement, Customs does not delegate away its responsibility under the Customs legislation. Customs retains its ultimate jurisdiction to give clearance to a film, but its decision to do so is based on the informed report received from the classification board (Fraser, op cit., pp. 156-157).

In the early 1980s, considerable problems existed with lists issued by Revenue Canada's Prohibited Importations Section, the

department that enforces the Customs Tariff relating to sexually explicit materials. A twice monthly listing of prohibited items was not listed alphabetically according to title, which made it difficult for field officers to locate a title among the 1,000 items ruled upon each month (Badgley, 1984, p. 1143). That problem has been solved in the form of an alphabetical list averaging 80 pages that is updated and distributed monthly. But the low priority given to Customs enforcement of laws regarding sexually explicit materials still leads to some difficulties, as the Fraser Committee pointed out.

While each of the Customs officers nationwide does not receive a copy of the list, each has access to the information. As we understand it, however, the Department has no separate computer facilities and competes with other government departments for computer time. The computer information flow appears to be from Ottawa headquarters to the regions. There is no computer information flow from the regions to Ottawa (Fraser, op. cit., p. 151).

And the federal government has not demonstrated any political will to increase the resources available to Customs to assist in controlling sexually explicit materials.(1) An internal Revenue Canada memorandum written in response to Fraser's recommendation that "the federal Government should give higher priority than it does now to the importation of pornography" indicates that the lack of political will is echoed in the bureaucracy and unless Customs and

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(1) Fraser concluded that: "At various times in the recent past, Customs received instructions to make Tariff items involving clothing and automobiles an administrative priority. No special priority has been ordered with respect to pornographic material. Among other things, the lack of political will has impacted on the treatment Customs has been able to give to the importation of pornographic material" (Ibid., 1985, pp. 153-154).

Excise is specifically ordered to make such activities a higher priority, the status quo will prevail. Writing to the Deputy Minister of National Revenue, T.C. Greig, assistant deputy minister of customs programs, notes:

Adoption of this recommendation would require additional Customs resources in direct proportion to the assigned level of "higher priority." .... If more Customs inspections of imported goods are required, Field Operations Branch will need additional resources in proportion to the size of the increase in inspections. However, it is expected that the public would not look favorably on an increase in Customs inspections (Greig, May 13, 1985).

The memorandum goes on to suggest that the minimum cost of enacting such a program would be 29 person-years, consisting of fully-dedicated officers who would liaise with and educate regular Customs inspectors as well as conducting more thorough examinations.

The resources could be broken down as follows:

Atlantic	2 p. y.s
Quebec	2
Montreal	4
Ottawa	2
Toronto	4
Hamilton	2
London	2
Windsor	2
Winnipeg	2
Saskatchewan	1
Alberta	2
Vancouver	4
TOTAL	29 p. y.s

At headquarters, it is proposed that an additional five person years be utilized in the Prohibited Importations Unit to ensure a more effective administration of tariff item 99201-1 (Ibid.).

Even if Customs and Excise were interested in intensifying its

inspections of sexually explicit materials, it is unlikely that it could do so in the existing political climate. Ironically, while the Mulroney government has made two efforts to legislate increased control over sexually explicit materials, it has simultaneously pursued other policies that undermine the intent of those efforts. In its efforts to put a public face on a promise to cut the deficit by curbing government spending, the Tories announced plans to eliminate 1,155 customs positions over five years (Toronto Sunday Star, Sept. 22, 1985). Revenue Minister Elmer MacKay scoffed at union claims that the cuts would undermine the department's ability to keep prohibited materials (drugs and sexually explicit materials) from entering the country. Those planned cuts were to include a centralization of customs examination of international mail by reducing the number of regional inspection centres to 12 from 22 (Ottawa Citizen, Sept. 25, 1985).

The Fraser Committee found that the international mail units are already overtaxed in terms of their ability to intercept sexually explicit materials, and given the admission by Customs and Excise officials of the additional resources that would be needed to act on the Fraser recommendation of assigning a higher priority to regulating sexually explicit materials, such changes are clearly not on the horizon. Katharine Lahey, a University of Windsor law professor and researcher for the Metro Toronto Action Committee on Public Violence Against Women and Children, believes that the ability of Customs officials to deal with sexually explicit materials will be adversely affected by a bilateral free trade agreement with the United States.

The U.S.'s negotiating stance in the bilateral



talks with Canada is that all nontariff as well as tariff barriers to free trade have to be eliminated. Because the customs guidelines on pornography derive their local authority from a tariff, they are prime candidates for repeal if a trade agreement were to be reached. Indeed, they are more likely to be conceded by Canadian negotiators than are Criminal Code provisions, for example (Lahey, Metrac, 1986, p. 65).

Government officials have denied this charge, and the end result of free trade upon customs inspections remains to be seen.

#### Film Boards and Videocassettes

The powers of Canada's eight film classification and censorship boards are as varied as they are unevenly used. Some boards demand cuts in films or ban products that fail to meet their guidelines. Others merely classify films and attach advisory warnings. Even less uniformity exists in the relatively new area of video cassette classification. The province of Manitoba restricted the powers of its film board to classification in 1972 and is unlikely to restore the board's powers to ban or cut films or videotapes.(1)

A report prepared for the department of Culture, Heritage and Recreation in 1984 notes that: "Since 1972, when the board switched from censorship there has been little evidence that the number of

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(1) The removal of censorship powers was sparked by the laying of obscenity charges against a "3-D skin flick" entitled the Stewardesses following a month-long run of the film in Winnipeg. While the charges were dismissed, the incident led the NDP government to abolish the censor board the following year in a stormy debate that resulted in a 27-26 vote in favor of eliminating the censorship powers. Theatre owners were among those opposing the bill, as they felt formal censorship protected them against arbitrary police action. (Dean, 1981 pp. 127-128).

'adult entertainment' or 'pornographic' films screened in Manitoba theatres have increased" (Ridington and Buffie, 1984, p. 2.1). Manitoba is currently negotiating with Ontario and Saskatchewan on the subject of entering into an interprovincial video cassette classification system. A departmental report sees this goal as a desirable objective, both as a means of providing information about subject matter to consumers and of preventing minors from obtaining access to "...so-called 'adult entertainment' or pornographic videotapes" (Ridington and Buffie, 1984, pp. 2.6-2.7).

At the same time, many hurdles stand in the way of such a plan. The report notes that:

...the volume of tapes already on the market, the complexities of the distribution industry which has developed to supply these tapes and the administrative problems which the M.F.C.B. may encounter in attempting to classify all home-use videotapes, suggest that expansion in this area will take more time to plan and implement (Ibid., p. 6).

In any event, a proposed system is only intended to impose restrictions at the point of sale, leaving parents to "still exercise ultimate responsibility for what they and their children view" (Ibid., p. 7). The volume of product already on the market is seen as a major problem and cost in the establishment of a classification scheme. Viewed in terms of efficiency and financial costs, this would seem to tip the scales towards inter-provincial co-operation, and Manitoba acknowledges the value of Ontario's proposal to establish a master tape archive to "be utilized by both the provincial agencies to monitor and censure illegal or unclassified versions of various

videotape titles" (Ibid., p. 10).

But concerns about how an archive set up in Ontario might look to Manitoba residents, combined with philosophical differences between the two provinces' governments, mean that efficiency takes a back seat to autonomy, even when that means duplication of service and additional cost.

...given that Manitoba does not endorse the use of censorship, any joint board with Ontario would require some degree of administrative separation to deal with those instances in which Ontario's representatives recommend that a videotape be banned or censored (Ibid., p. 10).

Nova Scotia considered working with Ontario, Manitoba and Saskatchewan in their current efforts to set up the interprovincial classification scheme, but decided not to join "for reasons of specific jurisdictional authority; which was supported by the Fraser Commission", according to board chairman Donald Trivett in a letter written March 17, 1987. Nova Scotia has not made any cuts to films for the past nine years, but has retained in abeyance the power to order cuts, Trivett wrote. As a general practice, films or videos that do not meet the board's criteria are not licensed, he wrote.

Yukon Territory, the only jurisdiction in Canada which does not have a classification system in place or rely on a neighboring jurisdiction's decisions, has also studied the interprovincial agreement, according to Vicki Hancock, a consumer services administrator with the Yukon Justice Department's Consumer, Corporate and Labor Affairs Branch. Government officials in Manitoba and

Ontario responded to queries about the status of the legislation with letters saying they expect to see the legislation presently. At the time of this writing, those assurances were close to a year old, and no legislation has been tabled. It is quite possible that the agreement will meet the same fate as two previous attempts to develop inter-provincial classification systems.(1)

Some Canadian provinces do not screen video cassettes for home viewing. One of these is Alberta, which has the highest per capita VCR ownership in Canada. Manitoba currently classifies film and video for public exhibition only, but according to Film Classification Board Chairman Ruby Donner, expects to begin licensing video cassette retailers and distributors once the inter-provincial agreement between Manitoba, Saskatchewan and Ontario has been signed. (Donner letter written January 13, 1987) Saskatchewan, on the other hand, passed legislation in December of 1985 expanding the responsibilities of its Film Classification Board to include videos (letter from Lawrence Hartt, Sept. 23, 1986).

While the Fraser Committee does not see the need for an interprovincial video classification body, the Badgley Committee took

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(1) "In 1914, the Manitoba and Saskatchewan Censor Boards joined forces in Winnipeg, possibly as a result of pressure from the film exchanges to reduce costs and cut red tape. Attempts to have Alberta and B.C. join in this arrangement were unsuccessful. Alberta was already accepting films pre-censored by Ontario and Manitoba. The tendency toward provincial sovereignty terminated the joint censorship board in 1916 (Dean, 1981, p. 166). ...By 1972, Manitoba and Saskatchewan were again discussing joint censorship, and Alberta was considering joining them in a regional classification system. .... It appears that the scheme met the same fate as all previous attempts to rationalize Canadian film censorship" (Ibid., pp. 166-167).

the opposite view. Badgley came to the conclusion that existing provincial systems are inadequate to protect children.

...the Committee recommends that more uniform and specific criteria be developed with respect to the showing of films depicting child sexual abuse and exploitation. The findings are clear and unequivocal that existing guidelines and their application constitute a porous, uneven and inconsistent method of regulating the showing of films (Badgley, 1984, p. 1136).

Customs officials agree, but in the absence of interprovincial co-operation, can do little to address the situation.(1) The Fraser Committee recommended continued co-operation between Customs and provincial film classification boards "in order that the classification of film and video recordings can take place as part of a single, integrated administrative procedure." According to T.C. Greig, assistant deputy minister of Customs Programs, Canada Customs has been working to achieve this co-operation, but is limited by provincial intransigence and is currently working with only four provinces.

It is intended to extend this system nationally, but it will be necessary to receive the co-operation of the film boards in Quebec, Nova Scotia, Manitoba and Alberta. If the co-operation of all the boards is secured, the system will not involve additional resources. If co-operation is not forthcoming and the decision is made to have customs officers review imported commercial films and video tapes, there will be undetermined additional resources required in those regional Customs offices which must undertake the review (Greig, May 13, 1985).

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(1) Alex Getty, director of the Prohibited Importations Branch of Customs and Excise, says that Canada Customs has been seeking a common standard for the eight film classification boards across the country for several years, without success to date (Canadian Business, op. cit., p. 47).

The Fraser Committee noted that some sexually explicit movies are transmitted by satellite from the U.S., then recorded onto video cassettes, duplicated and distributed. The virtual impossibility of regulating satellite transmissions makes the problems associated with regulating video cassettes seem relatively manageable by comparison.

#### Satellite Dishes -History and Problems

Scant attention has been paid to home satellite dishes, particularly in comparison to what has been written about video cassettes. There are likely several reasons for this. While the development of home satellite technology has been contemporaneous with VCRs, installation of a mid-to upper market dish still costs six to eight times as much as a VCR. The rapid deflation that accompanied consumer acceptance of VCRs has not cut the cost of owning a satellite dish to the same extent, largely because the market for dishes is smaller and more specialized. Satellite dishes tend to be most popular in rural areas where cable television is not available. In a November, 1985 brief to the Task Force on Broadcasting entitled "A Question of Choice", the Satellite Communications Association estimated that 175,000 TVRO (receive only) dishes were in use in Canada, and that dishes were selling at the rate of 4,000 a month (SCAC, November, 1985, p. 12). If that rate of growth has been maintained, there are likely close to 335,000 dishes in use in Canada at the time of this writing.

Among the 'adult' satellite channels available in the U.S. are: American Extasy, a "soft-core adult movies" channel that was launched

in January, 1985, supported by advertising, and available to 50 million homes; The Playboy Channel, a pay service launched in December, 1980 that offers "Soft-core adult programming" between 8 p.m. and 6 a.m. to an estimated 740,000 cable, satellite and SMATV subscribers; and the F.U.N. Channel (Fantasy Unrestricted Network), launched October, 1983 which offers "first-run adult features" to 50,000 subscribers. Program listings in OnSat magazine, which bills itself as "Canada's Weekly Guide to Satellite TV", include American Extasy, the Playboy Channel, The Playboy Private Ticket and Selec TV among the "adult-oriented" video services that Canadian dish owners can receive (OnSat, Feb. 22, 1987). It appears that most, if not all, of these services are scrambled, but like Canadian pay TV services, they offer occasional "free weekends" as a means of attracting new subscribers. American Extasy even runs explicit previews of upcoming programming during the early evening hours.

During the daytime hours when its programming is not being shown, American Extasy has carried a bulletin board service listing an Edmonton telephone number that Canadians who wish to subscribe to the service may call. Satellite dish operators are reticent to discuss the subject of Canadians subscribing to U.S. pay and satellite services, since technically, this practice is contrary to U.S. copyright law and

CRTC regulations.(1) Some dealers will, however, admit that the practice exists. In order to subscribe to a U.S. service, Canadians need to find out the code combination that will allow their descrambler to pick up the desired signal. Some enterprising Canadians, such as the Edmonton broker who acts on behalf of American Extasy, set up a U.S. post office box. This allows them to subscribe to the service by giving the address of a fictional U.S. citizen. Companies may alter their code from time to time, so a Canadian wishing the service pays the regular monthly subscription rate (in U.S. funds) plus commission to the broker, who ensures continued access to the signal.

As is the case with pay TV, satellite industry officials insist that parents who don't want their children to view "adult" programming

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(1) The CRTC position on illegal signal reception has shifted from turning a blind eye in past years to the point where Communications Minister Flora MacDonald, in a letter to the Satellite Communications Association of Canada, wrote that illegal signal reception is a matter between the copyright holder and the viewer. Some specialty services may, as a symbolic deterrent, initiate actions against hotel, condominium or cable company owners that are redistributing signals to many people. Allarcom pay Television of Western Canada, which operates the Superchannel network on the prairies, has estimated (probably somewhat exaggeratedly) that cheating viewers outnumber its 200,000 legitimate subscribers (Toronto Star, June 15, 1988, p. F9). An April, 1988 Canadian Press story out of Dawson told of the efforts of that frontier town's mayor to bring free pay-services to the frozen north by purchasing one subscription to Home Box Office, then re-distributing that service and other signals throughout the community. CRTC shut down the service after receiving an anonymous tip from parents upset about soft-core pornographic movies that began airing on the Cinemax channel in the early evening hours, long before children went to bed. Undeterred, the mayor vowed to purchase a new descrambler and to have the service back on the air shortly (Canadian Press, April 6, 1988). Action by satellite networks against home dishowners is as unlikely as that of a major record label entering homes to see if stereo owners have made illegal copies of records or compact discs.



need only lock out a channel or channels by using a programmable converter device. U.S. experience has shown, however, that lock boxes are unreliable and pose little barrier to the efforts of a clever eight-year-old.

Canadian government acceptance of satellite dishes came grudgingly, in the face of public pressure and government realization that they had little choice in the matter. While Canada is one of the most heavily cabled nations in the world, the geography of the nation means that many rural and northern communities will never receive cable service. In its brief to the Task Force on Broadcasting, the Satellite Communications Association of Canada argued that on this basis, more than one million Canadian families are "have-nots" in terms of communications choice (Ibid., p. 12). Those sorts of arguments led the federal Department of Communications in 1983 to abolish licence requirements for home satellite dishes intended only for personal use. Satellite Master Antenna TV (SMATV) systems used by apartment buildings, condominiums, apartments, and hotels still require DOC or CRTC permission (Ridington and Buffie, op. cit., p. 3.8).

Officers at Project P in Toronto and other police departments say that under existing law they could lay charges against tavern owners or multi-unit dwelling houses that show sexually explicit films contrary to the Criminal Code. However, Project P officers said they have more important things to do than to go snooping around people's apartments late at night to see what they are watching on television. In the case of public areas such as taverns, "Sargent (sic) Clark

Peckover of the Winnipeg Vice Squad maintains that ... monitoring would not be possible with present police staffing levels" (Ibid., p. 3.10). At the governmental level, Canada has unsuccessfully attempted for several years to negotiate a treaty with the U.S. to regulate and authorize Canadian reception of U.S. satellite signals.

But if the Canadian government claimed for itself the authority to regulate such signals, its regulatory agencies certainly lacked the muscle and the political will to do so. A Canadian cable TV operator in rural Canada who relied on U.S. satellite feeds for much of his programming applied to the government for permission to carry out his business legally. The government denied the request but, faced with a choice between obeying the law and losing his subscriber base and breaking the law and being forced to pay a fine he could live with, the operator chose the latter route, his profits being higher than the CRTC fines (Ahern, in Centre for the Study of Regulated Industries, 1984, p. 56). A report prepared for the government of Manitoba on the regulation of sexually explicit materials noted that as of May, 1984, the federal government "has been trying for a year to come to an agreement which would allow them to authorize reception of U.S. satellite signals" (Ridington and Buffie, op. cit., p. 3.9).

Some U.S. observers have suggested that an international treaty is required, not to create new law related to satellite transmissions, but to ensure compliance with existing laws on both sides of the border. Paul Murphy, president of the New York-based Morality in Media Inc., argues that:

Title 18 Section 1465 of the U.S. (Criminal) Code prohibits transportation of obscenity across the border. Canada also has a law prohibiting the

importation of obscenity. The United States also has a law 18 USC 1464 against broadcasting obscene or indecent programs. What is missing is a treaty between the United States and Canada which would prohibit using satellites to send obscene or indecent material from U.S. to Canada or vice-versa (letter from Murphy, Sept. 12, 1986).

The 1985 Fraser Committee echoed that concern, and its final report contained two recommendations related to satellite transmissions.

Recommendation 33 states that:

The CRTC should conduct the appropriate research into and promote appropriate public discussion about technology capable of scrambling and descrambling satellite signals, in order that there can be a measure of practical control over the transmission and reception of satellite signals (Fraser, 1985, p. 302).

A document obtained from the Department of Communications under the federal Access to Information Act reveals that the DOC's legal counsel has urged the government to ignore the Fraser recommendations. Writing to Richard G. Mosley, General Counsel, Criminal Law Policy and Amendments, on September 10, 1985, Michel Hetu, Senior Counsel, Department of Communications, described Fraser's Recommendation 33 as being "fundamentally misconceived." He argues that authority to act in this area lies with the DOC and not the CRTC, and that adequate research has already been undertaken in the field of scrambling

technologies.(1) He went on to say that since commercial interests in the U.S. are already scrambling their signals, he saw no merit whatsoever in the recommendation.

Hetu took a similar line on Fraser's recommendation that "Canada should take the initiative to immediately open discussions on the international regulation of both public broadcasting signals and private signals emanating from fixed satellite services." He quoted CRTC chairman Andre Bureau's view that convincing broadcasters to scramble their signals is the best solution to the situation, and went on to explain that the existing U.S.-Canadian satellite agreement is a carriage, and not a content, agreement. He also stated that:

A bilateral content agreement on a matter as subjective and controversial as pornography delivered by a technology that is entirely boundary insensitive would be a futile and sterile pursuit. Both Canadian and American legislators and judges have wrestled with obscenity and pornography over the years, two concepts seemingly immune to definition. What is pornography in one country may not be in the other. U.S.-originated satellite programming may violate Canadian law, however, it is altogether lawful in its country of origin. The satellite cannot beam its signals to one country and avoid spillover on the other...I believe that domestic content regulations, industry self-regulation, already in place in the Canadian pay TV industry, and scrambling technology, already in place to a limited extent in both countries, will combine to control this problem, to the extent that it remains a valid problem. ...As regards individuals owning their

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(-) Hetu writes: "Apparently unknown to the Fraser committee, Canada's private sector is at the leading edge of video scrambling technology. Two Canadian corporations, Digital Video and Leitch Video, are world leaders in the manufacture of sophisticated video encryption/ decryption technology for television signals. Research engineers employed at the Department's Communications Research Centre at Shirley's Bay advise that the government could do little or nothing to improve upon the research and design innovations of the Canadian private sector" (p. 2).

own backyard dishes....parties offended by the programming available to them, to the extent that it will in future remain unscrambled, have three practical recourses- 1)change channels; 2)redirect their satellite dish to a different satellite; or 3) install a lock-safe device to ensure that youngsters are not exposed to such programming without parental permission (Hetu, Sept. 10, 1985, pp. 4-5).

Herschel Hardin, a strident critic of the CRTC, sides with the federal agency in arguing that the threat of signal piracy from the U.S. is overblown. He writes:

In truth, the number of people receiving U.S. pay TV this way was statistically insignificant and public demand for it remained slight; isolated communities that had resorted to satellite dishes simply because their choice of channels had been so limited. And the threat of U.S. pay-T.V. covering the country via cheap and small home satellite receivers was self-cancelling. When the dishes became cheap enough to proliferate in Canada, they would also proliferate in the U.S., and the U.S. pay-T.V. networks would scramble their signals (Hardin, 1985, p. 299).

For all practical purposes, shutting out satellite transmissions through the erection of an electronic curtain is not seen as an option.(1) As Video World Inc. Communications Consultants conclude in "The Role of Satellites in the Canadian Broadcasting System" - A Study

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(1) One European observer had this to say about the question of jamming satellite signals: "While in theory a government could prohibit its citizens from watching foreign transmissions, ... this would be unthinkable in the Western democracies. ... Indeed, the European Convention on Human Rights... guarantees every person the freedom to receive and impart information and ideas without interference by public authorities and regardless of frontiers." From Realities and Tendencies in European Television Commission of the European Communities to the European Parliament, COM 83 229 Final (quoted in International Networks, a newsletter on world telecommunications technology and policy, Sept. 1983, p. 7).

Completed For The Task Force on Broadcasting Policy:

we cannot prevent their reception and the viewing of the unscrambled programs which they make available. Satellites represent a delivery mechanism which knows no other limit than the enormous range of the "footprints" they transmit. It is not the policy of Canada to interfere with the reception of satellite-delivered signals, and there is no good reason to do so. In any case, there is no practical electronic umbrella we could put in place to shield us from this rain of signals from space (Video World Inc., February, 1986, p. 114).

Still, the Soviets jam some Western signals for political reasons, at enormous financial and political cost.

The U.S.S.R. probably spends more to jam than the broadcasters do to transmit the jammed programs. Soviet jamming creates interference with their own programming and hurts Soviet credibility at home and abroad. Skywave jamming within the U.S.S.R. also creates interference far across Soviet frontiers, thus interfering with foreign broadcasters besides the ones they wish to jam, and alienating listeners over a wide area of the world... Soviet skywave jamming is making about 50 per cent of the world's HF (shortwave) broadcast frequency unusable (Ibid., p. 7).

Donald M. Jansky, president of Jansky Communications Inc., a U.S. firm, argues that scrambling is not the answer to the problem of signal piracy,

I do not think that encryption is going to solve the problem. Thus, if you look at what has happened so far, you will get into, essentially, a technological war. ... There are several ways to go, but I can assure you that as soon as you find one, someone else is going to break it (Jansky in Centre for the Study of Regulated Industries, 1984, p. 107).

Thomas Martin shares Jansky's view. He writes; "As long as authorized

receivers have decoders, there will be a black market in unauthorized receivers. In that scenario, the massive offender serves almost as a Robin Hood and helps bring the issue of unauthorized transmission to the fore" (Martin, "The Impact of New Techniques and Future Technologies on U.S.-Canadian Broadcast Relations", in Americas Society, 1984, pp. 196-197).

The Canadian experience has borne out the accuracy of Jansky's claim. Within a year after some major U.S. satellite channels scrambled their services, businesses selling satellite dishes had added a new line - descrambling devices. Among the most popular of these is the Videocipher II, and in Kitchener-Waterloo, Stellarvision Satellite Systems took out newspaper ads informing satellite dish owners that "You can get back those channels lost due to scrambling." Another company's advertisements, which urge readers to beat the problem of "Nothing Good on TV?" by viewing the over 100 channels available on satellite, lists adult-only programming as one of the benefits of owning a satellite dish.(1)

#### Pay TV in Canada and the U.S.

Availability of programming that cannot be received elsewhere and an absence of commercials have been seen as distinguishing pay TV from regular cable. (Walter S. Baer and Carl Pilnick, "Pay Television at

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(1) Some of the major programmers have introduced "direct to home" marketing arrangements which require subscribers to purchase or rent their decoders. In late 1985, the retail price of one of the major U.S. systems, the MA/COM decoder, was \$395 Canadian, hardly a prohibitive fee for people who had already invested upwards of \$5,000 in a home dish system (SCAC, 1985, p. 17).

the Crossroads", in Adler and Baer, 1974, p. 46).(1) Increasingly, as pay services carry advertisements to boost lower than anticipated revenues, and traditional broadcast channels carry many of the same movies offered on the "premium" pay channels, those distinctions are becoming blurred. Pay cable is one of the few forms of Pay TV currently available in Canada(2) except for the CANCOM satellite service. Neither the U.S. single channel subscription pay television service, whereby a homeowner receives an off-air signal with a home antenna, and pays a monthly fee for a convertor that descrambles that service, nor the "pay per view" system whereby subscribers pay a certain fee according to the amount of programming received, are in use in Canada. The earliest experiments with pay TV were conducted in

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(1) Schafer defines pay TV as follows: There are several versions of pay TV using alternative technologies including cable television systems and specially authorized broadcast stations to deliver programs to subscribers. Generally referred to as pay TV or Subscription T<sup>v</sup>, all delivery systems provide movies (which have been shown in theatres, but not yet on broadcast television) and/or sports events (not being shown on broadcast television) on selected channels to subscribers who pay a special monthly charge per channel or per program viewed. When offered by a CATV (in the U.S., known as Community Antenna TV) system, this service is generally referred to as "pay cable." Only homes which subscribe to the regular CATV service can receive the pay cable service (for an additional monthly fee) (Schafer, 1980, p. 204).

(2) Except of course for the CANCOM satellite package of U.S. network and independent stations and TSN offered to cable companies and backyard dish owners. Other pay-satellite offerings are now available - Superchannel in Western Canada and First Choice east of the Manitoba border. First Choice is currently negotiating with a number of other U.S. pay cable services about licensing rights for the Canadian backyard dish market.



Canada and involved a form of "pay per view."<sup>(1)</sup>

Recent efforts by major Canadian companies to have pay per view established have been disallowed by the CRTC.<sup>(2)</sup> The CRTC has historically cast a doubtful eye on pay TV, and dragged its feet as long as possible to prevent pay TV from being established in the country. Hardin (1985) argues that the agency's fears that pay TV would prove to be another medium of U.S. dominated programming that would further siphon off money they felt should be used to promote Canadian culture, have been borne out in the years pay has been in existence in Canada. The history of pay TV in Canada shows how the CRTC, an unwilling and impotent regulatory body, was forced, because of technological advances, to permit something it opposed.

In the 1980s, the federal government's hand had been forced by technological progress. Remote communities - and even some MATV (master antenna TV) operators of closed-circuit apartment or hotel

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- (1) "International Telemeter, a subsidiary of Famous Players Corporation and Paramount Pictures Corporation in the United States, began in 1960 to provide the first Canadian pay TV service to up to 6,000 subscribers in Etobicoke, Ontario. The service was distributed to the home by coaxial cable and followed a rudimentary pay-per-programme format whereby subscribers deposited coins in a box atop their television sets in order to receive the available channels. In operations until 1965, the International Telemeter "experiment" offered a mix of not-so-new movies, sporting events and special presentations, was not particularly popular with its subscribers whether because of content or format, and ended up losing \$3 million before it eventually folded (Woodrow and Woodside, 1982, p. 31).
- (2) The Caplan Sauvageau Task Force on Broadcasting Policy had the following to say about pay-per-view: "The system usually works by phone from the subscriber to the cable headend, with the most up-to-date systems using a coded number to trigger release of the program to the subscriber's TV set. The set must have an addressable decoder. The technology is available but the capital costs are high" (Report of the Task Force on Broadcasting Policy, 1986, p. 481).

television systems - installed earth stations to receive U.S. pay TV services via satellite. By these actions, they were openly challenging the CRTC prohibition on receiving foreign services. Essentially, technology was breaking the logjam because more Canadian television households were getting these services, law or no law (Lyman, 1983, pp. 68-69).

As was the case with video cassettes, the emergence of pay TV provided peddlers of sexually explicit materials with a lucrative new medium through which to sell their product. A number of U.S. channels have prospered through providing a continuous fare of sexually explicit "adult" programming.(1) The appeal of these services to an entrepreneur is not difficult to see.

When these services are offered on cable, they usually achieve over 30 per cent penetration and can be sold for about nine dollars a month per subscriber (Ibid., 1983, p. 59).

With no pretext of creativity or artistic merit, "sex-TV" appeals directly to lust, as a trade advertisement for the U.S. Escapade service shows.

Send the kids to bed. The kind of R-Rated movies your customers want to see ... when they want to see them. This stuff is explosive! Look at the trends in video cassette sales. Check the popularity of the "jiggle" and action shows on network programming. Think about the failure of pay TV channels without adult fare. America wants ... and will pay for ... action-packed, revealing movie entertainment in prime time (Baldwin, 1983, p. 135).

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(1) These include: The Playboy Channel, Penthouse Entertainment Television (P.E.T.), Private Screenings (which fluctuates between being satellite-delivered and delivered by a system that involves mailing tapes to subscribing systems, and Eros (Gross, 1983, p. 33).

Audience data has confirmed that uncut, R-rated movies contribute substantially to the success of pay TV channels (Ibid., p. 135). Canadian pay TV operators attempted to use the same formula to promote pay in Canada, but this met with considerable public resistance, as the St. John's Evening Telegram's description of a House of Commons committee's screening of Playboy Channel fare suggests.

The pay TV operators describe their programming as 'erotic.' They say it is not pornographic at all--not even 'soft-core.' Their advertisements suggest that it will be no more than a few bare-breasted women playing volleyball. In the House of Commons recently, members of Parliament watched material from what is described as 'a typical night's programming from the U.S. Playboy Channel headed to Canada.' According to a Canadian Press report they saw graphic scenes of gang rape, oral sex, lesbian sex, masochism and masturbation.... They winced as Confederate soldiers grabbed and raped a black slave in one of the Playboy films and wondered later how anyone could defend a company's right to exhibit such programming (Inglis, in Status, July, 1983, p. 15).

Public reaction to the introduction of the Playboy Channel was swift and pointed, with demonstrations and letter-writing campaigns across the nation voicing opposition to the programming. The episode hurt the entire industry's credibility, provoking a seldom seen reaction from the public, as former CRTC chairman John Meisel writes:

First Choice, one of Canada's two national pay-television programmers, and Playboy Enterprises announced that they would jointly produce \$30 million worth of 'adult' programming in Canada, and that these programs would be shown late at night on the First Choice pay TV channel. Then the sky fell. Within 48 hours, a national demonstration was planned. Thousands of people in 19 centers from Victoria, British Columbia to St. John's, Newfoundland, marched to protest the plans for this programming. Over 400 gathered on Parliament Hill, in bitterly cold weather. The newspapers and broadcast media could not leave the

issue alone. The CRTC's correspondence secretariat was buried in an avalanche of more than 7,000 letters and petitions (John Meisel "An Audible Squeak: Broadcast Regulation in Canada." in Americas Society, 1984, p. 129).

Writing for an American audience, Meisel went on to explain why Canadians reacted much differently than their U.S. neighbors.

What was really telling about the public response to the Playboy affair was the eminently Canadian assumption that broadcasting - even the explicitly commercial medium of pay television - is a matter of collective concern. Those who objected to the proposed programming were not for a moment satisfied with the option of not buying the offending service. Television programming is more to them than simply a consumer good to be provided to individual purchasers by unrestricted programmers in accordance with the free play of market forces. The incident shows that this assumption, which has been the basis of Canadian government policy from the days of the Aird Commission in 1928, still holds in the present (Ibid., p. 130).

Meisel's hindsight analysis contrasts sharply with his actions as CRTC commissioner during the controversy. A report prepared for the Manitoba department of Culture, Heritage and Recreation noted that while the CRTC is empowered under the Broadcasting Act "to license 'broadcast undertakings', to determine broadcast regulations and to revoke licenses, the C.R.T.C.'s first official statement on the controversy was to insist that it has no power to censor broadcasters and that obscenity is for the courts to decide" (Ridington and Buffie, 1984, p. 3.6).

In its only reference to sexually explicit materials, the Caplan-Sauvageau Task Force noted that the Playboy Channel controversy had a far-reaching impact.

First Choice signed a notorious deal with the Playboy Channel in the U.S., which boosted sales in the short-run, but the ensuing debate over pornography and the media eventually hurt pay TV in general, particularly in the important family market (Report of the Task Force on Broadcast Policy, 1986, p. 479).

In response to public concern about sexually explicit programming on pay TV, the CRTC asked the industry to set up a system of self-regulation.(1) Protests were also made about the French language pay television services, as Herschel Hardin relates:

Premier Choix. . resorted to what was variously described as 'erotica' or 'pornography' including a multiple run by Premier Choix of a hard-core, New York Erotic Film Festival featuring, among others, a lady using a cucumber - shows which generated diverse criticisms and protests (Hardin, 1985, p. 310).

On January 17, 1985, the CRTC accepted the Programming Standards

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(1) Federal Communications Minister Francis Fox expressed concern about the Playboy Channel and denied any prior knowledge about what the station would be showing, a claim of innocence that rang hollow when judged against the public record. "In response to the public outcry, Francis Fox, minister of communications stated 'we would not have licensed a channel if we knew that it was going to be pornographic.' This, even though it was known that one of the licensees proposed to show 'adult entertainment' (of a mild variety: 'Playboy TV just Tame Titillation,' The Toronto Globe and Mail, January 26, 1983) and an appeal to cabinet had already been rejected" ("The Border Broadcasting Dispute in Context" Theodore Hagelin and Hudson Janisch, in Americas Society, 1984, p. 90).

and Practices submission made by licensees.(1) The regulations, which were to be reviewed annually, required that on-air cautionary warnings be given, and that sex and violence be shown only in the late evenings and early morning. That practice has since been adopted by off-air broadcasters such as Toronto's City-TV, whose Friday and Saturday evening fare is now often similar to the sexually explicit programming seen on First Choice and Superchannel when those pay services first came on the air six years ago.

Given the CRTC's recent penchant for emulating the U.S. Federal Communications Commission, it is likely that in the absence of a major public outcry, the CRTC will continue to turn a blind eye to efforts by CITY and others to attract late-night viewers with increasingly explicit material. In late 1987, the FCC "effectively gave TV and radio stations permission to broadcast indecent material between midnight and 6 a.m." and put the onus on parents to supervise what their children see and hear after midnight, according to an American Press wire story.

"The broadcasters should make a judgement and

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(1) "The Standards and Practices acknowledge that the pay television licensees have a responsibility to ensure that the programming they provide is of high quality and meets general community standards within the context of a discretionary service. All programs are to be rated, no x-rated films will be shown and all material will be fully screened prior to airing....

4. Basis of Discretion. The discretion of programming personnel will be exercised responsibly and in good taste. In particular, no material will be selected that is: a) contrary to law, including the Broadcasting Act and CRTC Regulations; or, b) offensive to contemporary community standards. "Community standards will necessarily change over time and therefore will be subject to continuing reviews and evaluation. Pay Television licensees will not select programming that would go beyond an "R-rating" or its equivalent" " (Fraser, 1985, pp. 184-185).

exercise discretion," said Diane Killory, FCC general counsel. The commission offered broadcasters little detail about what it considers indecent. It did, however, indicate that between midnight and 6 a.m. programming is unlikely to be seen or heard by children - the guiding principle for airing indecent material. "All the commission said is that we would expect after midnight that we could rely on parents to supervise any children in the audience," Killory said. (Toronto Star, Nov. 26, 1987, p. 86).

"Where Are the Censors? - A titillating fall raises questions about network standards." a December 1988 Time magazine article, provides further evidence that the commercial networks are moving toward a laissez-faire attitude with regards to content. The article notes that the size of the networks' standards and practices departments have been slashed from 75 to 80 employees a decade ago to current levels of 35 to 40 at ABC. CBS and NBC have fewer watchdogs still, with fewer than 30 each. Cost-cutting measures and the need to respond to competition from cable networks are cited as reasons for the trend (Time, December 12, 1988, p. 93).

Subscription to pay TV services by Canadians dwarfs the satellite television industry. According to a 1987 Statistics Canada survey, 10 per cent of Canadian homes purchase one or more pay TV services. Regionally, subscription rates vary from 13 per cent of all homes in Ontario, where pay TV is most popular, to a low of three per cent in Manitoba (Kitchener-Waterloo Record, October 3, 1988, p. C1).

### Conclusion

Development of the home video cassette industry in the U.S. was hastened and strengthened by its use as a medium to transmit sexually

explicit films. Since the late 1970s, video cassettes and the industry that produces sexually explicit materials have enjoyed a mutually nurturing relationship. Video cassettes are now the dominant entertainment medium, and the variance in provincial laws and emerging new VCR formats pose immense challenges to regulatory efforts. Both the Fraser and Badgley Committees suggested that efforts to regulate video cassettes coming into Canada from the U.S. have had only limited effectiveness. Federal government moves to slash customs staff in recent years would appear to negate the possibility of closer inspection, given the admission by the federal Department of Revenue that additional staff would be needed to achieve this end.

All evidence suggests that regulating satellite transmissions is virtually impossible in the absence of international, that is to say, U.S., co-operation that is unlikely to be obtained. The CRTC position on satellite programming is that signal encryption is the answer, but the reality is that signal scrambling and descrambling is a cat-and-mouse game. Any Canadian satellite dishowner who wants to receive sexually explicit U.S. programming, either by stealing it from the airwaves with the help of a descrambling device or by subscribing to the service, can easily do so.

As was the case in the U.S., the introduction of sexually explicit programming on pay TV in Canada prompted some public protests, and in both countries, that programming did some damage to the medium's reputation. The difference between the experience in the two nations has been that in Canada, public pressure led First Choice to drop Playboy Channel programming. Canadian pay stations have



introduced self-regulation in the form of a code of industry standards and advisory notices at the beginning of each program.

## CHAPTER FIVE

### BACKGROUND TO SURVEY AND METHODOLOGY

The survey was administered to 400 people from across Canada who were chosen because of their professional or personal interest in the topic. Subjects included crown attorneys in every province and territory, film classification or censorship boards in eight provinces and one territory, police departments or vice squads in major cities across the country, regional customs offices, provincial civil liberties groups and women's organizations, members of church and other interest groups (e.g. Inter-church Committee on Pornography, Alberta Coalition Against Pornography), feminist writers who have written in this area, adult video distributors in British Columbia and Ontario, mainstream broadcast representatives, provincial justice departments in provinces where there are no centres large enough to have vice squads, and a few members of the Badgley and Fraser Committee who could be located.

In the case of the crown attorneys, names were selected from lists provided by various provincial governments, with slight over-sampling of female crown attorneys in an effort to compensate for the under-representation of women in the survey group as a whole. Other respondents were identified through lists provided by provincial film boards, through searches of popular media, various telephone books and records of such organizations as the Metro Toronto Action Committee on Violence Against Women and Children, and reference publications such as the Corpus and other annual listings of government departments and organizations across Canada. Letters were

sent to the federal Justice Department and to Fraser Committee chairman Paul Fraser in an unsuccessful effort to obtain the addresses of individuals and organizations who made submissions at the committee's public hearings.(1) When that effort failed, an attempt was made to locate addresses in telephone books by using the list of presenters in Fraser's final report and the city in which they made presentations. That secondary effort was time consuming and only marginally successful. A list of major Canadian video distributors was gathered by searching the personal ad listings in the classified ads sections of major daily newspapers such as the Globe and Mail, and with the assistance of a researcher's list of distributors who had previously co-operated with a research endeavour.

Difficulty in identifying and locating some of the desired respondents and the dearth of literature in the subject area led me to conduct some exploratory, unstructured interviews in Mississauga, Toronto, Ottawa and Kitchener. The purpose of these interviews was threefold: to learn about current issues, to gather information about individuals and organizations that might be included in the survey, and to eliminate avenues of inquiry that seemed unlikely to be fruitful. Persons or organizations interviewed included Brian Dinsdale and Bill Barr of the Satellite Communications Association of Canada

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(1) In reply, Fraser wrote that such materials had long since been turned over to the federal Justice Department. A receptionist at the main Justice Department building in Ottawa made some inquiries and suggested that no list ever existed. If this in fact is the case, it seems unfortunate that over the course of a \$2 million federal inquiry, records were not kept to assist subsequent research efforts.

(who provided some general information on the consumer satellite industry in Canada), Toronto researcher David Scott (who testified before the Fraser Committee and regularly attended public hearings of both the Fraser Committee and the U.S. Attorney General's Commission public hearings), Pat Marshall, executive director of the Metro Action Committee on Violence Against Women and Children (Metrac), Rose Potvin of the Canadian Coalition Against Media Pornography, Margaret Gillies of the Prohibited Importations Branch of the Department of National Revenue, an RCMP constable who asked to remain anonymous, two secretaries at the Ontario Film Review Board in Toronto (an official who had agreed to meet with me was unavailable when I arrived), and two officers at Project P in Toronto.

Several individuals whose assistance would have proven invaluable either refused to grant interviews or did not respond to letters and telephone calls. These included former Ontario Censor Board chairman Mary Brown, who still works for the provincial government, and Fraser alumnus Mary Eberts, whose secretary said Eberts was too busy with a midwifery task force to grant an interview or respond to my letter. Metrac's resource library proved to be a valuable source of information and contacts, as did that of the Canadian Advisory Council on the Status of Women in Ottawa. Difficulty in locating source material also necessitated filing Access to Information requests with the Department of Justice regarding information received by the Fraser Committee, and to the Department of Communications regarding submissions to the Task Force on Broadcast Policy.

The survey was organized into four sections. In the first

section, respondents were provided with a series of 10 notions that could be considered with regards to the regulation of sexually explicit materials and were asked to rank the importance of the issue with regards to the question of regulation of sexually explicit materials on a five point scale that ranged from extremely important to extremely unimportant.

In the second section of the survey, respondents were given a series of 11 questions and a series of choices for each question. They were asked to place an X beside the response which most accurately reflected their thoughts, and to mark only one response. This subsection also included two open-ended questions that allowed respondents to expand on their ideas about the conditions under which prior restraint is preferable to post restraint (or vice-versa), and on methods by which the issue of sexually explicit satellite programming could be dealt with. Both of these open-ended questions followed specific closed-ended questions on the same subject. Respondents were next given a series of 24 statements and asked to enter a number from a five point scale that corresponded most closely with the respondent's opinion on the subject.

A third section of the questionnaire provided a series of popular contemporary definitions of the term "pornography", and asked respondents to mark the response which came closest to capturing the essence of their understanding of the term. Space was provided at the end of the series of possible definitions for respondents to enter their own definition of the term. A follow-up question asked respondents if they saw a difference between erotica and pornography.

Subjects who responded positively to that question were next provided with a series of contemporary definitions of the term "erotica" and asked to place an X beside the response which came closest to their understanding of the term. Additional space was provided at the end of section for the subject to supply a definition of the term. Many of the questions in the survey were exploratory in nature and designed merely to gather respondents' views on related issues.

Some of the questions were based on scholarly arguments and viewpoints, such as the definitions for pornography and erotica. Others were based on statements or positions taken by public officials. The 28th item on the questionnaire - "When it comes to videos, government must be careful in respecting the sanctity of people's homes" - is a paraphrase of a statement Ontario Film Review Board Chairman Anne Jones made in a public speech. Similarly, the 48th item, "The CRTC has no role to play in the regulation of sexually explicit program content on pay TV", was asked in an effort to determine whether respondents share the CRTC's hands-off view of its role.

The fourth and final section of the questionnaire asked respondents to supply demographic information. Demographic information requested of respondents included gender, level of education, employment, marital status, occupation of legal or commonlaw spouse, whether or not the respondent has children, age, religious affiliation or lack thereof, size of home community and region of residence. Because of the nation-wide scope of the study, the costs involved with conducting personal or telephone interviews would have been

prohibitive.

The questionnaire was pre-tested on a dozen people, primarily university graduates, in order to detect problems with the wording of questions and the length of time required to complete the survey. University graduates of both sexes were chosen for the pre-test for reasons of accessibility and the fact that their level of education would be roughly equal to the majority of the population in the sample. Women took considerably longer than men to complete the survey, a fact that tended to be true of the sample as well, judging by comments from women who completed the survey.

Pre-testing revealed consistent comprehension problems with a few of the questions. These were either re-worded or eliminated. Another general problem that surfaced during the pre-test was that while some respondents completed the survey within 20-25 minutes, several others took between 30 and 40 minutes, and two respondents (both female) took nearly an hour to complete the task. As a result of suggestions from committee members and pre-test respondents the questionnaire was downscaled considerably, from 106 items in the initial draft to 61 in the version that was sent out.

The questionnaire was mailed in a stamped envelope (which research suggests elicits a higher return rate than metered requests), with a covering letter explaining the purpose of the survey, and a pre-paid self-addressed envelope. (Use of a pre-paid return envelope may seem inconsistent with the preceding, but was necessary due to budgetary limits.) Each respondent was asked to return the survey within one week's time.

Fifty-five of the surveys (translated by the author with the assistance of Dr. David Sehl of the Romance Languages Department) were printed in French and sent out with an accompanying French language cover letter. The French version of the survey differed from the English version in two minor respects. One variable deemed to be unimportant and deleted from the first portion of the English survey was inadvertently left in the French version. Secondly, in a few instances, the nuances of language made it impossible to translate with precision. Two of the French surveys were sent to New Brunswick, with the balance being sent to francophone Quebecers.

Seventeen surveys were returned because the addressee had moved or gone out of business. Half of the returned surveys had been sent to video distributors, who sometimes change their corporate name and address because of legal difficulties. Where new addresses could be found, a survey and covering letter was re-mailed to another member of the same sub-population, and to the same geographic region if at all possible. In one instance, a survey was returned a second time, as the addressee had moved twice within the previous 12 to 18 months. A follow-up letter and pre-paid envelope were sent to non-respondents one month after the initial mailing requesting that they please return the survey as soon as possible, or in the event that they had mislaid the questionnaire, to write and ask for another questionnaire.

The second mailing generated a few more responses and a handful of requests for additional questionnaires. A second follow-up letter was sent to selected members of subgroups where the response rate was judged to be too low. Pre-paid envelopes and some additional copies of



the survey were included with that mailing, which was conducted over a period of six weeks following the second mailing, or up to 10 weeks after the original mailing of the survey. Both follow-up mailings alluded to the number of respondents at the time of writing, re-emphasized the purpose of the project, and stressed the fact that the value of the results would be increased by inclusion of the subject's views.

An examination and explanation of the survey results follows in the next chapter.

## CHAPTER SIX

### DESCRIPTION AND ANALYSIS OF SURVEY RESULTS

#### Introduction

Survey questions were designed to probe the effect technology is perceived to be having on government's ability to regulate sexually explicit materials and other related issues. The survey sample is purposive rather than random for several reasons. A desire to sample elite opinion, combined with the prohibitive cost of doing a random sample, led my research in this direction. Unfortunately, the relatively low response rate - 143 of 400 questionnaires returned, or 35.75 per cent - and the limited number of respondents within some subgroups, precludes certain types of inter-group comparisons. This chapter will include comments about the problems encountered with the survey; and a discussion of survey results. An examination of inferences and conclusions that can be drawn from the survey will round out the chapter. The full text of the survey is reproduced in appendix 6.1. , with results included.

Many respondents returned their surveys only after followup letters. Most disappointing was the fact that many of the subjects who were likely best informed and potentially the most useful sources of information - film board members and members of vice squads in police forces - ignored repeated requests to complete the survey. Members of

regional Customs offices posed another non-response problem. Four officers completed the survey, likely before receiving an edict from Ottawa that they were forbidden to do so.

A series of virtually identical letters followed from all corners of the country explaining that the survey had been forwarded to Ottawa, and that a departmental response would be forthcoming from Kathy Wickens of the Prohibited Importations Branch of the Customs and Excise Division of the Department of National Revenue. That department, which presumably issued the gag order to the regional field officers, verbally indicated that they would complete the survey, then declined. Further efforts to encourage someone, preferably several people, within the department to complete the survey were eventually answered by T.C. Greig, assistant deputy minister of Customs Programs, who flatly refused to respond.

It appears that most of the film boards allowed one member to complete and return the survey in order to receive a copy of the survey summary promised to respondents as an incentive for their co-operation. Most respondents requested a copy of the summary of results, which suggests a degree of interest or curiosity in the subject among respondents. Guarantees of anonymity were insufficient to persuade 12.6 per cent of respondents to reveal their occupation or interest in the subject. Even with the inclusion of a covering letter explaining that the survey

would likely require 20-25 minutes to complete, several respondents complained that the questionnaire was time-consuming. This may have had some impact on the response rate, particularly among women (one female respondent noted that she spent 45 minutes completing the questionnaire.) Several women respondents complained about a lack of opportunity to explain or expand upon their answers and wrote extensive comments in the margins beside the questions.

#### Demographics

Not surprisingly for an elite sample, the demographics of respondents were atypical of the general population. Nearly half (44.8) per cent of respondents had undertaken some post-graduate education. Only 2.8 per cent of respondents had not completed high school. Close to two-thirds (62.9 per cent) of respondents were male, which may reflect prevailing gender inequality in some of the occupational groups sampled.(1) Further underlining the non-representative nature of the population under study, the mean age was 44.8.

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(1) Female representation would have been even lower than the 35.7 per cent of respondents had over-sampling of some female crown attorneys (identifiable because of lists provided by provincial governments) not been undertaken.

Table 6.1 Regional Distribution of Respondents

Value Label	Percent	(N)
Maritimes	14.2	19
Quebec	6.7	9
Ontario	35.1	47
Prairies	26.1	35
B.C.	11.2	15
Territories	6.7	9
	----	----
	100.0	134

Missing Values 9

In general, regional distributions were reasonably reflective of the country as a whole with the exception of Quebec, which accounted for only 6.3 per cent of respondents, and the Territories, which appear to be over-sampled because of the high response rate. Unfortunately, the response rate was not adequate to facilitate inter-group comparisons on the basis of occupational group, information which might have been interesting as a basis for further research efforts.(1)

#### Definitions of Pornography

Nine popular definitions of pornography, drawn from the academic literature and dictionaries, were included on the

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(1) Respondents tended to be expansive in their additional comments. Survey questions were variously criticized for being pro- and anti-censorship. Comments ranged from support to derision towards the research effort and the nature of the questionnaire, a wide range of views that was surprising given the small sample. A listing of general comments offered by respondents is contained in appendix 6.2

survey. That range of definitions, which encompassed several ideological viewpoints, was not sufficient for the almost one in five (18.2 per cent) respondents who chose to provide their own alternative definitions, 19 in all. Those definitions were very individualized, as no more than three people gave open-ended responses conveying similar ideas. Of the responses provided, a feminist definition incorporating notions of coercion, psychological or physical abuse and depictions of an imbalance of power and the advocacy or endorsement of such behaviors was the modal response, the choice of 39.9 per cent of respondents.

There appears to be a significant gender variance on the definitional issue. Nearly six in 10 women respondents (30 of 51 or 58.8 per cent) favor the feminist definition, compared to less than three in 10 (26 of 87 or 29.9 per cent) men. A similar gap can be seen on the definition which revolves around the notion of lust. The definition centring around lust was selected by 31 per cent of male respondents, compared with only 9.8 per cent of women. The question of gender as an important variable with regards to some other issues will be discussed later.

Sexually explicit subordination of women or children was seen by 7.9 per cent of respondents as defining pornography. Graphic displays of actual or simulated sex acts were deemed to constitute pornography by 5.1 per cent of respondents. A definition adopted by the federal Badgley

Committee, taken from the pages of Webster's Third International Dictionary, was selected by less than one in 20 respondents. That definition, which defines pornography as: "the depiction of licentiousness or lewdness; a portrayal of erotic behavior designed to cause sexual excitement", was selected by 4.9 per cent of respondents. A smaller number, 3.5 per cent, chose a response which said that pornography is "material designed to stimulate sexual feelings independent of another loved and chosen human being." Only 2.1 per cent of respondents indicated they did not know how to define pornography, a figure that seems low considering the vagueness of some of the open-ended responses. Ten respondents checked several answers as well as providing additional comments. Other definitions of pornography given by respondents are listed in appendix 6.3.

For ease of analysis, two similar definitions - two and four - were combined.(1) When the second and fourth definitions are considered together, we see that almost half of respondents (47.6 per cent) take considerations of exploitation, subordination or degradation into account when defining pornography. The definition chosen by the next largest group of respondents (22.4 per cent) incorporates the notion of lust.

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(1) Among respondents who checked more than one answer - a coding problem that was dealt with by treating each case as a discrete open-ended choice - five checked the second and fourth definitions in conjunction with some other comment or choice.

The three preceding definitions account for 70 per cent of respondents, a total that might have been even higher had respondents not been given a large number of options, and an open-ended choice. This finding runs somewhat counter to the definitional survey discussed in Chapter Three, as it suggests that, among the elite at least, there is some consensus as to what constitutes pornography. Unhappily, that does not allow us to suggest that the problem of a lack of definitional clarity in this area has been overcome, as shall be demonstrated shortly.

An overwhelming majority of respondents - 89.5 per cent - said that there is a distinction between pornography and erotica. One in 10 (10.5 per cent) said there is no distinction. Whatever commonality of perception can be said to exist as to what constitutes pornography, it certainly doesn't extend to shared understandings of the term erotica, as examination of competing definitions reveals.



Table 6.2 Definitions of Erotica

Definition	Percentage	(n)
depictions of sexuality which reflect equal choice, equal power and passionate yearning for a particular person	30.3	(36)
concerned with sexuality, not about power or sex-as-weapon	21.0	(25)
material designed to arouse sexual desire	19.3	(23)
depictions of the great variety of sexual practices and types of foreplay which are common in our society	10.1	(12)
material which expresses sexual excitement rather than causes it	6.7	(8)
Other	<u>12.6</u> 100.0	<u>(15)</u> (119)
	Missing Values	(24)

Eight respondents checked several possible definitions. Other definitions provided by more than one respondent are listed in appendix G.3

Erotica is seen by respondents as being many different things, including passion, sexuality and the great variety of sexual practices and foreplay common in our society. Almost one in five respondents say that erotica is material designed to arouse sexual desire, a definition which is very similar to a definition which describes pornography as: "a depiction of licentiousness or lewdness; a portrayal of erotic behavior designed to cause sexual excitement." Probing that similarity of response would likely support this study's finding that the term erotica is poorly

understood. If this finding can be extended to the general population, which is a reasonable assumption, many people aren't referring to the same thing when they speak of erotica. That is not surprising, given the range of tolerance and attitudes toward sexually explicit materials found within the population surveyed, let alone the Canadian public.

A majority of respondents doubt the ability of police to distinguish between pornography and erotica, a finding that perhaps largely explains the antipathy towards a police role in regulation. Respondents expressed a little more faith in the ability of regulatory officials to make this distinction.

Table 6.3 Confidence in the Ability of Regulators and Police to distinguish between Erotica and Pornography

Value Label	Regulatory Officials		Police	
a great deal	19.3%	(27)	18.4%	(26)
some	29.3%	(41)	29.8%	(42)
a little	33.6%	(47)	30.5%	(43)
none	17.9%	(25)	21.3%	(30)
	<u>100.0</u>	<u>(140)</u>	<u>100.0</u>	<u>(141)</u>
	Missing Values	(3)		(2)

Respondents also gave low marks to the Criminal Code of Canada in distinguishing between erotica and pornography. More than two in three (69 per cent) said the CCC has failed to distinguish adequately between the two, compared to only 17.1 per cent who took the opposite view.

#### General Issues

Given abstract terminology, respondents deferred to abstract rights. On the surface, the data shows that respondents feel that issues such as protection of children (87.3%), prevention of degradation of people (84.5%), the context in which sexuality is used (68.3%), protection of free speech (67.8%), and the enforceability of sanctions against the material (64.7%) are important issues with regards to the regulation of sexually explicit materials.

Table 6.4 Importance of Issues related to the Regulation of Sexually Explicit Materials

Respondents were shown a 5-point scale ranging from "extremely important" to "extremely unimportant," then given a number of issues commonly discussed in connection with the regulation of sexually explicit materials and asked to assess the importance of each of those listed issues with regards to the question of regulation of sexually explicit materials.

Results have been recoded and collapsed to a three-point scale for the purposes of this table.

	Important 1	2	Unimportant 3
Protection of Free Speech	67.8 (97)	22.4 (32)	9.8 (14)
Degradation of people	84.5 (120)	11.3 (16)	4.2 (6)
People's rights to see whatever they want	35.7 (51)	28.7 (41)	35.7 (51)
Protection of children	87.3 (124)	6.3 (9)	6.3 (9)
Arts Integrity	33.8 (48)	35.9 (51)	30.3 (43)
Support family, marriage	50.0 (71)	25.4 (36)	24.6 (35)
Educational value	32.6 (46)	28.4 (40)	39.0 (28)
Private versus public viewing	42.3 (60)	24.6 (35)	33.1 (47)
Enforceability of sanctions	64.7 (90)	21.7 (30)	13.7 (19)
Context in which sexuality used	68.3 (97)	19.7 (28)	12.0 (17)

Respondents were divided on the issue of people's rights to see what they want, with equal numbers (35.7 per cent) indicating the importance/unimportance of the issue. The issue of protection of the integrity of the arts community drew a neutral response from 35.9 per cent of respondents, which suggests that the population surveyed has no strong feelings on the issue.(1)

Some of the correlations of these variables produced expected results. Respondents who felt that people's right to see whatever they wanted was extremely important also felt that the appropriate action to be taken with regards to TV programs which show sexually explicit scenes during hours when children might be watching would be to advertise that the program contains sexually explicit scenes. Respondents who viewed the right to see as extremely unimportant, on the other hand, favored use of censorship as a means of dealing with the problem. Of those who view the right to see as an extremely unimportant concern, the enforceability of sanctions against the material is viewed as more important than by those who saw the right to see as an important concern, by a margin of four to one. It appears, then, that in consideration of these and other issues, either respondents fail to understand the consequences of following

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(1) Indifference of regulators to artistic concerns may help to explain the vehemence with which the artistic community has attacked the Mulroney government's legislative efforts to update the law as it relates to sexually explicit materials.

through and applying these abstract principles to real, specific situations, or they are not consistent in their beliefs. These issues deserve further exploration.

Technology and Regulation: Support for the hypothesis under study

Survey results provide a strong confirmation of the frequently-espoused suggestion that technology is rendering efforts to regulate sexually explicit materials more difficult. That hypothesis, which is the central focus of the study, received the support of 73.8 and 86 per cent of respondents when it was put forth in two related questions.

Table 6.5 Is Technology Outpacing Regulation?

Value Label	Percentage	(N)
Agree Strongly	28.7	35
Agree	45.1	55
Neutral	16.4	20
Disagree	7.4	9
Disagree Strongly	2.5	3
	-----	-----
	100.0	122
	Missing Values	21

Table 6.6 Effect of Technology on Government's Ability to Regulate

Value Label	Percentage	(N)
Technology is making regulation more difficult	86	117
Regulation is keeping pace with technology	14	19
	<u>100</u>	<u>136</u>
	Missing Values	7

Asked to agree or disagree with the proposal that new technologies tend to outpace the capacity of established patterns of regulation to meet the challenge of their existence (Table 6.5), 73.8 per cent agreed, compared with 9.9 per cent who disagreed. A higher level of support was given to a question which suggested that technological advances in the area of home entertainment such as video cassette recorders make it more difficult for government to regulate sexually explicit materials. (Table 6.8) More than eight in 10 (86 per cent) respondents supported this position, compared with 14 per cent who felt that regulation is keeping pace with technology.

The fact that the more specific of the two questions, the one which mentions video cassette recorders, received a higher level of support suggests a familiarity with the regulatory problems associated with video cassettes rather than a lack of consistency on the part of respondents. Further questioning about video cassettes would likely reveal that respondents are aware of how easy it is for card

buddies, people who work together, or more to the point, under the counter entrepreneurs, to make copies of tapes and give, rent or sell the tapes. But the issue isn't simply friends swapping Triple-X blue movies. Respondents to a survey of film classification boards across Canada conducted by a New Brunswick government department indicated that "trunkies" - people who sell videos from the trunk of their cars and never pay tax, let alone pay copyright fees or submit to provincial classification or censorship regimes - constitute a major regulatory problem.(1) As previously noted, the advent of smaller tape formats and machines which allow the copying of tapes within a single unit, are expected to exacerbate these problems.

The level of support given by respondents to the two questions would likely have been more even, or reversed, had the words "home satellite dish" been substituted for "video cassette recorders." Awareness of the difficulty in addressing the regulatory problems posed by home satellite dishes is much lower than the awareness of VCR-related issues. That would be unremarkable and not worthy of comment in a study of the general population, given that ownership of home dishes in Canada pales along side VCR penetration. However, given that the respondents represent a more

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(1) This information is contained in the Practices and Procedures, 1986 report published by the New Brunswick Department of Tourism, Recreation and Heritage and the New Brunswick Film Classification Board.



interested and informed elite, that finding points to a knowledge gap as well as gaps in policy or ability to regulate. When we consider systems that are widely-heralded and will have a profound impact but are not yet in use such as direct-to-home or direct broadcast satellites (DBS), the knowledge gap becomes even more pronounced.

Table 6.7 Does Direct Satellite Broadcasting of TV Programs mean an End to Government's Role in Deciding what People will watch?

Value Label	Percentage	(N)
Agree Strongly	13.2	15
Agree	26.3	30
Neutral	22.8	26
Disagree	20.2	23
Disagree Strongly	17.5	20
	-----	-----
	100.0	114

Missing Values 31

Responses to a question about whether direct satellite broadcasting of TV programs from outer space into people's livingrooms will spell the end of government's role in deciding what people will watch supports the view that many respondents don't have a great deal of understanding of the issue. Almost one in four respondents (39.5 per cent) don't think government's role will end, compared to 37.5 per cent who think it will end. That finding can be interpreted in a manner that is not incongruent with the responses to the other two questions. The high level of neutral and undecided responses suggest a high level of unfamiliarity with the

technology among respondents.(1)

Table 6.8 Will Government Close the Regulatory Gap?

Value Label	Percentage	(N)
Govt will close gap	22.5	25
Gap will remain	35.2	39
Gap is widening	42.3	47
	----	---
	100.0	111

Missing Values 32

Among respondents who felt technology is making regulation more difficult, just over one in five think government will close the gap. Why do so many respondents doubt the ability of regulators to close the gap? Certainly the literature sheds some light on the nature of the problem. However, it appears that to a certain extent, the attitudinal dimension may be as significant as technological considerations. While almost two-in three respondents (62.8 per cent) were of the opinion that the public is not very aware of the content of sexually explicit movies and videos,

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(1) Direct satellite broadcasting has been discussed for a number of years, and appears to be close at hand. In a November, 1988 interview with the Globe and Mail, CRTC chairman Andre Bureau suggested that: 'home viewers will soon be able to install small antennae directly in their livingrooms to receive programs by satellite - "and no network, cablecaster or regulator will be able to impede this program flow"' (Globe and Mail, November 8, 1988, p. B9).

a slightly larger number (65 per cent) agreed that when it comes to videos, government must respect the sanctity of people's homes. Congruent with that finding is the agreement of 65 per cent of respondents that video cassettes have led to a sharp increase in the acceptability of sexually explicit movies. It would be interesting to study respondents' views on that development.

Asked about pay TV, almost two in three respondents (63.1 per cent) agreed that sexually explicit programming is more acceptable on pay TV if it's shown on a channel where viewers expect it, with only 17.7 per cent disagreeing. But respondents don't accept the idea that federal regulators should play no part in regulating sexually explicit content on pay TV. More than six in 10 (61.3 per cent) respondents disagreed with the statement that "The CRTC has no role to play in the regulation of sexually explicit program content on pay TV", compared with 28.7 per cent who agreed.(1)

It appears that as sexually explicit materials made the transition from glossy magazines and stag films to more broadly-based, familiar media, the public has become increasingly desensitized to sexually explicit materials, or at least complacent at their pervasiveness. Just over half

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(1) Confronted with complaints about sexually explicit programming on Canadian pay TV in the early 1980s, the CRTC consistently maintained that it had no power to act as a censor. Survey responses suggest that further inquiry into the type of role respondents would like the CRTC to play in regulating sexually explicit program content should be undertaken.

(50.3 per cent) of respondents agreed with the statement that anyone should be able to watch whatever they choose in the privacy of their own home, with 33.6 per cent disagreeing. That abstract principle should be probed further, as answers would likely be different if the words "child pornography" or "snuff films" were substituted for the word anything.

More than six in 10 respondents (62 per cent) said that government has a role to play in helping parents determine what is suitable for their children to watch, compared with 38 per cent who said that adults should be left to decide what is appropriate viewing for themselves and their children in their homes. But what action or "government role" would be tolerated? Any move to regulate the content of television broadcasts would require action by a federal government agency, logically the CRTC. To be effective, government action would have to go beyond advisory warnings in TV listings or at the beginning of programs. In an era of latch key children and "television babysitters", the advisories serve as a red flag, an enticement for children to watch the programming in question.

Curiously, although respondents seem to think that the venue in which sexually explicit programming is watched (i.e. a private livingroom as opposed to a public theatre) has some bearing on the propriety of regulation, purchases of sexually explicit materials through private rather than

retail avenues are not preferred. Responding to the statement "It is better for people to obtain sexually explicit material through mail-orders than from local stores", almost two in three subjects (62.5 per cent) disagreed, compared with only 9.2 per cent who agreed. These attitudinal juxtapositions may explain some of the problems faced by regulators. When suggestions are made of vague, enhanced regulatory actions that would extend state powers, images of book burning, confiscation of classic statues and the like are thrown about in the media and become fixed in the mind of the public, which understandably resists the notion of new laws or regulations to control sexually explicit materials.

Only when discussion turns to infrequently mentioned, but flourishing avenues of commerce such as the border town and West Coast video mail order businesses does public unease with non-consensual, exploitative and degrading images find expression, and then possibly translate into marginal support for regulatory initiatives. Aiding the merchants and hindering the regulators is the reality that the new home entertainment technologies further conceal the seamy and illicit nature of the sexually explicit materials industry. If the public is truly unaware of the content of sexually explicit movies and videos that can be easily viewed by anyone who has a few dollars to spend, certainly there will be that much less awareness of the content of

programming that is narrowcast to an even smaller audience via home satellite dish, or soon by direct broadcast satellite.

Regulation: Who should take the lead role?

Respondents showed a low level of trust regarding the role of police in regulating sexually explicit materials. Only one respondent said police should take the lead role in controlling sexually explicit materials. Just over half of the respondents said that the federal government should take the lead role in regulating sexually explicit materials. One in five respondents felt that the matter should be left to each person's own discretion, 6.4 per cent favored provincial government primacy, five per cent favored industry control and 5.7 per cent thought provincial film boards should take the primary role. Less than two per cent of respondents favored having municipal government or the church take the lead role. These results may reflect the preponderance of crown attorneys amongst respondents.(1)

Respondents disagreed with the notion that industry self-regulation would be an improvement over existing obscenity laws with regards to sexually explicit materials.

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(1) Twenty nine of 47 crown attorneys in the sample favored the federal government taking the lead role in regulating sexually explicit materials, as did 15 of 25 respondents identified as members of interest groups favoring stricter controls on sexually explicit materials.

Only 23.8 per cent of respondents favored that suggestion. Asked a similar question, whether the market should be allowed to dictate regulatory standards concerning sexually explicit materials, only 19.6 per cent of respondents favored a laissez-faire approach. Apparently, there is some substantial measure of concern about the prospect of no regulation. This issue should be explored further.

#### Prior versus Post Restraint

Findings on the question of prior versus post restraint seem to contradict answers given to the question of who should take the lead role in regulating sexually explicit materials. Two thirds of respondents said that regulation (prior restraint) is always or sometimes preferable to legal action (post restraint). Only 14 per cent of respondents said that legal action is always or sometimes the preferable route to take. This is surprising given the strong support for the notion that the lead role should be assumed by the federal government which, through the customs and excise branch of the department of national revenue, can conduct prior restraint on a limited amount of the sexually explicit materials distributed in Canada.(1)

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(1) The Fraser Committee rejected the notion of a national film board which would have the ability to fulfill this function. Functionalism takes a back seat to federalism in this case.

What standards should be used?

Use of a single national standard to regulate sexually explicit materials was favored by 58 per cent of respondents, a finding that is congruent with the view of 51 per cent of respondents that the federal government should take the lead role in regulating sexually explicit materials. Support for the notion of each province setting its own standards (19.6 per cent) was more than triple the support given to the notion that the provincial government should take the lead role in regulation (6.3 per cent) in a previous question.(1) Support for local standards is eight times greater than the level of acceptance of the notion that municipalities should take the lead role in regulating sexually explicit materials in a previous question. Some of that lack of consistency may be attributable to the large number of choices offered in one question.

One in 11 respondents felt that no standards should be used to regulate sexually explicit magazines, movies or video cassettes. Three years ago, the provinces of Saskatchewan, Manitoba and Ontario began negotiating to establish an inter-provincial video cassette classification system, which could be viewed as a step in the direction of

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(1) When the percentage who favored having provincial film boards take the lead role (5.6 per cent) is added to the provincial figures, the levels of support given to provincially-based control/standards becomes somewhat more comparable.



centralized regulation of video cassettes. That prospect was favored by nearly three-quarters of respondents. Almost one-fifth (18.9 per cent) had no opinion on the matter.

Further support for the notion of centralized regulation is implicit in responses to the statement: "Where it is necessary for regulation of communications to occur, it is preferable that such regulation be decentralized rather than centralized." Almost half of the respondents (42 per cent) disagreed with the notion of decentralized regulation, compared with one in four (26 per cent) who agreed with the notion. The relatively large number of 'don't know' (17.5 per cent) and neutral (14 per cent) responses suggests either that the question lacked sufficient clarity to be properly understood, or that responses to previous questions about who should assume the lead role in regulating sexually explicit materials were not carefully considered. If that was the case, responses were made on the basis of the respondent's abstract preferences on the distribution of governmental power rather than the most desirable or efficient method of regulating communications.

Respondents tended to favor the status quo on police activities with regards to controlling sexually explicit materials.

Table 6.9 How should the Police proceed in Enforcing Laws Related to Sexually Explicit Materials?

Value Label	Percentage	(N)
Investigations should only arise from specific complaints.	18.8	25
Priority to complaints with spot checks as resources allow	33.8	45
Emphasize investigations as much as complaints	24.1	32
More emphasis to investigations than complaints	9.0	12
Regular spot checks and investigations, not complaints	14.3	19
	-----	-----
	100.0	133

Missing Values= 10

Lack of confidence in police judgement appears to translate either into support for the status quo or opposition to changes that would broaden the police role. One out of three respondents (33.8 per cent) said that police priority should be given to investigations arising from specific complaints, with occasional spot checks as resources allow. Almost one in four respondents (24.1 per cent) said independent investigations should be emphasized as much as complaints, while 18.8 per cent said investigations should only arise from specific complaints.

Asked whether "Police forces assign a low priority to the regulation of sexually explicit materials because they believe that they have more important things to do", nearly one-half of respondents (48.5 per cent) agreed, compared

with just over one-quarter (27.6 per cent) who disagreed. Almost one-quarter (23.9 per cent) are neutral on the issue. Low response from vice squads and police forces across the country did not permit the assessment of how this sub-population views itself with regards to these issues, information that would prove useful in understanding the existing atmosphere.

Respondents' perceptions of police disinterest in regulating sexually explicit materials suggests that the lack of political will on the issue translates into lesser interest in enforcing existing laws, that police may be generally over-worked, or that increased regulatory efforts in this area will require commitment on the part of police commissions and police chiefs, and likely necessitate spending more money and deploying more officers for that task. The establishment of specially-assigned units along the lines of Toronto's Project P in other areas of the country - border cities, Montreal and Vancouver would be the logical locales - could overcome this problem. Letters to the Quebec provincial police force and Vancouver police about whether such units have been considered or tried in the past went unanswered.

#### Government spending to regulate sexually explicit materials

Respondents who think federal and provincial governments don't spend enough in their efforts to regulate sexually explicit materials substantially outnumber those who think they spend too much.

Table 6.10 Respondents' Views on Federal, Provincial/Territorial Government Spending to Regulate Sexually Explicit Materials

Value Label	Federal Govt.	Prov/Territ. Govt.
Spend too much	18.4% (18)	20.4% (21)
Spend too little	66.3% (65)	49.5% (51)
Spend enough	15.3% (15)	30.1% (31)
	<u>100.0 (98)</u>	<u>100.0 (103)</u>
Missing Values	(45)	(40)

Federal spending is seen as being too limited by about one-quarter more respondents than is the case with provincial spending. Almost one-third of respondents feel that their provincial or territorial government spends enough money in this area, compared with only 15.3 per cent who feel that way about federal spending. Among respondents who feel government spends too much money to regulate sexually explicit materials, 20.4 per cent of respondents level that charge against the provincial government, compared with 18.4 per cent against the federal. Public perceptions of the amount of money spent by the federal and provincial governments on this area are likely very limited, given that almost one-third of survey respondents had no idea of the level of federal spending, and almost as many gave no response to the question of provincial spending.

Consistency of regulatory efforts, or rather a lack thereof, is a major concern for respondents. Asked whether they think consistent guidance as to what the community will tolerate in terms of sexually explicit materials is lacking,

just over half of respondents (56.7 per cent) said that lack of consistency is a major problem. A further 34.6 per cent of respondents view lack of consistency as a minor problem and only 8.7 per cent said that lack of consistency is rarely a problem. One in nine respondents did not answer the question or did not know.

Confidence in the ability of federal and provincial regulatory bodies to consistently regulate sexually explicit materials appears to be lukewarm.

Table 6.11 Respondents' Confidence in the Consistency with which Federal and Provincial officials Regulate Sexually Explicit Materials

Value Label	Percentage	(N)
a great deal	16.8	23
some	48.9	67
a little	26.3	36
none	8.0	11
	<u>100</u>	<u>137</u>
Missing Values		6

The results outlined in Table 6.11 should not be viewed as surprising, given the history of governmental inconsistency documented by Fraser and others. Confidence and legitimacy are unlikely to be restored until new laws are brought in and governments demonstrate the political will to enforce those laws.

## Censorship

Respondents who feel that Canadians are over-censored when it comes to sexually explicit materials are substantially outnumbered by those who take the opposite view. Less than a third of respondents (30.3 per cent) agreed that Canadians are over-censored, compared with just over half (53 per cent) who disagreed. Less than one-fifth (16.7 per cent) were neutral on the issue. In answer to a separate question, a majority of respondents agreed that education of public taste is preferable to censorship. More than two-thirds (69.5 per cent) of respondents agreed with that statement, compared with 14.5 per cent who disagreed. Roughly one in six respondents (16.0 per cent) had no strong feeling on the issue.

Several questions which suggested possible (if authoritarian or unlikely) solutions to some of the regulatory issues raised were included in the survey. Little support was given to the idea of increasing police powers to intercept illicit videos by giving them the ability to conduct random inspections of mail or couriered material. This suggestion was raised as a possible means of overcoming a situation where videos banned in one province enter another by mail or courier. Almost one-half (44.6 per cent) of respondents viewed the idea as an unacceptable invasion of personal privacy and freedom. A further one in four respondents (25.9 per cent) say the idea should be

considered as a last resort only. Less than one in 10 respondents (9.4 per cent) see it as a reasonable response to a difficult problem, and a slightly larger number (12.2 per cent) see such action as being drastic but necessary.

Table 6.12 Respondents' views on giving the Post Office and Police the Power to Randomly Inspect Mail and Couriered Material as a Means of intercepting Illicit Videos.

Value Labels	Percentage	(N)
Reasonable Response	9.4	13
Drastic but necessary	12.2	17
Last resort only	25.9	36
Unnecessary invasion of privacy	7.9	11
Unacceptable	44.6	62
	<u>100.0</u>	<u>139</u>

Missing Values 4

Similarly, the idea of requiring movie camera owners to obtain licences or register their cameras as a means of aiding police efforts to apprehend the producers of child pornography meets with disapproval. Two-thirds of respondents (66.4 per cent) disapprove, compared with one-third of respondents (33.6 per cent) who approve.

Regulation of the content of satellite transmissions which originate outside of Canada is clearly impossible unless draconian measures are taken, as was discussed in the previous chapter. Jamming of satellite signals as a means

of preventing Canadians from receiving unauthorized sexually explicit transmissions receives support from less than a third of respondents. This finding may explain the thinking of respondents who concur with the study's hypothesis, that technology is making regulation of sexually explicit materials more difficult. Regulation is being made more difficult by technology because Canadians are unwilling to permit the curtailment of personal liberties and freedom of choice that taking steps to control these home entertainment technologies would require.

Table 6.13 Respondents' Views on Jamming U.S. Satellite Signals as a Means of Controlling Sexually Explicit Programming

Value Label	Percentage	(N)
Would favor	27.6	39
Would oppose	34.8	49
Depends on situation	37.6	53
	---	---
	100.0	141
Missing Values		2

The high level of indecision on the question may be attributable to a low public knowledge about satellite transmissions(1) and the feasibility of jamming. Support for

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(1) That position is reinforced by the previously-noted responses to a question about direct satellite broadcasting into people's livingrooms. In that case, nearly four in 10 respondents said they did not know or chose a neutral response. Those levels lend support to the possibility that respondents were not very knowledgeable about the nature of home satellites. If that is true of an elite sample, the level of ignorance among the general population would likely be even higher.



the concept of jamming fell by one-quarter when the question of supporting jamming that resulted in unintended interference with other signals as well was posed. Almost three-quarters (73.1 per cent) of respondents said they wouldn't support jamming under those circumstances. Only 26.9 per cent favor such action. A list of respondents' comments on the question of other means by which sexually explicit satellite transmissions might be controlled is contained in appendix 5.4

#### Gender Differences

An interesting gender gap exists on several issues examined in the study, particularly related to attitudes and willingness to permit regulatory efforts aimed at extending control over sexually explicit materials.

Table 6.14 Importance of Whether Sexually Explicit Materials are Viewed in Public Rather than in Private, By Gender

		V62		
COUNT	ROW PCT	MALE	FEMALE	ROW TOTAL
		1.00	2.00	
V9				
1.00				
EXTREMELY		20	5	25
N.B.		22.5	9.8	17.9
2.00		24	9	33
		27.0	17.6	23.6
3.00		22	13	35
		24.7	25.5	25.0
		62.9	37.1	
4.00		14	9	23
		15.7	17.6	16.4
		60.9	39.1	
EXTREMELY				
UNN.B.		9	15	24
5.00		10.1	29.4	17.1
COLUMN		89	51	140
TOTAL		63.6	34.6	100.0

Cramer's V = .28326

Significance Level=.0241

Missing Values=3

Male respondents, much more than female, ascribe importance to the question of whether sexually explicit material is viewed in private rather than public. Almost half of the men who completed the survey - 49.5 per cent (44) think the issue is important, compared to only 27.4 per cent (14) of women. Conversely, 47 per cent (24) of women respondents said the issue is unimportant, almost double the 25.8 per cent (23) of men who felt that way. One possible explanation for this difference is that women are more concerned with other issues, such as consent, content and context. The first two issues deserve further exploration, but the third appears to be supported by the data.

One inference that can be made from survey results is that the context in which sexuality is used is more of an issue for women than it is for men, not surprisingly given that it is women's sexuality that is primarily conveyed, and often distorted, for profit.

Table 6.15 Importance of the Context in which Sexuality is used in Sexually Explicit Materials, by Gender

COUNT ROW PCT	V62		ROW TOTAL
	MALE	FEMALE	
	1.00	2.00	
-----			
V11 1.00 EXTREMELY N.B.	29 32.6	32 9.8	61 43.6
-----			
2.00	25 28.1 73.5	9 17.6	34 24.3
-----			
3.00	22 24.7 78.6	6 11.8	28 20.0
-----			
4.00	9 10.1 100.0		9 6.4
-----			
EXTREMELY UNN.B. 5.00	4 4.5 50.0	4 7.8	8 5.7
-----			
COLUMN TOTAL	89 63.6	51 34.6	140 100.0

Cramer's V = .34578

Significance Level=.0022

Missing Values=3

A slightly greater percentage of women - 80.3 per cent (41) than men 60.7 per cent (54) think that the context in which sexuality is used is an important consideration in the regulation of sexually explicit materials. What is surprising about this finding is that the gap is not more pronounced. Does a wider gender gap exist among the general population than among the elite respondents in this sample?

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Table 6.16 Government's Ability to Close the Regulatory Gap Caused by Technology, by Gender

		V62		
COUNT	ROW PCT	MALE	FEMALE	ROW TOTAL
		11.00	12.00	
-----				
V17	1.00	10	14	24
Govt Will	14.9	33.3		22.0
Close gap	41.7	58.3		
-----				
	2.00	29	10	39
Gap will	43.3	23.8		35.8
remain	74.4	25.6		
-----				
	3.00	28	18	46
Gap is	41.8	42.9		42.2
widening	60.9	39.1		
-----				
COLUMN		67	42	109
TOTAL		61.5	38.5	100.0

Cramer's V= .24823

Significance Level= .0348

Missing Values= 34

On the question of government's ability to close the regulatory gap caused by technology, women are much more optimistic than men. One third of women (14) think government will close the gap, compared with 14.9 per cent (10) of men. Similarly, only half as many women - 23.8 per cent (10) - as men - 43.3 per cent (29) believe the technology gap will remain. It is possible that the harder line taken by women, that is, their greater willingness to allow the extension of government and police powers in order to bring sexually explicit materials under control, accounts for this optimism. Alternately, women's responses to the question could be normative in nature. If women can be said

to place a higher value than men on maintaining control over sexually explicit materials, they may also tend to view necessary steps as being achievable, whether or not that is the case.

Table 6.17 Respondents' Views on Whether Standards related to Sexually Explicit Materials should be Stricter, Less Strict or the Same as they are now, by Gender

		V62		
COUNT	ROW PCT	MALE	FEMALE	ROW TOTAL
		1.00	2.00	
-----				
V23	1.00	24	25	49
Stricter		28.9	55.6	38.3
		49.0	51.0	
-----				
	2.00	19	5	24
Less strict		22.9	11.1	18.8
		79.2	20.8	
-----				
	3.00	40	15	55
Keep the same		48.2	33.3	43.0
		72.7	27.3	
-----				
COLUMN TOTAL		83	45	128
		64.8	35.2	100.0

Cramer's V= .26618

Significance Level= .0107

Missing Values= 15

Close to twice as many women (55.6 per cent or 25) favor stricter standards as men (28.9 per cent or 24). Twice as many men (22.9 per cent or 19) favor less strict standards as do women (11.1 per cent or five.) This finding is consistent with other information on gender differences generated by the survey. Since some women view sexually explicit materials in a more negative light than their male

counterparts, viewing some sexually explicit representations as being undesirable and therefore justifiably subject to control, it is only logical that women tend to favor stricter controls on those materials. Conversely, men who view sexually explicit materials in a different, benign light, would logically be less concerned about the materials, do not see the need for stricter controls, and in some cases, favor less strict regulatory standards.



Similar arguments can be made about the differing views held by women and men on the question of registration of movie cameras.

Table 6.18 Approval or Disapproval for Licensing Movie Cameras, by Gender

		V62		
Count		Male	Female	Row Total
Row Pct				
Col Pct				
		1.00	2.00	
V34		-----		
1.00	Approve	20	23	43
		25.0	48.9	33.9
2.00	Disapprove	60	24	84
		75.4	51.1	66.1
		71.4	28.6	
Column Total		80	47	127
		63.0	37.0	100.0

Significance Level= .0105

Missing Values= 16

Support for the idea of requiring VCR owners to licence their cameras in order to help police track down producers of child pornography is almost twice as high among women as men. The idea is supported by 48.9 per cent (23) of women and 25 per cent (20) of men. Further study should be done of the relationship of gender to these and other issues. In a larger sample, it would be possible to control for other possible explanations of the difference - occupational group, for instance - and verify the attitudinal gender gap.

### Summary:

In all surveys of this type, some sort of tradeoff must be made between the amount of information hoped for and the response rate. In seeking to probe as wide a range of topics as possible, the researcher runs the risk of obtaining a lower-than-desired response rate. Alternately, some answers prompt speculation about whether a greater degree of understanding could have been achieved if follow-up questions had zeroed in on what respondents meant by a particular answer. While both of these problems were encountered with this project, perhaps fewer questions should have been posed in order to shorten the time demand made of the population being studied. Given that several respondents complained about the length of time required to complete the survey, it is reasonable to suggest that a shorter survey might have yielded a more acceptable response rate.

On the pervasive definitional question, survey results showed that there is some degree of consensus as to what constitutes pornography, at least among the elite sampled. The same cannot be said of the term erotica. There is little commonality of response on that question. While almost nine in 10 respondents indicated that there is a difference between erotica and pornography, almost one in five respondents checked a definition of erotica which was very close to a definition of pornography in a previous question.

It is likely that many people who use the term erotica do not have a common frame of reference.

Respondents doubt the ability of regulatory officials and police to distinguish between pornography and erotica. Not surprisingly, they also tend to favor the status quo vis-a-vis police powers in this area.

The study's hypothesis, that technology is making regulation of sexually explicit materials more difficult, was strongly confirmed by respondents. Phrased in slightly different fashions in two questions, the notion received the support of more than seven in 10 and more than eight in 10 respondents. Just over one in five respondents think government will close the regulatory gap, and there is evidence that regulatory problems are worsened by attitudinal and knowledge gaps with respect to the new home entertainment technologies.

On the question of who should take the lead role in regulating sexually explicit materials, more than half of respondents favored federal government primacy and the use of a national standard to determine how that regulation should be carried out. Industry self-regulation was not viewed as a favorable alternative to current types of regulation, despite concerns about a lack of consistency in existing regulation.

Respondents don't think that Canadians are over-censored when it comes to sexually explicit materials,

and don't think that either the federal or provincial governments spend enough money in their efforts to regulate sexually explicit materials. But respondents do think that police forces assign a low priority to the regulation of sexually explicit materials because they believe they have more important things to do.

Restrictive measures to allow a greater degree of control over sexually explicit materials are viewed with disfavor. There is a gender gap on this latter question, with women taking a harder line on regulation than men and expressing a greater willingness to support regulatory actions that could encroach on personal freedoms. This could explain why women respondents are more optimistic than men that the regulatory gap will be closed.

## CHAPTER SEVEN

### CONCLUSIONS

There is no question that new home entertainment technologies have rendered efforts to regulate sexually explicit materials in the 1980s much more difficult. Home entertainment devices have eliminated traditional factors which aided government efforts to regulate, such as limited access to the images in question (each city having only so many motion picture screens), and geography.(1)

The most widely accepted and institutionalized of the new technologies, the video cassette recorder, has uncorked a genie that is not easily contained in its bottle. As this study has shown some governments have either not yet responded to the realities of a nation where VCRs are found in an ever-growing majority of homes, or appear to be unwilling to do so for whatever reason. Other developments - smaller cassette formats, the appearance of machines that allow for in-home tape duplication without the nuisance of having to hook together two machines and the diffusion of

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(1) Canada is arguably in the worst situation of any nation in the free world vis-a-vis regulatory efforts, because of our continent-wide border with a nation 10 times our size, a nation which happens to produce almost all of the sexually explicit materials which enter this country, as was noted earlier. By contrast, the nations which have traditionally had the greatest degree of success in their regulatory efforts, Australia and New Zealand, are the most geographically removed from the centres of production and are island nations with few points of entry.

explicit satellite signals that erase international boundaries - severely restrict and even eliminate regulatory options. Regulation of satellite signals can only be achieved with the co-operation of the United States, a nation noted in international circles for its preference for the free flow of information and data. That issue aside, the likelihood of the U.S. agreeing to discuss new barriers to trade at a time when all official efforts on both sides of the border are inclined in the opposite direction can likely be described as less than slim. Video cassettes are certainly the dominant medium, and possible to control to some extent. But what of satellite transmissions that are taped, duplicated and re-sold?

When we probe these realities, posing further questions such as: is regulation still possible, and if so, will the public accept the incursions on personal freedoms that intensified regulatory efforts are certain to represent, it becomes more difficult to speak authoritatively. There is much evidence to suggest that in general, the public is not willing to acquiesce in sacrificing personal freedoms to facilitate a state role in regulation of sexually explicit materials in the home. However, public opinion on the myriad of issues and concerns which surround the regulation of sexually explicit materials is far from uniform. Indeed, public views on these issues might more properly be described as inconsistent, even contradictory. That lack of

consistency helps to explain the lack of political will to regulate demonstrated in the literature by Fraser and others, and the jumble of views expressed by elite respondents to the survey conducted for this study.

The Customs and Excise Branch of the Department of National Revenue, arguably the major player in the regulatory hierarchy, clearly does not see control of sexually explicit materials to be one of its chief, or even secondary, priorities. As Fraser pointed out, no administrative priority has ever been given to control of sexually explicit materials. Official departmental reaction to Fraser's recommendations released by the Information Commissioner reveals that the department is reluctant to consider devoting additional resources to such duties, and nationwide staffing cuts imposed by the Mulroney government make it unlikely that additional efforts in this direction would be possible even should the department be so declined.

Canada Post, a federal crown corporation, has a potentially significant role to play in the regulation of sexually explicit materials but the sheer volume of mail passing through International Mail Centres (which have also been consolidated) reduces the effectiveness of these efforts. The Canadian Radio Television and Telecommunications Commission, for its part takes a hands-off, "see no evil" approach to the question of regulating the content of pay TV, feebly protesting that it

has no power to control licensees short of refusal to renew licenses. At one end of the legal spectrum, police forces, with the notable exception of Toronto's Project P, argue that they don't have the personnel needed to investigate legal offences involving sexually explicit materials. Even Project P officers said that while they could probably lay charges against some apartment building and condominium owners for distributing illicit sexually explicit programming to tenants, they have better things to do than snoop around to find out what people are watching. Provincial attorneys-general and justice ministers sometimes discourage complaints or refuse to lay charges, as Fraser noted. The suspicion with which this research effort was regarded by some government officials and lobbyists (both in personal interviews and letters or phone calls explaining why they would not complete the survey) made it difficult to build on Fraser's work or go further than making inferences about the attitudes and priorities given to the regulation of sexually explicit materials.

Nearly six in 10 respondents to a 1984 national study said that "pornography" is a problem in Canada, but only one in 100 said that it is a serious problem. Taken at face value, those numbers might suggest limited public concern about the issue. Or do they? Respondents to the elite survey conducted for this study provided strong support for former Ontario Film Board Chairman Mary Brown's contention



that the public is not aware of the content of the sexually explicit material on the market. Nearly two in three respondents (62.8 per cent)

many of whom have dealt with this material, agreed with a statement in the survey that "the general public is not very aware of the content of sexually explicit movies and videos," compared with only 19.7 per cent who disagreed. It is dangerous to assume too much about levels of tolerance or disapproval, particularly when dealing with a poorly-informed or uninformed public.

Ongoing and high level support for regulatory initiatives would likely be required to arrest or reverse the seeming total absence of will to regulate. Such support is not likely to emerge without new federal government legislation clarifying the law. In an age of virtually total narrowcasting as opposed to broadcasting, the political dimension becomes that much more important. Any new law or regulatory initiative would have to be limited and clearly defined in scope, with specific objectives, if it is to be tolerated, as the federal Justice department has learned to its sorrow. A Fraser model as opposed to the broader, twice-discarded Mulroney government legislation would have a better chance of receiving the support required to be workable. The need for new, clearly understood and broadly accepted definitions in this area should be deeply ingrained in the thinking of any bureaucrat or federal minister hoping

to alter the regulatory framework.

Sharon Nelson's previously-noted observation that concerns about freedom of expression have distracted public attention from the fact that sexually explicit materials are a commodity produced for profit, and a relatively under-regulated one at that, is a good starting point for thoughts about possible future regulation. Successful regulatory initiatives in recent years that infringed on commerce without sparking a massive public outcry centred around access by children to sexually explicit materials, and the prevention of same. Could lawmakers require closed-circuit TV networks offering "adult entertainment" in hotel rooms to scramble explicit programming and require patrons to call the desk if they want it unscrambled as opposed to the current system which places the onus on parents to request the programming be scrambled to prevent their children from viewing it? If Canada were to initiate talks with the U.S. on sexually explicit satellite programming, could success be achieved in discussions of the appropriateness of such networks showing unscrambled previews during weekend supper hours when children could be watching? A less-easily addressed problem is posed by video vending machines, which are becoming popular in shopping malls and on street corners in major metropolitan centres. Even though a consumer must pay for the tape rental with a credit card, there is no guarantee that the person using the

credit card is the person who owns it, or a person over 18 years of age. The only realistic way to ensure that children can't rent sexually explicit tapes from such machines would be to require companies not to stock any such tapes in the machines. That would limit the profitability of the machines, and the retailers right to sell, which raises the question of whether that could be considered to be a reasonable restriction.

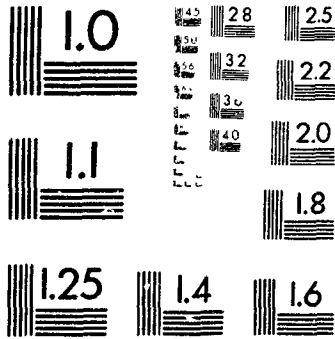
Stemming the flow of illicit tapes from B.C. mail order houses to provinces where they would not be permitted to be sold is also a difficult problem which would require new laws prohibiting courier companies from carrying, knowingly or otherwise, material which has not been cleared by Canada Customs. Would forcing customers to declare what is in the packages they are sending, and putting the onus on the couriers to ensure that they are not in contravention of the law, be an acceptable solution to this regulatory problem?

There is clearly a need for further studies such as those conducted by Gallup and James Check, to probe public values and concerns regarding regulation of sexually explicit materials. Such research would examine what, if any, freedoms the public would be willing to sacrifice to facilitate regulation of sexually explicit materials, and under what circumstances.

3

OF/DE

3



**Microlith**

## Appendices

### Appendix A Federal Government's proposed definition of pornography

Bill C-114, "An Act to amend the Criminal Code and the Customs Tariff", contains the following definitions:

"degrading pornography" means any pornography that shows defecation, urination, ejaculation or expectoration by one person onto another, lactation, menstruation, penetration of a bodily orifice with an object, one person treating himself or another as an animal or object, an act of bondage or any act in which one person attempts to degrade himself or another;

"pornography" means any visual matter showing vaginal, anal or oral intercourse, ejaculation, sexually violent behaviour, bestiality, incest, necrophilia, masturbation or other sexual activity;

"pornography that shows physical harm" means any pornography that shows a person in the act of causing or attempting to cause actual or simulated or permanent or extended impairment of the body of any person or any of its functions;

"sexually violent behaviour" includes sexual assault and any behaviour shown for the apparent purpose of causing sexual gratification to or stimulation of the viewer, in which physical pain is inflicted or apparently inflicted on a person by another person or by the person himself."

Source: Guide to the Federal Government's Response to The Reports On Sexual Abuse of Children, Pornography and Prostitution  
Government of Canada, June, 1986, p.28

Appendix B Original covering letter sent out with survey

March 12, 1987

John Doe Film Distributors,  
123 Anywhere Ave.,  
Gotham City, Ontario  
A3B 4C5

Dear Friend (or name where known):

I am conducting a national survey regarding the regulation of sexually explicit materials in Canada as part of my master's thesis in political science at Wilfrid Laurier University, in Waterloo, Ontario.

Your input is important to ensuring that this project produces a truly national, balanced picture of the views of those involved with making or carrying out policies in this area, and the concerns of interests seeking to influence these policies.

I hope you will agree to complete and return this survey sometime within the next week. The survey will likely take approximately 20 minutes to complete. All responses will be kept in the strictest confidence.

The purpose of my survey is to solicit the opinions of industry, regulatory, legal and interest group officials with some interest in this area or in communications technology in general.

Should you be interested in seeing some of the results of this work, indicate your desire to receive a copy of the summary by entering your name and address in the space allocated on the last page of the questionnaire. Anonymity will be assured for all respondents.

Sincerely,

Michael Strathdee

THIS STUDY DEALS WITH THE EFFECT TECHNOLOGY IS PERCEIVED TO BE HAVING ON GOVERNMENT'S ABILITY TO REGULATE SEXUALLY EXPLICIT MATERIALS.

## PART A

BELOW IS A 5-POINT SCALE RANGING FROM "EXTREMELY IMPORTANT" TO "EXTREMELY UNIMPORTANT."

1. HERE ARE A NUMBER OF ISSUES COMMONLY DISCUSSED IN CONNECTION WITH THE REGULATION OF SEXUALLY EXPLICIT MATERIALS. HOW IMPORTANT TO YOU IS EACH OF THE ISSUES LISTED BELOW WITH REGARDS TO THE QUESTION OF REGULATION OF SEXUALLY EXPLICIT MATERIALS?

IF YOU FEEL THE ISSUE IS EXTREMELY IMPORTANT, SELECT A NUMBER FROM THE LEFT SIDE OF THE SCALE CLOSEST TO 1 AND JOT IT IN THE SPACE BESIDE THE ITEM. IF YOU FEEL IT IS EXTREMELY UNIMPORTANT, SELECT A NUMBER FROM THE RIGHT SIDE CLOSER TO 5, AND IF YOU FEEL THE IMPORTANCE IS BETWEEN THESE EXTREMES, SELECT A NUMBER SOMEPLACE IN THE MIDDLE OF THE SCALE TO SHOW YOUR OPINION.

Extremely Important	1	2	3	4	5	Extremely Unimportant	Mean
							<u>(2.028)</u>
a) The protection of free speech							<u>(1.549)</u>
b) The prevention of degradation of people							<u>(2.993)</u>
c) People's rights to see whatever they want							<u>(1.479)</u>
d) The protection of children							<u>(2.951)</u>
e) The protection of the integrity of the arts community							<u>(2.549)</u>
f) Maintenance of values which support marriage and the family							<u>(3.142)</u>
g) The educational value of the material in question							<u>(2.901)</u>
h) Whether the material is viewed in public or in private							<u>(2.245)</u>
i) The enforceability of sanctions against the material							<u>(2.063)</u>
j) The context in which sexuality is used							

.....OVER

Part B

PLACE AN X BESIDE THE RESPONSE WHICH MOST ACCURATELY REFLECTS YOUR THOUGHTS. PLEASE MARK ONLY ONE RESPONSE.

2. WHAT ACTION SHOULD BE TAKEN WITH REGARDS TO TV PROGRAMS WHICH SHOW SEXUALLY EXPLICIT SCENES DURING HOURS CHILDREN MIGHT BE WATCHING?

3 nothing  
36 censor  
13 parents should forbid their children  
53 advertise that the program contains sexually explicit scenes  
3 court action  
33 ban the material  
2 don't know

3. WHO, IF ANYONE, SHOULD TAKE THE LEAD ROLE IN CONTROLLING SEXUALLY EXPLICIT MATERIALS?

32 matter should be left to each person's own discretion  
7 industry  
13 federal government  
9 provincial government  
2 municipal government  
1 police  
8 film review boards  
2 Canada Customs  
-2 church  
3 other \_\_\_\_\_  
1 no one  
3 don't know

4. THE QUESTION OF WHETHER OR NOT POLICE AND REGULATORY OFFICIALS ARE ABLE TO DISTINGUISH BETWEEN EROTICA AND PORNOGRAPHY IS OFTEN DEBATED. HOW MUCH CONFIDENCE DO YOU PERSONALLY HAVE IN THE ABILITY OF REGULATORY OFFICIALS TO MAKE THIS DISTINCTION?

27 a great deal  
42 some  
43 a little  
30 none  
2 don't know

5. HOW MUCH CONFIDENCE DO YOU HAVE IN THE ABILITY OF POLICE TO DISTINGUISH BETWEEN EROTICA AND PORNOGRAPHY?

26 a great deal  
42 some  
43 a little  
25 none  
3 don't know



6. SOME PEOPLE ARGUE THAT TECHNOLOGICAL ADVANCES IN THE AREA OF HOME ENTERTAINMENT SUCH AS VIDEO CASSETTE RECORDERS MAKE IT MORE DIFFICULT FOR GOVERNMENT TO REGULATE SEXUALLY EXPLICIT MATERIALS. OTHERS FEEL THAT REGULATION IS KEEPING PACE WITH TECHNOLOGY AND THE NEW FORMS OF HOME ENTERTAINMENT. WHAT DO YOU THINK?

117 Technology is making regulation more difficult  
19 Regulation is keeping pace with changes  
7 don't know

7. IF YOU BELIEVE TECHNOLOGY IS MAKING REGULATION MORE DIFFICULT, DO YOU BELIEVE THAT THE PROBLEM IS ONE OF "CATCH-UP", THAT IS TO SAY THAT GOVERNMENT HAS FALLEN BEHIND IN ITS ABILITY TO REGULATE BUT WILL EVENTUALLY CLOSE THE GAP, OR DO YOU BELIEVE THE GAP CANNOT BE CLOSED, OR DO YOU BELIEVE THE GAP IS WIDENING?

25 government will eventually catch-up and close the gap  
39 the gap will remain and cannot be closed  
47 the gap is widening  
17 don't know  
15 not applicable

8. SOME PEOPLE BELIEVE THAT WHILE GOVERNMENT REGULATION OF PUBLIC ENTERTAINMENT IS ACCEPTABLE, ADULTS SHOULD BE LEFT TO DECIDE WHAT IS APPROPRIATE VIEWING FOR THEMSELVES AND THEIR CHILDREN IN THEIR OWN HOMES. OTHERS BELIEVE THAT GOVERNMENT HAS A ROLE TO PLAY IN HELPING PARENTS DETERMINE WHAT IS SUITABLE FOR THEIR CHILDREN. WHAT DO YOU THINK?

52 adults should be left to decide what is appropriate viewing for themselves and their children in their own homes  
85 government has a role to play in helping parents determine what is suitable for their children  
6 don't know

9. SOCIETAL OBJECTIONS TO SEXUALLY EXPLICIT MATERIALS ARE SOMETIMES DEALT WITH BY GOVERNMENT REGULATION (KNOWN AS PRIOR RESTRAINT), SOMETIMES BY POLICE AND THE COURTS AFTER THE APPEARANCE OF THE MATERIAL (POST RESTRAINT). WHICH OF THESE APPROACHES IS PREFERABLE?

57 Regulation is always preferable  
40 Regulation is sometimes preferable  
10 Legal action is always preferable  
11 Legal action is sometimes preferable  
16 Either approach is suitable  
9 I haven't thought much about it

10. IF YOU BELIEVE THAT REGULATION IS SOMETIMES PREFERABLE TO COURT ACTION OR VICE-VERSA, UNDER WHAT CIRCUMSTANCES IS THAT THE CASE? PLEASE EXPLAIN BRIEFLY IN THE SPACE LISTED BELOW.

See Appendix I

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11. VIDEO RETAILERS HAVE ARGUED THAT NEITHER FEDERAL NOR PROVINCIAL OFFICIALS ARE ABLE TO PROVIDE CONSISTENT GUIDANCE ABOUT WHAT THE COMMUNITY WILL TOLERATE IN TERMS OF SEXUALLY EXPLICIT MATERIALS. HOW DO YOU VIEW THE ARGUMENT THAT CONSISTENT GUIDANCE IS LACKING AS TO WHAT IS ACCEPTABLE?

72 lack of consistency is a major problem  
44 lack of consistency is a minor problem  
11 consistency exists and is rarely a problem  
11 consistency exists and is never a problem  
16 don't know

12. IN DETERMINING WHETHER MAGAZINES, MOVIES OR VIDEOCASSETTES SHOULD BE REGULATED, DO YOU THINK NATIONAL, PROVINCIAL OR COMMUNITY STANDARDS SHOULD BE USED?

83 a single national standard should be used  
28 each province should set its own standards  
12 each community should set its own standards  
13 there shouldn't be any set standards  
2 no opinion  
5 don't know

13. DO YOU THINK THE STANDARDS IN YOUR PROVINCE/TERRITORY REGARDING THE SALE OF SEXUALLY EXPLICIT MATERIAL SHOULD BE STRICTER THAN THEY ARE NOW, NOT AS STRICT AS THEY ARE NOW, OR KEPT THE SAME AS THEY ARE NOW?

50 stricter than they are now  
24 not as strict as they are now  
56 kept the same as they are now  
13 don't know

14. HOW MUCH CONFIDENCE DO YOU HAVE IN THE ABILITY OF FEDERAL AND PROVINCIAL REGULATORY BODIES TO CONSISTENTLY REGULATE SEXUALLY EXPLICIT MATERIALS?

23 a great deal  
67 some  
36 very little  
11 none

15. POLICE AGENCIES CHARGED WITH ENFORCING LAWS GOVERNING SEXUALLY EXPLICIT MATERIALS HAVE BEEN CRITICIZED FOR ACTING ONLY ON COMPLAINTS. ACCORDING TO THIS VIEWPOINT, SUCH AGENCIES SHOULD CONDUCT THEIR OWN INDEPENDENT INVESTIGATIONS AND CARRY OUT REGULAR SPOT CHECKS. WHAT IS YOUR OPINION?

- 25 Investigations should only arise from specific complaints
- 45 Priority should be given to investigations arising from specific complaints, with occasional spot checks as resources allow
- 32 Independent investigations should be emphasized as much as complaints
- 12 More effort should be devoted to independent investigations than to acting on complaints
- 19 Investigations should be based on independent work and regular spot checks rather than on the basis of complaints
- 10 don't know

16. DO YOU THINK THE FEDERAL GOVERNMENT IS SPENDING TOO MUCH, TOO LITTLE, OR JUST ABOUT THE RIGHT AMOUNT IN ITS EFFORTS TO REGULATE SEXUALLY EXPLICIT MATERIALS?

- 18 spending too much
- 65 spending too little
- 15 spending just about the right amount
- 45 don't know

17. DO YOU THINK YOUR PROVINCIAL/TERRITORIAL GOVERNMENT IS SPENDING TOO MUCH, TOO LITTLE OR JUST ABOUT THE RIGHT AMOUNT IN ITS EFFORTS TO REGULATE SEXUALLY EXPLICIT MATERIALS?

- 21 spending too much
- 51 spending too little
- 31 spending just about the right amount
- 40 don't know

18. SASKATCHEWAN, MANITOBA AND ONTARIO HAVE AGREED TO INTERPROVINCIAL STANDARDS FOR VIDEOCASSETTE CLASSIFICATION. HOW DO YOU VIEW THIS DEVELOPMENT?

- 68 highly favorable
- 37 somewhat favorable
- 11 somewhat unfavorable
- 0 highly unfavorable
- 27 no opinion

19. IN THE ABSENCE OF A TREATY WITH THE U.S. THAT WOULD PROHIBIT U.S. CABLECASTERS OR SATELLITE OPERATORS FROM TRANSMITTING SEXUALLY EXPLICIT MATERIALS WHICH CAN BE PICKED UP IN CANADA BY SATELLITE DISH OWNERS, THERE IS VERY LITTLE THAT CANADIAN REGULATORY AUTHORITIES CAN DO TO PREVENT PEOPLE FROM RECEIVING SUCH TRANSMISSIONS. ONE POSSIBLE SOLUTION MIGHT BE TO JAM THE SIGNALS OF SUCH STATIONS. WHAT DO YOU THINK OF THIS IDEA?

- 39 would favor such a move
- 49 would oppose such a move
- 53 it would depend on the situation

20. WOULD YOU SUPPORT THIS ACTION IF JAMMING A SIGNAL RESULTED IN UNINTENDED INTERFERENCE WITH OTHER SIGNALS AS WELL?

- 29 would support
  - 79 would not support
  - 35 don't know
- GO TO QUESTION 31

21. ASSUMING THAT THE COST OF JAMMING SATELLITE SIGNALS IS MINIMAL, WHY DO YOU OPPOSE JAMMING THAT WOULD INTERFERE WITH OTHER SIGNALS? MARK ONE RESPONSE ONLY.

- 43 disapprove of principle of jamming
- 45 while unregulated sexually explicit satellite signals should be controlled, jamming other signals isn't warranted
- 0 The American government would not approve
- 0 American industries would not approve
- 3 The Canadian public would not allow it

22. ARE THERE OTHER METHODS OF DEALING WITH THE ISSUE OF SEXUALLY EXPLICIT SATELLITE PROGRAMMING? LIST IN THE SPACE BELOW.

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See Appendix H

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23. ONE METHOD OF OVERCOMING A SITUATION WHERE VIDEOS BANNED IN ONE PROVINCE ENTER ANOTHER BY MAIL OR COURIER WOULD BE TO GIVE THE POLICE AND POSTAL OFFICIALS THE POWER TO RANDOMLY INSPECT PARCELS IN ORDER TO SEIZE ILLICIT MATERIAL. DOES THIS PROPOSAL STRIKE YOU AS BEING:

- 13 a reasonable response to a difficult problem
- 17 somewhat drastic but necessary
- 36 to be considered only as a last resort
- 11 a minor and unnecessary invasion of personal privacy and freedom
- 62 an unacceptable invasion of personal privacy and freedom



33. "OBSCENITY SHOULD BE TAKEN OUT OF THE CRIMINAL CODE" (3.902)
34. "THE THEORY OF CENSORSHIP IS SOUND, BUT THE CENSORS MAKE A MESS OF IT" (3.378)
35. "ONCE MATERIALS HAVE BEEN CLEARED BY CUSTOMS AND LET INTO THE COUNTRY, NO CHARGES SHOULD BE POSSIBLE" (3.756)
36. "THE CRIMINAL CODE HAS FAILED TO ADEQUATELY DISTINGUISH BETWEEN EROTICA AND PORNOGRAPHY" (2.178)
37. "VIDEOCASSETTES HAVE LED TO A SHARP INCREASE IN THE ACCEPTABILITY OF SEXUALLY EXPLICIT MOVIES." (2.163)
38. "WE MUST HAVE CENSORSHIP TO PROTECT THE MORALS OF YOUNG PEOPLE" (2.833)
39. "DIRECT SATELLITE BROADCASTING OF TV PROGRAMS FROM OUTER SPACE INTO PEOPLE'S LIVING ROOMS WILL SPELL THE END OF GOVERNMENT'S ROLE IN DECIDING WHAT PEOPLE ARE ALLOWED TO WATCH" (3.026)
40. "WHEN IT COMES TO CONTROL OF SEXUALLY EXPLICIT MATERIALS, CANADIANS ARE WILLING TO TRADE LIBERTY FOR SECURITY" (2.902)
41. "SEXUALLY EXPLICIT PROGRAMMING IS MORE ACCEPTABLE ON PAY-TV IF IT IS SHOWN ON A CHANNEL WHERE VIEWERS EXPECT IT" (2.462)
42. "WHEN IT COMES TO SEXUALITY, CANADIANS ARE OVER-CENSORED" (3.341)
43. "CUSTOMS AGENTS SHOULD PAY MORE ATTENTION TO VIOLENT PORNOGRAPHY AND LESS ATTENTION TO NON-VIOLENT MATERIAL" (2.099)
44. "WHERE IT IS NECESSARY FOR REGULATION OF COMMUNICATIONS TO OCCUR, IT IS PREFERABLE THAT SUCH REGULATION BE DECENTRALIZED RATHER THAN CENTRALIZED" (3.339)
45. "EDUCATION OF PUBLIC TASTE IS PREFERABLE TO CENSORSHIP" (2.115)
46. "NEW TECHNOLOGIES, EVEN AFTER THEY HAVE BEEN IN EXISTENCE FOR A WHILE, TEND TO OUTPACE THE CAPACITY OF ESTABLISHED PATTERNS OF REGULATION TO MEET THE CHALLENGE OF THEIR EXISTENCE" (2.098)
47. "IT IS BETTER FOR PEOPLE TO OBTAIN SEXUALLY EXPLICIT MATERIAL THROUGH MAIL-ORDERS THAN FROM LOCAL STORES" (3.875)
48. "THE CRTC HAS NO ROLE TO PLAY IN THE REGULATION OF SEXUALLY EXPLICIT PROGRAM CONTENT ON PAY-TV" (3.574)

Part C

PLEASE ENTER ONE RESPONSE ONLY TO EACH QUESTION BY MARKING AN "X"  
BESIDE THE ANSWER COMES CLOSEST TO YOUR THOUGHTS.

49. THE QUESTION OF EXACTLY WHAT CONSTITUTES PORNOGRAPHY IS A MUCH  
DEBATED SUBJECT. A NUMBER OF POPULAR CONTEMPORARY DEFINITIONS OF  
THE TERM ARE LISTED BELOW. PLEASE MARK THE RESPONSE WHICH COMES  
CLOSEST TO CAPTURING THE ESSENCE OF YOUR UNDERSTANDING OF PORNOGRAPHY.

- 1 the graphic depiction of whores
- 11 the sexually explicit subordination of women or children
- 5 material designed to stimulate sexual feelings independent of  
the presence of another loved and chosen human being
- 57 a presentation of sexual behavior in which one or more  
participants are coerced overtly or implicitly, into participation;  
or are injured or abused physically or psychologically; or in  
which an imbalance of power is presented either explicitly or  
implicitly involving any participant and in which such behavior  
can be taken to be advocated or endorsed
- 0 sexually explicit materials which focus on a relationship of  
power and exchange
- 7 books, magazines, or videotapes containing visual depictions of  
actual or simulated sexual acts, graphically displayed, usually  
in closeup, clearly showing genitals and penetration
- 1 obscene literature or art
- 32 the depiction of sexuality primarily for the purpose of appealing  
to prurient interest (lust), as well as any depiction of sexuality  
which combines sex with implicit or explicit force or uses  
children or animals in the portrayal of a sex act
- 7 the depiction of licentiousness or lewdness; a portrayal of  
erotic behavior designed to cause sexual excitement

OTHER See Appendix G

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50. IS THERE A DIFFERENCE BETWEEN EROTICA AND PORNOGRAPHY?

- 114 yes
- 14 no
- 10 don't know

51. IF YOU BELIEVE THERE IS A DIFFERENCE BETWEEN EROTICA AND  
PORNOGRAPHY, HOW DO YOU DEFINE EROTICA?  
ENTER AN "X" BESIDE THE RESPONSE WHICH COMES CLOSEST TO CAPTURING  
THE ESSENCE OF YOUR UNDERSTANDING OF THE TERM "EROTICA".

- 23 material designed to arouse sexual desire
- 8 material which expresses sexual excitement rather than causing it
- 25 concerned with sexuality, and not about power or sex-as-weapon
- 36 depictions of sexuality which reflect equal choice, equal power  
and passionate yearning for a particular person
- 12 depictions of the great variety of sexual practices and  
types of foreplay which are common in our society
- 14 Other See Appendix F
-



Demographic Characteristics  
Part D

ALL INFORMATION WILL BE KEPT IN STRICTEST CONFIDENCE

52. GENDER	MALE	<u>90</u>	FEMALE	<u>51</u>
53. EDUCATION (HIGH SCHOOL GRADUATE = 12 YEARS)				
	EIGHTH GRADE OR LESS			<u>0</u>
	SOME HIGH SCHOOL			<u>4</u>
	HIGH SCHOOL GRADUATE			<u>9</u>
	SOME UNIVERSITY OR COLLEGE			<u>24</u>
	UNIVERSITY OR COLLEGE GRADUATE			<u>40</u>
	POST GRADUATE WORK			<u>64</u>
54. EMPLOYMENT				
	MAIN OCCUPATION OF THE RESPONDENT			
	PLEASE BE SPECIFIC			
55. MARITAL STATUS	single			<u>21</u>
	married			<u>98</u>
	divorced			<u>11</u>
	widowed			<u>7</u>
	separated			<u>2</u>
56. OCCUPATION OF LEGAL OR COMMONLAW SPOUSE	professional and/ or business			<u>56</u>
	clerical and /or sales			<u>10</u>
	manual worker			<u>3</u>
	homemaker			<u>24</u>
	student			<u>1</u>
	retired			<u>3</u>
	not applicable			<u>42</u>
57. CHILDREN	yes			<u>104</u>
	no			<u>36</u>
58. YOUR AGE	*(Mean is 2.746, high end of 31-40 age group)			<u>          </u>

59. RELIGIOUS AFFILIATION

Protestant	<u>53</u>
Roman Catholic	<u>24</u>
Jewish	<u>8</u>
Other (please specify)	<u>7</u>
No Religion	<u>32</u>

60. SIZE OF COMMUNITY

under 1,000	<u>0</u>
1,000-9,999	<u>6</u>
10,000-99,999	<u>33</u>
100,000-499,999	<u>39</u>
500,000-999,999	<u>31</u>
over 1 million	<u>24</u>

72. REGION WHERE YOU LIVE:

Maritimes	<u>19</u>
Quebec	<u>9</u>
Ontario	<u>47</u>
Prairies	<u>35</u>
B.C.	<u>15</u>
Territories	<u>9</u>

GENERAL COMMENTS: See Appendix E  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please enter your name and address if you wish to be sent a summary of research findings (all information will be kept confidential)

\_\_\_\_\_  
\_\_\_\_\_

THANK YOU FOR COMPLETING AND RETURNING THIS SURVEY

Appendix D Follow-up letter sent to survey non-respondents

August 4, 1987

Mrs. Sue Smith,  
Otherassociations,  
5678 Primrose Lane,

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Q2R 3S4

Dear Mrs. Smith:

Earlier this year, I sent members of your association a survey regarding the regulation of sexually explicit materials in Canada. This survey forms an integral part of my master's thesis in political science at Wilfrid Laurier University, in Waterloo, Ontario.

You will be interested to know that 138 people from across Canada have completed the survey- crown attorneys from all provinces, police officers from five provinces, government officials, members of film classification boards, industry officials and interest groups.

Unfortunately, I have not yet received sufficient response from members of some associations, from your association in particular. Anonymity will be guaranteed for all respondents, but I need more responses from \_\_\_\_\_ in order to do meaningful regional comparisons when I do computer data analysis.

Could you please ask members of your association who received surveys, but who have not yet returned them, to please do so within the next few weeks? I need to begin analysis of the data base early this fall.

Please feel free to contact me if you should require additional copies of the questionnaire. I know that it is easy for busy people to misplace such requests.

As I mentioned previously, anonymity will be guaranteed for all respondents, and the value of this work will be enhanced by the inclusion of a representative number of views from \_\_\_\_\_. I will send a summary of survey results to anyone who so desires. I know that you will find this information to be of considerable interest, and of some value in your work.

Sincerely,

Michael Strathdee

## Appendix E

General comments made by respondents at the end of the survey.

- Id# 002 "In some cases, didn't have the choice... Otherwise, a good questionnaire."
- Id#006 "Some of the questions should be reviewed as they have the quality of 'Have you stopped beating your wife yet?' In particular, 25-48."
- Id#010 "For a crown attorney, I have relatively liberal views on obscenity, not reflective of most crowns. Most obscenity strike me as basically funny. If you don't like it, don't look at it."
- Id#012 "I think just as much emphasis should be directed to graphic depictions of brutality, murder, disemowlement (sic), torture, etc. as this offends a great many people as strongly as depictions of sex."
- Id#015 "Should define Erotica, Pornography, Sexually Explicit Materials."
- Id#021 "Some questions I could not answer as they implied regulation which I consider as synonymous with censorship. I oppose censorship in any form."
- ID#027 "At present, the weak link in the control of this material is Canada, not the U.S. The material currently available in Canada is beyond a normal human being's comprehension. Provincial governments in B.C. and Quebec have not enforced the Criminal Code relative to this subject." -suggests that survey be sent to Sgt. Hutchison at Project P. thinks that licencing VCR cameras is feasible.
- ID#028 "ALL EROTICA IS PORNOGRAPHY ALL PORNOGRAPHY IS NOT EROTICA "GOOD LUCK"
- ID#031 "The failure to define 'sexually explicit materials' for the purposes of this survey makes it impossible to give accurate responses"
- ID #033 "Public education starting at a very early age - about sex-role stereotypes, etc. is crucial"
- ID# 043 "QUESTIONS ASKED DO NOT CORRESPOND TO THE ISSUE AS RAISED" RE: QUESTION 9 PRIOR VS. POST RESTRAINT.
- ID#047 "The whole area is much ado about nothing. Holland has been exposed to the scourge of pornography and is doing just fine. The only question is how to shield children from it and other adult material and to not make it too unavoidable for those who don't want to see it."
- ID#049 -opposes licencing home video cameras, because he says it would not be effective in stopping child pornography.  
"It would be interesting to know if opinions on the subject differ from region to region or if Canadians have the same opinions on standards"
- ID#050 "I continue to have difficulty with the popular definitions of pornography. I believe there is an important distinction between pornography that depicts consensual sex between adults and that which doesn't"
- ID#054 "According to Fraser report fewer than 1% of Canadians thought pornography a serious problem. You might want to look at that survey."
- ID#057 "It took me 45 minutes to complete this questionnaire. Interesting questions -I would like to have seen several questions relating sexism to pornography. It is my opinion that pornography is the worst extent of sexism. I have no problem with sexually explicit materials, however I have a great deal of problem with materials

- that are violent and or degrading."
- ID#067 Good questionnaire. All discussion of further regulation is futile unless technology improves. As matters now stand, we only nail the odd one in the hopes that it will scare hell out of the rest of them."
- ID#068 I really don't like this kind of opinion gathering. Hope it is useful to you. Often it is misleading."
- ID#080 "A better law could correct problem of lack of consistent guidance re sexually explicit materials Question #11  
Community Standards should NOT be used (re Question 12) only HARM Ontario is not enforcing videocassette classification  
Cannot change federal and provincial jurisdiction re. centralized vs. decentralized regulation of communications Question #44  
You should have distinguished between pornography and erotica throughout. You should not have used a pejorative term like 'censor' Inability to distinguish between pornography and erotica invalidates many questions.
- ID#078 "Part A was difficult to answer because of the construction of the questions; they were not complete."  
-felt neither regulation nor legal action suitable in dealing with sexually explicit materials ? #9  
-said standards re:regulation of sexually explicit materials should be less strict than they are now in Manitoba
- ID#079 Answered Prior vs. Post Restraint Question with comment :  
"NEITHER Regulation or Legal action is never preferable."  
On question of public's awareness of content of sexually explicit materials, wrote "They G.P. have a tendency (sic) to Exaggerate (sic) -they think sex tapes are worse than they are."  
\*\*"I am opposed to any type of censorship, classification or regulation. Many of the questions/choices are difficult to answer because of this."
- ID#034 "Sorry to be critical, but I find these questions poorly articulated- they do not reflect difference between erotica and pornography, & the complexities of the issue."  
"These questions (25-48) do not distinguish between erotica and pornography, therefore unanswerable."
- ID#088 "Not an ideal survey. As a woman who works with other women who are 'victims', I see the way in which society via pornography degrades and objectifies (sic) all women. Some of the questions not satisfactory."
- ID#095 "Surveys tend to make "either/or" statements or assume too much eg. My answer to q.14 is neither "a great deal nor "some" I put an X by; it is "substantial."
- ID#112 "My basic thought is that life is simpler when the mode of life is clean and uncluttered. Family is #1 priority, and anything including pornography that has any chance of adversely affecting my family is better avoided."
- ID#113 "Although morality is learned, it cannot be taught. We keep trying - forgetting that what we learn early (Sic) by what goes on around us. If you are a good person - your children will be also -by your example."
- ID#115 "The opinions expressed here are mine and not the official view of the Police Force. However, I believe that they may be close to the views of many police officers. I have worked in

- this area in command of a Branch which included obscenity investigations and therefore have a feeling for individual Police viewpoints within the framework of its organization."
- ID#118 "My main comment about the questionnaire is that giving a range to answer by or a choice of answers doesn't always accurately reflect the true feelings of respondents. This can't be avoided, but leaving a small explanation space for the respondent allows them to state why they answer a question a specific way, if they feel an explanation is necessary. Or, you could leave a box for "agree with qualification" or "disagree with qualification."
- ID#120 "You cannot use quantitative models in an arena where qualitative judgements are concerned. See T. Hobbes Leviathan and, R.G. Collingwood's New Leviathan Part 1 Man Chapters I-XVII., Oxford U Press." wrote at bottom of q 25-48  
Also wrote at the end of the survey "This is very time consuming and should involve some remuneration. Censorship is in itself very worrying. Most people prefer the classification of film and then freedom to see what they want to see - in a specially designated place."
- ID#129 "I feel many of these questions deserved more thought than I was able to give immediately in fact, on a few I changed my mind on re-reading. Many of my answers seem contradictory depending on specific situations."
- ID#132 "You do not define Explicit Sex. If you include any promotion of harm, physical or psychological, to others for the purpose of obtaining sexual satisfaction, my answers would be quite different."
- ID#133 "Pornography violates the Equality rights guaranteed to Women under Section 15 of the Canadian Charter of Rights and Freedoms"
- ID#134 Asked for definition of term sexually explicit materials, wrote "B.C. stand appear far more relaxed than rest of country (Quebec excepted.) Look at new B.C. Motion Picture Act for Legislated standards. Regulatory Boards can only make their decisions within context of those legislated standards."
- ID#021 "Some questions I could not answer as they implied regulation which I consider as synonymous with censorship. I oppose censorship in any form."
- ID#040 "As much as I would like to participate in answering this survey, it is very hard to participate (either personally or institutionally to many of the questions you have set. At least two problems arise here: (1) your terminology is uncomfortably vague (e.g. is the term "regulation" to be read as interchangeable with "censorship"? Unfortunately, for most people these have distinct meanings, and this makes answering many of the questions confusing); and (2) some of the questions are so narrowly cast that it is very hard to provide a response that correctly represents this writer's (or this organization's) views."
- ID#016 "Your response should be most interesting. The number of statements in nos 25-48 which are anti-restriction may bias your results. On the whole, the questionnaire wording tends to have an anti-censorship bias, since the pro-censorship arguments tend to be based on simple conservatism ??? on arguments from human rights and human dignity. One can be pro-censorship precisely

because one believes strongly in human liberty and freedom, as from dehumanization, sexual harassment following from pornographic role models, child sexual abuse and sexual assault. As a woman, I do not want that sort of image of my kind of person forming people's minds anymore than a Jew wants anti-semitic literature forming them, or a Black wants racist literature forming them. I want liberty from dehumanization by others, for all women, for my daughters, for the mind of my son, and for me. Good luck with your analysis."

ID#081 "Delighted you are undertaking this project - - There is a grave need more money should be delegated for this purpose."

Appendix F Other definitions of erotica provided by respondents  
(Identification numbers were put on surveys in order received for coding purposes.)

ID#031 "CONSENSUAL NON-VIOLENT AND UNDEGRADING DEPICTIONS OF SEXUALITY"

ID#067 "If the parties are laughing while they do it, it is erotica.  
F\*\*\*\*\*g should not be a serious activity."

ID#118 "depictions of sexuality which reflect equal choice and power &  
passionate yearning for a particular person AND depictions of  
the great variety of sexual practices (ie. homosexuality and  
celibacy) and types of foreplay which are common in our society"

ID#129 Checked #3 and #5

ID#131 Checked #2 and #5

ID#134 Wrote "Sexual relationships presented positively."

ID#135 Checked #2, #3, #4

ID#102 Checked #1, #3, #4

ID#021 Checked #3 and #4, wrote "combination of the two."

ID#029 Checked #3 and #4

ID#076 Checked #4 and #5

ID#037 Checked #4 and #5

ID#136 Checked #4, wrote "this is not intended to exclude erotica  
meeting the theme of equality and choice, including  
homosexual or group sex."





## Appendix G

### Open-ended definitions of pornography provided by respondents

- ID#005 "Where sex is preformed (sic) by children (under 18) or by unconsenting adults"
- ID#006 "The use of power to gain one's personal goals at the expense of another person"
- ID#010 "Anything which turns my stomach" -respondent also checked 2,4,8
- ID#028 "Anything intended to cause sexual excitement"  
also circled answer 10
- ID#047 "The portrayal of sexual activities that whatever pressure groups happen to be prominent at the moment perceive as a threat to their interests or just distasteful"
- ID#049 Checked def'n #2, added comment: "use of force, violence, animals most particular (sic) involving children."
- ID#072 "The undue exploitation of sex; in particular sex in combination with crime, horror, cruelty, violence, children or animals"
- ID#076 "Sexually explicit material involving children in any role or where violence is applied to either male or female or where animals are portrayed in a sex act."
- ID#079 "Depictions of the great variety of sexual practices and types of foreplay which are not so common in our society."
- ID#109 "The depiction of human activity proven to be harmful to a percentage of people viewing or proven to cause a percentage of people viewing to act in a manner which is harmful."
- ID#017 Checked #4 and #6
- ID#119 "Material that represents, or describes explicit, degrading, abusive and or violent behaviour for sexual gratification as to imply or endorse that gratification."
- ID#120 "Something distinct from erotica but generally thought to be unacceptable by non-critical people, or over critical."
- ID#129 Checked #2 and #4
- ID#135 Checked #2, #4, #5, and #7
- ID#102 Checked #2, #4, #8
- ID#021 Checked #2, #4, #8
- ID#029 Checked #3, #8
- ID#042 Checked #6 and #10
- ID#076 Checked #4, #8
- ID#140 "La description de la sexualité qui exploite la sexualité des enfants ou des animaux." A description of sexuality which exploits the sexuality of children or animals. (translation mine.)

Appendix H Responses to open-ended question re:  
Are there other methods of dealing with the issue of sexually explicit  
satellite programming?

- ID#002 "Should not be dealt with"
- ID#003 "Don't Know"
- ID#005 "No"
- ID#011 "It's not an issue. there is far more hardcore on video at the local milk store in P.Q. , than on satellite"
- ID#012 "since these type of signals are usually scrambled, regulate the sale of decoders"
- ID#013 "Have this type of program transmitted late at night and have satellite programmed to be operated by a 'locking mechanism' enabling only an adult to operate it"
- ID#022 "SELF REGULATION (INDUSTRY) ADEQUATE PRE-NOTICE TO VIEWERS RE CONTENT"
- ID#027 "Dealing with North America Only: there should be a reciprocal agreement between Canada and the U.S. to prevent the use of satellites to transmit such material"
- ID#029 "Public Education. Public discussion. Lobby stations and advertisers who abuse public taste."
- ID#034 "Bars and similar locations can be prohibited (by province or municipality) from showing as condition of licence."
- ID#035 "Not to my knowledge"
- ID#041 "Up to the receiver to select that which he wishes to see"
- ID#043 "Federal government should channel all the programs and regulate these as required, making private dishes obsolete and unnecessary."
- ID#044 "Prefer to regulate at production level -international problems"
- ID#045 Answered previous two questions with the notations ridiculous and even more ridiculous. Comment: "Forget it and worry about the defect (sic)"
- ID#049 "NO NOT WITHOUT JAMMING OTHER PROGRAMS"
- ID#050 "Not that I can think of"
- ID#056 "The public display or access should be prohibited but the private receipt of such programming should be allowed"
- ID#058 "Prosecution when programming exposed to public view"
- ID#060 "Leave untouched"
- ID#067 "Try to make treaty with the U.S. Many states would support the prohibition of such programming."
- ID#069 "Adult entertainment should be scrambled by the source of the programming and descrambled by the viewer with the use of electronic equipment."
- ID#080 "International agreement- individual jamming devices to prevent children's viewing."
- ID#072 "By advertising that the program contains sexually explicit scenes."
- ID#077 "Not at this time."
- ID#078 "Leave untouched."
- ID#079 "Allow the freedom for the right to view what one wants."

- ID#083 "Information (A l'école et dans la famille) -Faire concurrence avec des programmations bonnes et intéressantes même si couteux"
- ID#053 "Go to the source of production of this material and ban it totally"
- ID#089 "There is not a one set solution to a problem like this."
- ID#085 "legal/licensing requirements limiting certain (sexually explicit) materials from inclusion in satellite programming or no licence granted."
- ID#088 "Close monitoring."
- ID#095 "It's a technological question only a qualified person can answer."
- ID#101 "Let it alone."
- ID#106 "Warnings, individual TV scramblers so parents can at their discretion, lock out objectionable programming."
- ID#107 "target specific signal or individual broadcaster (impose charge for beaming signal into Canada)"
- ID#110 "Attempts should be made to develop other methods."
- ID#111 "Educating the public as to what acceptable standards are. I really don't care what adults watch in the privacy of their homes, as long as children aren't involved."
- ID#092 "Il appartient a l'utilisation de controler l'accès au satellite. Le gouvernement n'a rien à voir dans ma chambre a coucher."
- ID#093 "Toute réglementation qui constitue une forme de censure est immorale - seuls les avertissements sont acceptables -laissant à chaque individu la responsabilité de s'auto réglementer"
- ID#104 "Non- Laisser faire les lois du marché. Aucun ne peut survivre très longtemps seulement avec ça!"
- ID#016 "Make it illegal for anyone to re-transmit such signals in Canada, or to display them in a public place such as a tavern."
- ID#113 "Education Family life Ed would help raise awareness."
- ID#118 "Education. Fostering our own culture for satellite b'cast, as opposed to using American culture which we already get enough of."
- ID#119 "Change American law."
- ID#120 "Let the consumer and the market decide -individual choice."
- ID#123 "Not the reception of the material itself. You could make it an offence to show it to children."
- ID#125 "U.S. -Canada Treaty."
- ID#129 "Can't think of one. Perhaps a device to enable adults in a household to lock out specific stations from their children?"
- ID#133 "Canada Customs could preview the material as they do now with Playboy, Penthouse, etc."
- ID#134 "Enforcement by U.S. of their broadcast obscenity laws."
- ID#135 "Treaty with the U.S. prohibiting U.S. cablemasters or satellite operators from transmitting sexually explicit materials to Canada."
- ID#124 "Négociier des traités. C'est le ..."/ Negotiate

treaties..." balance is illegible  
ID#081 "Should be banned by Radio and Television Commission."  
ID#137 "None that I'm aware of"  
ID#140 "Laisser au citoyen la liberté fondamentale de  
disposer de lui-même, toute intervention étant trop dangereuse pour  
la liberté d'expression."  
ID#142 "Inter-governmental agreement to prevent production of such  
material at source, with church leaders invited."

Appendix I Responses to open-ended survey question re:  
Circumstances where regulation preferred over court action or  
vice-versa.

- ID#002 "Basically, either approach is not suitable, but if  
if is necessary, action should only be taken after the fact because  
of some specific breach of the law"
- ID#003 "Financially successful martyrs aren't created by prior restraint"
- ID#006 "It sets the norm of behavior and most people will  
abide by that norm. This lessens the retroactive problem to those  
who have flouted the societal norm."
- ID#008 "By regulation it is standardized, by court action  
legal technicalities may override the intent of law or regulation"
- ID#011 "Prior Restraint is an insult to one's intelligence  
and a threat to free speech. Advisory classifications are all that  
is required."
- ID#012 "Children may gain access to those articles and  
materials, that while sexually explicit, contain depictions of  
degradation and violence. If it is left to Post Restraint, the  
Goods may fall into their hands (children), possibly warping  
their idea that this is the way men and women (Mommy and Daddy)  
love each other and is therefore acceptable."
- ID#015 "Public should be made aware of regulations and  
acceptable norms of material they intend to view. Once made aware,  
importers, distributors and manufacturers of violent or degrading  
material should be prosecuted"
- ID#018 "Selection and editing of publicly (sic) broadcasts- radio  
and tv"
- ID#019 favors regulation "Where sexually explicit material  
portrays children as sex objects, shows degradation of either sex  
or combines violence and sex"
- ID#020 "It seems to me the one predisposes the other- the  
court case comes after the regulation is broken. The court case  
is at least a case of accusation and defence, a potential debate  
within the community context."
- ID#016 "both at once has always been the norm in Canada-  
screen , and then prosecute what slips through." "See note at side.  
By forcing a choice in your question, you are missing an important element  
in your data.
- ID#022 "If guidelines are clear and acceptable to general  
public, prior restraint minimizes problems and cost of post restraint."
- ID#024 "Government regulation is undesirable."
- ID#029 "To help establish guidelines to aid people in making  
non-exploitative selection of material"
- ID#032 favors regulation: "EFFECTIVENESS"
- ID#034 "Regulation should deal with material which is  
obviously in violation of criminal code, courts, preferably  
judge and jury should judge more "marginal" material.
- ID#035 "Good Corporate citizens would appreciate the guidance  
regulation can provide rather than court action"
- ID#036 "Dependent on the degree to which the material is  
violent, degrading to women, etc."
- ID#043 "Prior restraint is preferred. (sic) No system is expected

- to be fool proof - post restraint cannot be excluded."
- ID#044 "To enforce regulation after material is produced is to burden the small dealer and distributor rather than the producer. I feel it is more appropriate to go after the source."
- ID#045 "LONG INVOLVED PROCESS IN TAKING THE MATTER TO COURT"
- ID#049 "FIRST, YOU NEED AN ACCEPTABLE DEFINITION (NONE ACCEPTABLE AT PRESENT) SECOND, YOU NEED REGULATIONS (LAWS) THIRD, COURT ACTION WHERE LAWS ARE BROKEN."
- ID#050 "There will always be situations where the material is close to the legal line - here, the courts should decide."
- ID#055 "By declaring certain materials obscene and thereby preventing distribution, it prevents the uncertainty that sometimes arises amongst retailers who are uncertain as to what constitutes prohibited material"
- ID#057 "Court action is too costly and too time-consuming but we still need court action as an alternative."
- ID#058 "Regulation applies to all and not just those against whom sufficient evidence for prosecution has been found."
- ID#062 "A good definition and sound regulations with realistic penalties will be a surer way to control the materials than discretion by law or police officers and the courts."
- ID#063 "There is no universally accepted definition of pornography therefore regulation will always be based on local conditions. Conditions that are also in a state of continual change also mean the distributor should be given the definition BEFORE any legal action occurs"
- ID# 67 "Ideally, people will heed regulations and govern themselves accordingly. Some in fact do. As a last resort, we prosecute the jerks that don't, or enough of them to put the fear of the law into the non-co-operators."
- ID#068 "Court action is slow and costly after the fact. Obscene material can be explicitly defined and judged illegal."
- ID#069 "It gives the courts and the police general guidelines and a level of public tolerance."
- ID#070 "Affichage et avertissements sur le matériel"/  
Signs and warnings on the matériel
- ID#080 "If the regulation (Law) is breached, then there should be court action"
- ID#072 "Under all circumstances regulation is preferable to court action as it would eliminate the problem rather than leaving it open to judicial interpretation."
- ID#072 "Minimal regulation for specific types of material e.g. kiddie porn"
- ID#079 Respondent doesn't favor regulation or legal action.  
"Rather than take action on material that has already been produced, the law should enforce existing laws in the production area. ie. Child labor laws, coercion, violence, etc."
- ID#089 "The time of the court decision depends upon the context of the regulation."
- ID#096 "Legal action tends to be less constrictive than regulatory procedures."
- ID#085 "Court action on the vast numbers of cases of 'possibly' obscene material is already taking up vast amounts

- of time and expense - why not more clearly written guidelines and regulations, an updated and rewritten criminal code definition of 'obscenity' and realistic penalties for offenders that would be a REAL deterrent - we have NONE of the above at present."
- ID#088 "There is much debate about the definition of the sexually explicit -depends on terms of reference. If regulation per se then little flexibility allowed."
- ID#087 "Allow adults to decide for themselves. No laws necessary for behavior at home as long as law abiding...fræe airways or air."
- ID#095 "I think the industry should be entitled to know beforehand whether an item is ok or not rather than forced to "chance it" and maybe get taken to criminal court."
- ID#100 "Regulation is preferable. Litigation should only be used as a last resort."
- ID#103 "So long as there is a sanction many people will not commit that offence."
- ID#106 "The obvious stuff should be weeded out so as not to tie up the courts; for example, explicit kiddie porn, necrophilia, etc. A good Board with common sense and a minimum of Personal Hang-Ups is, in my opinion, the best, but not perfect way to go."
- ID#107 "materials which abuse or exploit the well being or dignity should not be allowed unimpeded distribution to all; ie materials which promote/condone hatred and violence"
- ID#111 "Presumably a regulatory board has more than one member thus has the ability to reach a consensus. A single judge is bound by all his own personal prejudices."
- ID#094 "When exploitation of individuals (eg. women or children) is involved."
- ID#093 "Affichage et avertissements sur le matériel."
- ID#115 "In case in doubt a court decision (if promptly rendered) could determine status of material."
- ID#118 "Regulation is preferable because often court cases attract attention to particular books/films etc. (ie. No one wanted to read Catcher in the Rye until it was banned.) Also regulation can stop the importation of snuff films, whereas court action can't. But, above and beyond that, EDUCATION IS WHAT'S NEEDED."
- ID#119 "It is ideal that people be fully aware that specific behaviour or possession of material is illegal and a criminal offence prior to the act itself."
- ID#122 "Post restraint action takes place after the damage is done \_ The whole purpose is to prevent the material being shown."
- ID#123 "Prior restraint is always the best 1st step. I base that on the belief that there are some materials (violence oriented) that should not be available to anyone."
- ID#125 "Considerations of artistic merit (court case), regulation for age (regulation)"
- ID#129 "Anticipating" avoids the chance of copying undesirable material and broad dissemination of pornography.
- ID# 130 "Selon les éléments de preuve disponibles, il se peut qu'on

- ne pourrait traduire certains cas devant les tribunaux (surtout si on accuse en vertu du code criminel.)
- ID#132 "Where it has been shown that certain types of material has led to the harming of others."
- ID#134 "Court action is reactive; regulation Proactive. Regulation is able to deal with all the material. Of course only a tiny fraction would be subject to elimination."
- ID#102 "Regulation is a preventive measure and solves the dilemma of dealing with groups, eg. church, women, parents."
- ID#076 "At present all films that are classified as X rated would be deemed obscene under Federal law, yet they are allowed to be imported and are classified by the provincial government in B.C. I would prefer that it be federally regulated and that this judgement would offer some protection in court."
- ID#037 "Regulation should be involed (sic) to prevent the exploitation of children in sexually explicit scenes -or to prevent depiction of injury to adults or animals."
- ID#081 "Regulations have not always keep (sic) up with the trend of the public hence court actions brings attention to public; consequently public may be aroused to demand regulations."
- ID#137 "Regulation in the form of classifying material according to an acceptable standard."
- ID#140 "Lors de spectacles publics pour éviter l'arbitraire policier."
- ID#141 "Child Pornography and explicit violent sex should be banned/regulated. Other forms of sexually explicit material should be debated."
- ID#142 "Because Regulations spell out the standard against which a decision is made by others."
- ID#143 019 "If regulation is effective it negates the need for legal action."



Interviews Conducted for this study

Brian Dirsdale and Bill Barr, Satellite Communications Association  
of Canada, Mississauga, February 23, 1987

Margaret Gillies. Prohibited Importations Branch, Customs and  
Excise Department, Department of National Revenue,  
Ottawa, -telephone interview November 4, 1986  
-personal interview November 24, 1986

Pat Marshall Executive Director, Metraco, Toronto, January 20, 1987

Rose Potvin President, Canadian Coalition Against Media Pornography  
Ottawa November 25, 1986

Project P Toronto, December 29, 1986

R.C.M.P. Kitchener Detachment, December 4, 1986

David Scott - researcher, author and lobbyist, Toronto January 21, 1987

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