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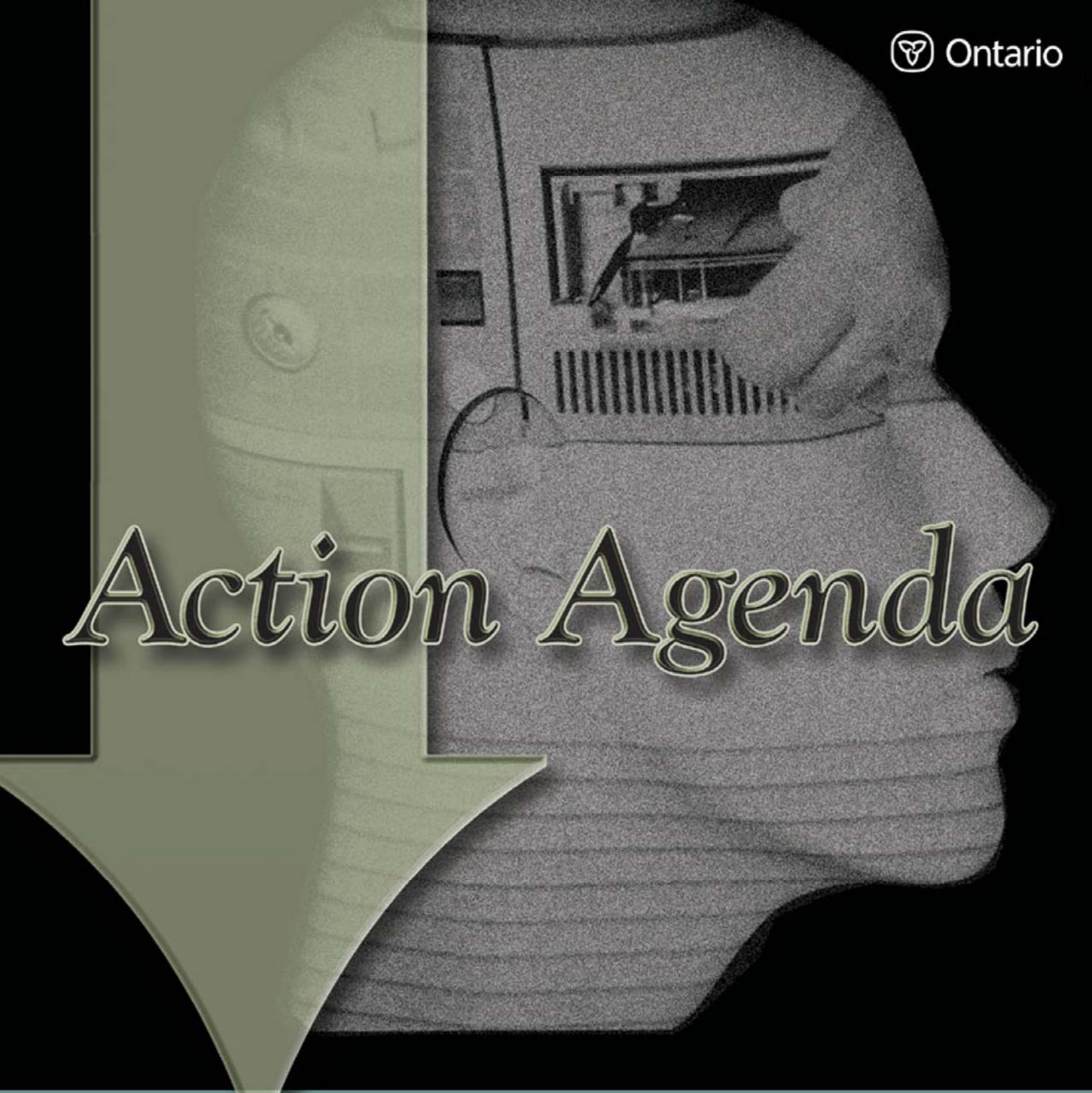

Action Agenda

A Strategic Blueprint for Reducing Exposure to Media Violence in Canada

Action Agenda:
A Strategic Blueprint for Reducing Exposure to Media Violence in Canada

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FOREWORD

It can fairly be said that we live in a world of unprecedented exposure to information, advertising and 'entertainment' products. Added to this, is a rapid advance of technology that frequently blurs the line between fantasy and reality. One only needs to turn on a TV, put in a video game, watch a movie or log on to a computer, to appreciate the extent to which violence has become a routine part of what now is called 'entertainment'.

As such, it is indeed timely that an exploration of the consequences of violence in the media in all its forms has been produced. The Action Agenda is a compilation of media practises and relevant research into the demonstrable effects of media violence. I would like to specifically thank Valerie Smith, who researched and wrote this Report for the Office for Victims of Crime, for her tremendous dedication and expertise on this subject. We are indebted to her for taking on this challenge and providing detailed analysis and practical recommendations.

Frequently, when acts of violence occur that appear to mirror violence portrayed through media 'entertainment', claims are made that there is no 'proof' of any causal relationship between the two. This Report will, hopefully, serve as a full answer to that assertion and also foreclose any claim of ignorance of effect from those who produce harmful products.

Finally, it is my hope that people reading this Report will find it of assistance in recognizing this new challenge and crafting effective solutions to it.

Sincerely,

Sharon Rosenfeldt

Sharon Rosenfeldt
Chair
Ontario Office for Victims of Crime

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1. INTRODUCTION

Concern about the contributing role violent media plays in creating real-life violence has been expressed by politicians, victims' groups, justice officials, law enforcement, educators, and medical and mental health professionals for many years. Indeed, government involvement began shortly after the introduction of television in 1952 when the U.S. House of Representatives conducted the first committee hearings on television violence and its' impact on children. Thereafter followed decades of academic research and many more government hearings conducted not only in Canada and the United States, but internationally.

Polls in both Canada and the U.S. chronicle the public's anxiety about the media's negative influence, particularly on children. Common Sense Media, a high-profile American advocacy organization, released poll figures in May 2003 indicating that 81% of the parents contacted were concerned that the media "teaches violent, anti-social behavior to children".[1] A poll conducted for the Canadian Teachers' Federation in 2001 revealed that 7 in 10 Canadians believe children's exposure to violence in the entertainment media contributes to youth violence in their community and schools, and 8 in 10 Canadians believe it is important that governments take steps to limit the violence children are exposed to in the media.[2]

Unfortunately, neither public concern, government reports nor repeated pleas from the medical and mental health community have resulted in any reduction in the level of entertainment violence -- quite the contrary -- and in 1997, the American Academy of Pediatrics told the United States' Senate:

> ***The level of violence to which [children] are exposed through the media has reached such horrific proportions, health professionals, parents, legislators and educators agree that something has to be done.[3]***

Dr. Brandon Centerwall, an epidemiologist studying the rising tide of violence in the United States, offered this disturbing conclusion back in 1992: "Long-term childhood exposure to TV is a causal factor behind approximately one-half of the homicides committed in the United States, or approximately 10,000 homicides committed annually". He said, "If, hypothetically, TV technology had never been developed, there would today be 10,000 fewer homicides each year in the United States."[4] While violent crime in Canada has decreased slightly in recent years, in 2003 the violent crime rate was 66% higher than twenty-five years ago.[5]

Violent media is not, of course, the only cause of violence, but the conclusion of the public health community, based on over thirty years of research, is that viewing entertainment violence can lead to increases in aggressive attitudes, values and behaviour, particularly in children.[6] The "debate" is over, and, clearly, if we are to reduce societal violence, we must reduce the production and consumption of violent media.

---

[1] *Parents fear perils of media, poll shows,* San Francisco Chronicle, May 22, 2003

[2] *Majority of Canadians believe media violence linked to youth violence in the community,* Canadian Teachers' Federation press release, July 13, 2001

[3] *Stop Teaching Our Kids to Kill: A Call to Action Against TV, Movie & Video Game Violence,* Dave Grossman and Gloria DeGaetano, Crown Publishing, New York, 1999

[4] *Television and Violence*, Brandon Centerwall, Journal of the American Medical Association, June 10, 1992

[5] *Crime Statistics in Canada*, 2003, Juristat, Canadian Centre for Justice Statistics, Statistics Canada Catalogue no. 85-002-XPE, Vol. 24, no. 6

[6] *Joint Statement on the Impact of Entertainment Violence on Children* presented to the Congressional Public Health Summit by the American Academy of Pediatrics, American Psychological Association, American Academy of Child & Adolescent Psychiatry, American Medical Association, American Academy of Family Physicians and the American Psychiatric Association, July 2000

The purpose of this report is to provide people with the information necessary to get involved in the movement to reduce entertainment violence, with the major focus being on Ontario and Canada. We are, of course, heavily influenced by the United States, as much of the violent entertainment consumed in this country comes from south of the border. However, Canada is a sovereign nation and, as such, we have both the legal means and the responsibility to reduce the availability and influence of violent media in our country.

OTHER POLL RESULTS

2002 - Public Agenda (U.S.) survey showed that 83% of teachers believe that "parents who fail to control how much time their kids spend with TV, computers and video games" is a very or somewhat serious problem in their school. (A Lot Easier Said Than Done: Parents Talk About Raising Children in Today's America, Public Agenda, October 2002)

2002 - Poll conducted for Family Service Canada and the Canadian Council on Social Development found that 83% of parents are concerned about the violence their children are absorbing from television, music videos and movies. (School bullies, TV violence top list of parental concerns, Globe and Mail, June 27, 2002)

1993 - Gallup Canada conducted a survey to ascertain the degree of support for a law restricting violence on television; 70% favoured such a law (Gallup Canada, May 26, 1993, Media Awareness Network web site)

This report includes sections on political history, academic research, legislative and regulatory highlights, Supreme Court of Canada decisions, television, radio, movies, video games, music, pornography and the Internet. Also covered, are the failure of our broadcast regulatory system to protect the public from escalating levels of violence, public funding of violent film and television, and roadblocks to progress in reducing entertainment violence.

As well, the American concept of filing civil lawsuits against entertainment companies for real-life violence their products have allegedly inspired is examined, with a view to adopting this important strategy in Canada. A resources section provides articles, publications, links to research sources, advocacy organizations, government and other web sites of interest. Many recommendations are also provided that, if implemented, could significantly reduce the harmful impact of violent media on Canadians.

This report could have been many volumes long, but the goal was to provide a compendium of critical information for activists, because, sad to say, the government action of the past half century has been a whole lot of smoke and very little fire. The result is that the entertainment industry continues to ratchet the level of violence well past the "horrific proportions" identified by the AAP in 1997.

The problem is enormous in scope, complex, and frequently daunting, but never subscribe to the theory that nothing can be done. We can do something, and we must do something. As the Office for Victims of Crime said in their report on children in the justice system, addressing media violence is "absolutely necessary if we truly wish to reduce violence, prevent victims and extinguish fear, especially among the young".[7]

[7] *A Voice for Children in the Criminal Justice System*, Office for Victims of Crime, Ontario Ministry of the Attorney General, Toronto, 2000

2. POLITICAL HIGHLIGHTS

2.1. Introduction

> *Along with every right also comes the social responsibility not to abuse that right to the detriment of others in society.*
>
> *Television Violence: Fraying Our Social Fabric*
> Standing Committee on Communications and Culture[8]

Following the first American study into the influence of television in 1952, there followed several decades of government inquiries and thousands of research studies, both of which continue to this day. Much of the work has been done by our good neighbours to the south. While there are differences between our two countries, as American researcher Dr. Edward Donnerstein told a Toronto conference on TV violence in 1993, "The borders are nothing but air".[9] As a result, we consume pretty much the same entertainment diet as the Americans, and it makes sense for us to take advantage of the work done by their government, as well as the significant body of research carried out by their medical and mental health organizations.

One of the first major American reports on television violence was released by the U.S. Surgeon General in 1972, followed up ten years later by the National Institute of Mental Health *Report on Television and Social Behavior*. In the late '80s and early '90s, the American Medical Association and the American Psychiatric Association both issued reports on the topic. In 1990, the American Psychological Association issued a report called *Big World Small Screen: The Role of Television in American Society.* In 1992, the American Psychological Association started another commission, and, in the same year, the *Centers for Disease Control* in the United States issued a report.[10]

In Canada, the first significant evidence of public concern over television violence was noted in 1975.[11] For those wondering what might have concerned the public in the mid 1970s, around that time, a movie called *Snuff* was released in North America. The distributors claimed it showed the actual torture, mutilation and murder of a real woman, not the simulated slaying of an actress. So believable was the promotional campaign for the movie, that the FBI launched an investigation to determine whether the woman shown in the film was alive or dead. The distributor's claims turned out to be false, but the fact remains, that an actual murder was marketed as entertainment acceptable enough to be shown in movie theatres.

In May of 1975, the Ontario government announced the Ontario Royal Commission on Violence in the Communications Industry. A few months later in August, the Canadian Radio-Television and Telecommunications Commission (CRTC), the federal broadcast regulator, held a Symposium on Television Violence.[12] In the 1980s, there were several government initiatives dealing with pornography, including formation of the Special Committee on Pornography and Prostitution (1985) that produced a significant report on the subject following public hearings across the country.

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[8] *Television Violence: Fraying Our Social Fabric,* Report of the Standing Committee on Communications and Culture, Supply and Services Canada, Ottawa, 1993
[9] *Reclaiming Childhood: Responsible Solutions to TV Violence & Our Children,* transcript of the C.M. Hincks Institute conference on television violence, Toronto, 1993
[10] Ibid
[11] *Television Violence: Fraying Our Social Fabric,* Report of the Standing Committee on Communications and Culture, Supply and Services Canada, Ottawa, 1993
[12] Ibid

In June 1990, following the massacre of fourteen young women at Montreal's École Polytechnique, Perrin Beatty, Minister of Communications, asked the CRTC to study the possible links between violence on television and violence in society. Grassroots protest against media violence grew in all parts of Canada and culminated in 1991, when 13-year-old Virginie Larivière gathered 1.3 million signatures on a petition demanding a law against TV violence.

A number of public figures paid tribute to Virginie's remarkable accomplishment which she undertook in response to the murder of her little sister. The Prime Minister and the Minister of Communications both warned the industry that if it did not take serious voluntary action, the government would consider some kind of coercive approach,[13] and the federal government identified media violence as a major issue requiring national action.

In 1992, Virginie's petition was referred to the Standing Committee on Communications and Culture, which launched a study of television violence and produced the report *Television Violence: Fraying Our Social Fabric.* Thereafter followed more CRTC and federal government initiatives, including a discussion paper issued by the Justice Department on expanding the *Criminal Code* obscenity law to include the "undue exploitation of violence".

In 1999, Consumer Affairs Minister Robert Runciman said the Ontario government was looking at implementing a legislated classification system for video games because of their influence on youth violence. In October 2000, B.C. Premier Ujjal Dosanjh, Attorney General Andrew Petter and Education Minister Penny Priddy, declared media violence a threat to children and launched a provincial strategy to combat it. The same month, Ontario Attorney General, Jim Flaherty, attempted to have the violent rap performer, Eminem, stopped at the border because of the violence he promotes against women. At the 2001 meeting of Federal Provincial Territorial Justice Ministers, B.C. Attorney General, Andrew Petter, initiated the formation of an FPT Working Group on Children and Violence in Video Games and New Media.

Regrettably, little of this has resulted in anything concrete, and all aspects of the entertainment industry continue to increase the level of violence in their products with virtual impunity. Nevertheless, many of the studies and reports contain excellent information and recommendations that deserve a review. The following, while not an exhaustive account of government action, provides information on some of the more significant undertakings. More details on Canadian and American initiatives are provided as an Appendix.

2.2. Ontario Royal Commission on Violence in the Communications Industry, 1975

The Ontario government struck this Commission (LaMarsh Commission) in 1975 to study violence in the communications industry. Chaired by Judy LaMarsh, a former federal Cabinet Minister, the Commission's mandate was to study the effects on society of the increasing exhibition of violence in the communications industry, determine if there was any connection or a cause-and-effect-relationship between this phenomenon and the incidence of violent crime in society, hold public hearings to enable citizens, organizations and industry representatives to share their views, and make appropriate recommendations on any measures that should be taken by the government of Ontario, other levels of government, the public and industry.[14]

Although funded by the government of Ontario, the Commission's mandate was to look at the entire Canadian industry. The Ontario government took action because, as Premier Bill Davis noted, no one else in the country was undertaking the job, and he was not impressed with American initiatives at the

[13] *Reclaiming Childhood: Responsible Solutions to TV Violence & Our Children,* transcript of the C.M. Hincks Institute conference on television violence, Toronto, 1993

[14] *Television Violence: Fraying Our Social Fabric,* Report of the Standing Committee on Communications and Culture, Supply and Services Canada, Ottawa, 1993

time.[15] Mindful of the limitations of a provincial inquiry, the government and Commissioners nevertheless believed a great deal could be accomplished at both provincial and municipal levels, and anticipated the CRTC becoming interested in the issue as a result. It was also expected that the inquiry would bring public and moral pressure to bear, focus attention on American responses, such as boycotts, and stimulate social activism. With a budget in excess of $2 million, the Commission held sixty-one hearings in thirty-eight communities, received more than a thousand briefs, logged 10,000 air miles and heard from over eight thousand people.

In submitting their report, the members of the Commission wrote that they had "studied the effects on society of the increasing exhibition of violence in the communications industry" and "determined a connection between this phenomenon and the incidence of violent crime in society."[16] On the basis of "the great weight of research into the effects of violent media content", the Royal Commission found that television violence created "potential harm to society". While the Commission found that the "depiction of violence in the media is only one of the many social factors contributing to crime", it concluded that "it is the largest single variable most amenable to rectification".[17]

Media spokesmen who insist that parents are totally responsible for what their children see or hear are simply avoiding their own role in today's unsatisfactory media diet.

The Commission made 87 wide-ranging recommendations, including:

- a requirement that the CRTC monitor program content, especially for violence and other anti-social acts, as part of its procedure for issuing or renewing licenses to use the publicly-owned airwaves
- a strong policy of government financing worthwhile films, not including those that exploit violence, horror and sex
- journalists should familiarize themselves with current social science research on the impact of the media, and
- a government-supported publicity campaign to promote understanding of the scientific research regarding the effects of violent media.

Some of the recommendations have been implemented, but most have not.[18] Certainly, there hasn't been a public education campaign, taxpayers continue to fund violent films and television programs, and many journalists appear unaware of the research.

As for the role of parents, which the entertainment industry continues to stress, the Commissioners said, "it was impracticable for parents to monitor every moment of their children's media intake", and, "Media spokesmen who insist that parents are totally responsible for what their children see or hear are simply avoiding their own role in today's unsatisfactory media diet".[19]

[15] *Mind Abuse, Media Violence in an Information Age,* Rose A. Dyson, Black Rose Books, Montreal, 2000
[16] *Report of the Royal Commission on Violence in the Communications Industry,* Queen's Printer for Ontario, Toronto, 1977
[17] Ibid
[18] *Mind Abuse, Media Violence in an Information Age,* Rose A. Dyson, Black Rose Books, Montreal, 2000
[19] *Report of the Royal Commission on Violence in the Communications Industry,* Queen's Printer for Ontario, Toronto, 1977

2.3. Standing Committee on Justice and Legal Affairs, Report on Pornography, 1978

In 1978, the Standing Committee on Justice and Legal Affairs presented a *Report on Pornography* to the House of Commons *(MacGuigan Report)*. It contained eleven recommendations, the thrust of which was to strengthen the law.[20] The following passage (referenced with approval in the 1992 Supreme Court of Canada *Butler* decision on obscenity), reflects the philosophy of the report:

> *The clear and unquestionable danger of this type of material is that it reinforces some unhealthy tendencies in Canadian society. The effect of this type of material is to reinforce male-female stereotypes to the detriment of both sexes. It attempts to make degradation, humiliation, victimization, and violence in human relationships appear normal and acceptable. A society which holds that egalitarianism, non-violence, consensualism, and mutuality are basic to any human interaction, whether sexual or other, is clearly justified in controlling and prohibiting any medium of depiction, description or advocacy which violates these principles.*[21]

2.4. Amendment to *Criminal Code* Obscenity Law, Bill C-19, 1983

There is no prohibition in the *Criminal Code* to deal with materials that gratuitously or unduly exploit violence, unless the violence is combined with the "undue" exploitation of sex. The current *Criminal Code* definition of obscenity, Section 163(8) defines "obscene" as follows:

> *For the purposes of this Act, 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.*

This is a serious omission, and in an omnibus *Criminal Code* amendment bill proposed by the Minister of Justice in 1983, *Bill C-19*, the elements of violence and cruelty were detached from the element of sex. The bill proposed a new definition of obscene:

> *… any matter or thing is obscene where 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 or in any other manner.*[22]

This change never made it into law.

2.5. Special Committee on Pornography and Prostitution, 1983

Pornography and prostitution had been the subject of considerable public debate in Canada during the decade prior to the formation of the Special Committee on Pornography and Prostitution in 1983. The federal government established the Committee to study the problems associated with both, and to carry out a program of socio-legal research. The Committee published their findings in a comprehensive, two-volume report, *Pornography and Prostitution in Canada (Fraser Report)*. As the focus of the *Action Agenda* is violent media, only information relating to pornography will be included here.

The Committee was mandated to:

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[20] *Pornography and Prostitution in Canada,* Report of the Special Committee on Pornography and Prostitution, Supply and Services Canada, Ottawa, 1985

[21] *Regina v. Butler,* Supreme Court of Canada, 1992

[22] *Pornography and Prostitution in Canada,* Report of the Special Committee on Pornography and Prostitution, Supply and Services Canada, Ottawa, 1985

- consider the problems of access to pornography, its effects and what was considered to be pornographic in Canada;

- to ascertain public views on ways and means to deal with these problems by inviting written submissions from concerned groups and citizens and by conducting meetings in major centres across the country;

- to consider the experience and attempts to deal with these problems in other countries, and

- to consider alternatives, report findings and recommend solutions to the problems identified[23]

In the decade prior to 1983, some forty bills had been introduced in the House of Commons on matters relating to pornography, the majority of which proposed amendments to the *Criminal Code*. Despite the volume of bills introduced (few passed), no change of any magnitude had materialized, [24] a fact made evident at the public hearings held in 22 centres across the country. A large percentage of presenters expressed strong concerns about the prevalence of violent pornography and urged that government controls be strengthened to ensure that such material was kept off newsstands and prohibited from television. Most people were of the opinion that pornography was overwhelmingly pervasive in Canadian society.[25]

A National Population Survey commissioned by the Committee revealed:

> 59% thought that pornography was a problem • two-thirds thought that police and censor boards should have more power to deal with sexually explicit material • three-quarters thought it very important that action be taken to deal with violent sexual material and material to which children might have access • 69% thought the viewing of violent sexual material leads people to commit acts of violence • 48% believed that people imitate in real life the scenes they see in violent sexual material

The Committee received many critical comments about the CRTC during the public hearings, with the concern most frequently expressed being the perceived failure of the Commission to supervise program content generally, and particularly with respect to pay television. Some complained that the CRTC did not have an adequate appreciation of the concerns parents have about the content of programs that could be seen by children. There was also an allegation that the Commission was not prepared to take any, or any effective, action to prevent offensive program content.[26]

The Committee's recommendations were sweeping, and included suggestions for the *Criminal Code*, Canada Customs, Canada Post, broadcasting, human rights, hate literature, and film classification. Excerpts from a few recommendations follow:

> **Recommendation 3:** The federal government should give immediate consideration to studying carefully the introduction of criminal sanctions against the production or sale or distribution of material containing representations of violence without sex.
>
> **Recommendation 5**: Criminal sanctions for those selling or making pornography accessible to people under 18.
>
> **Recommendation 6:** Provinces and the municipalities should play a major role in regulation of the visual pornographic representations that are not prohibited by the *Criminal Code* through film classification, display by-laws and other similar means.

[23]Ibid
[24]Ibid
[25]Ibid
[26]Ibid

Recommendation 7: Criminal sanctions for the display of visual pornographic material in public places.

Recommendation 12: Everyone who makes use of the mails for the purpose of transmitting or delivering unsolicited visual pornographic material to members of the public would be guilty of an offence punishable on summary conviction.

Recommendation 34: Upon the issuing or renewal of a broadcast licence, a licensee should be required to post a bond in an appropriate amount to ensure compliance with the Regulations and conditions of licence relating to program content. In the event that a complaint about program content is upheld by the CRTC, the Commission should have the discretion to compensate the complainant for the costs incurred in presenting the complaint, such costs to be paid by the licensee and secured by the aforesaid bond.

Recommendation 38: The definition of "identifiable group" in subsection [318(4)] of the *Criminal Code* should be broadened to include sex, age, and mental or physical disability.

Recommendation 39: The word "willfully" should be removed from section [319(2)] of the *Code*, so as to remove the requirement of specific intent for the offence of promoting hatred against an identifiable group.

Recommendation 40: The requirement in [319(6)] that the Attorney General consent to a prosecution under [319(2)] should be repealed.

Recommendation 48: Clearance for exhibition [of a film or video] by a provincial authority should not constitute a defence or a discretionary bar to a prosecution under the *Criminal Code*.

As with the LaMarsh Commission, few of this Committee's recommendations seem to have been implemented.

2.6. Hincks Institute Conference on Television Violence, 1993

In February 1993, with financial assistance from the CRTC, a national symposium on television violence -- "Reclaiming Childhood: Responsible Solutions to Television Violence and Our Children" -- was hosted by the C.M. Hincks Institute in Toronto. In his opening remarks, moderator Laurier LaPierre called the conference "the first of its kind in Canada" because the participants were to engage in a dialogue "based on harmony and on the willingness to share experiences, to share knowledge, and to arrive at a bold plan of action". There were to be "no culprits at this conference", only people willing to come together, to exchange views, and an understanding in order to launch an action plan to lessen violence in Canadian society.[27]

The high-profile, two-day event, carried on Rogers Cable, was well attended by prominent researchers, educators, broadcasters, activists, the federal Minister responsible for broadcasting, Perrin Beatty, and Liberal M.P., Sheila Finestone (appointed federal minister responsible for the status of women a few months later when the Liberals were elected). Dr. Edward Donnerstein (U.S.), and Dr. Peter Jaffe of the London Family Court Clinic in Ontario, presented the research findings to the conference; there were panel discussions, and many earnest promises made by broadcast representatives that they would reduce violence on television.

When introducing Keith Spicer, CRTC Chairman, Mr. LaPierre quite accurately described him as having "launched a crusade to awaken Canadians, the broadcasting industry, and everyone associated with it, to the impact of societal violence, particularly, violence on television".[28] (A great deal of progress on this

[27] *Reclaiming Childhood: Responsible Solutions to TV Violence & Our Children,* transcript of the C.M. Hincks Institute conference on television violence, Toronto, 1993
[28] Ibid

issue was made during Mr. Spicer's term as CRTC Chairman, and following his departure, the issue of violence disappeared from the CRTC agenda.) Mr. Spicer proposed that new ground could be broken at the Hincks' conference by recognizing gratuitous and glamorized violence on television as a child protection issue, rather than a free speech issue.

The Minister of Communications, Perrin Beatty, in addressing the conference regarding the government's five-part strategy to deal with television violence said, "... if we cannot do it by consensus, I am prepared to ask the CRTC to write and to enforce a tough code [on violence] for the whole industry".[29]

In thanking the Minister, Laurier LaPierre said, "...you may rest assured sir, that after the discussions this morning and the ones that we have had in organizing these meetings for the past three months, that we, who represent a portion of the Canadian people, the industry, teachers, parents and young people, are determined to bring about a lessening of the violence which we see on our television screens too often, and which is experienced in Canadian society".[30] However, as Nancy Toran-Harbin, Vice-Chair of the Ontario Film Review Board told the conference "... if it were simply a matter of self-regulation, the situation that we're in now would not have come into existence to begin with".[31]

Indeed, ten years later, the situation has deteriorated under the self-regulatory scheme, with violence having escalated quite dramatically in the intervening years. The legislated violence code that Perrin Beatty spoke of has not been enacted, while the "harmonious dialogue" touted by Mr. LaPierre as being an important step forward, has accomplished nothing.

2.7. Standing Committee on Communications and Culture, Report on Television Violence, 1993

> *The challenge that our society faces is to recognize that television violence may be destroying the values which keep us together as a civilization...*
>
> *Television Violence: Fraying Our Social Fabric*
> Report of the Standing Committee on Communications and Culture[32]

In November 1992, the House of Commons referred the petition of Virginie Larivière on television violence for consideration by the Standing Committee on Communications and Culture. The petition was initiated by Virginie following the murder of her little sister, Marie-Ève. Virginie believed that TV violence might have contributed to her sister's death, and she started a national campaign to gather signatures. With more than 1.3 million signatures, the petition called for citizens to boycott violent television and for the government to pass legislation requiring networks to make reductions in violent programming. Some months prior to that, the House of Commons had referred a motion by M.P. Larry Schneider to the Committee, calling for a full review of the media's portrayal of violence, particularly with regard to women and children, and seeking better ways to protect people from being exposed to gratuitous violence. [33]

The Committee held public hearings and reviewed a wide range of possible solutions to the problem of violence on television. Their report, *Television Violence: Fraying Our Social Fabric*, noted the escalation in television violence since publication of the LaMarsh Commission report in 1977. It acknowledged that hundreds of studies had shown a positive correlation between television violence and aggressive and antisocial behaviour, and the Committee said the problem of television violence, and the larger issue of societal violence, could lead to the fraying of the fabric of our modern civilization, unless a comprehensive strategy was developed to combat it. The Committee believed that "the past complacent attitude of this

[29] Ibid
[30] Ibid
[31] Ibid
[32] *Television Violence: Fraying Our Social Fabric,* Report of the Standing Committee on Communications and Culture, Supply and Services Canada, Ottawa, 1993
[33] Ibid

country's population, institutions and government towards television violence" had changed, and they stated unequivocally:

> *What is needed is for government, the federal regulator and broadcasters to act.*[34]

Given the complexity of the problem, Committee members felt that adopting a framework of co-ordinated, co-operative and graduated responses would be most effective. Their recommendations included a range of responses directed at individuals, industry and government, and reflected the Committee's conviction that everyone must play a role -- parents, teachers, consumers, researchers, broadcasters, artists, producers, advertisers, regulators and legislators -- in reducing the amount and degree of violence on television.[35]

While recognizing that the classification, exhibition, sale and rental of films and videos generally falls under provincial jurisdiction, the Committee was also aware that "a film classified for theatrical distribution as "18 years and over" could eventually appear on television screens".[36] The Committee heard that movies were becoming increasingly violent. Sandra Macdonald, President of the Canadian Film and Television Production Association said "... it is certainly the case that movies have gotten more violent..."[37]

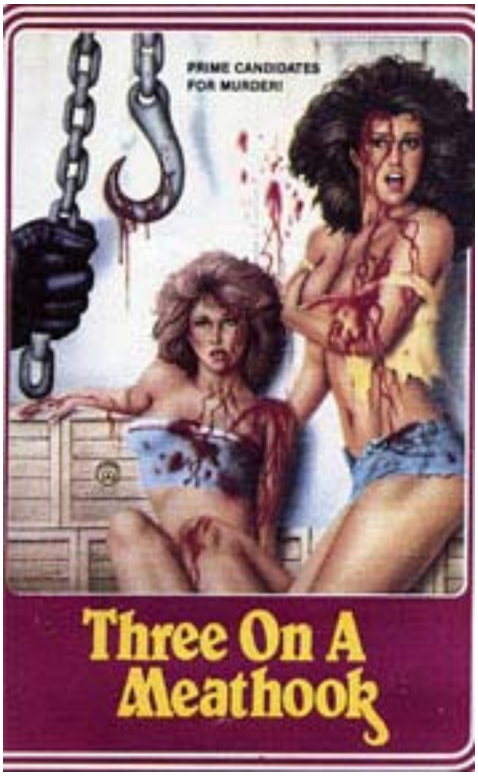

Figure 1 - Rental video jacket

In commenting on the availability of violent videos for home viewing, Keith Spicer, Chairman of the CRTC, said, "I'm thinking specifically of slasher movies, which consist mainly of torturing and mutilating women. If you've seen even a 10-second extract, you won't want to see any more. It's just wall-to-wall gore and cruelty, totally without justification. You can buy these things. Children can manage to buy these in their local neighbourhood video store. Nobody's doing anything."[38]

Al MacKay, Vice-President of the Canadian Association of Broadcasters (CAB), expressed a similar sentiment. "As a parent", he said, "I'm curious that here in Canada impending federal legislation will create a $50,000 fine for selling cigarettes to children under 18. Yet that same under 18-year-old can rent a [slasher] movie called *Three on a Meat Hook* or any other film of that genre with no apparent restrictions."[39]

The Committee concluded that Canadians who watch a large number of American television programs are exposed to a high level of televisual violence, and that "the violence portrayed on television reflects and shapes unhealthy social attitudes."[40] They reiterated the sentiments expressed by the LaMarsh Commission on the responsibility of parents, i,e., while parents must exercise a certain control over the media content entering the home, they "must not and cannot be solely held responsible for controlling television violence".

The Committee made several worthwhile recommendations designed to curtail the escalation in entertainment violence. Some of the key recommendations:

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[34]Ibid
[35]Ibid
[36]Ibid
[37]Ibid
[38]Ibid
[39]Ibid
[40]Ibid

RECOMMENDATION No. 6 - The Committee recommends that the federal government foster creative initiatives which inform viewers about television violence and make them more television literate, using television itself as the educational tool.

RECOMMENDATION No. 10 - The Committee recommends that the CRTC continue to press broadcasters to be responsible in purchasing and scheduling violent programming and that those who do not demonstrate the requisite measure of responsibility be held accountable and subject to the Commission's sanctions.

RECOMMENDATION No. 16 - The Committee recommends that the CRTC, as the body charged with implementing the federal government's broadcasting policy, continue to take full advantage of its powers of moral suasion and continue to pioneer initiatives to deal with television violence.

RECOMMENDATION No. 22 - The Committee recommends that, in the event industry self-regulation is unsuccessful, the CRTC, giving due regard to the rights and freedoms guaranteed by the *Canadian Charter of Rights and Freedoms,* should devise a regulatory scheme to govern the broadcast of programs with violent content, including a universal television program classification system and strict penalties for violating the regulatory scheme.

RECOMMENDATION No. 23 - The Committee recommends that, if industry self-regulation is unsuccessful, and if the CRTC does not respond effectively within a reasonable period of time, the Minister of Communications introduce legislation to achieve the same effect as proposed in Recommendation No. 22.

Recommendation No. 26 - The Committee recommends that the federal Minister of Justice, in collaboration with his provincial counterparts, study the matter of extremely violent forms of entertainment, such as slasher and snuff films, to determine the criminal legislative measures needed to control them and to design such legislation to conform to the Canadian Charter of Rights and Freedoms.

Despite their assertion that government needed to act, few of the recommendations were followed.

2.8. Private Member's Resolution on Slasher Films, Ontario, 1993

On April 22, 1993, Dianne Poole, Liberal Critic for Women's Issues, introduced a Private Member's resolution in the Ontario Legislature urging the provincial NDP government to, among other things "... enact policy initiatives and, if necessary, introduce legislation to ensure the protection of women and society against the proliferation of slasher films in this province".[41] She was responding to a public information campaign launched by the Coalition for the Safety of Our Daughters some months earlier. During the debate in the Legislature on her Resolution, Ms Poole read from a letter written by Debbie Mahaffy, mother of young murder victim, Leslie Mahaffy, to Premier Bob Rae, criticizing him for inaction on the issue:

> *How can you not realize that the real victims, their families and loved ones in Ontario pay the ultimate price of the free expression to make profits from the pain and deaths these violent, hateful, obscene films bring with them?*[42]

The resolution was unanimously passed by all three parties. As Leader of the Liberal party, Lyn McLeod continued to press the NDP for action, and in July 1993 the Ontario Liberal Caucus issued a news release urging the government to ban slasher films. Ms McLeod said, "These films are abhorrent and the viewing of these films cannot be condoned in any way. We need more than words on this matter, we

[41] Legislative Assembly of Ontario, Hansard, April 22, 1993
[42] Ibid

need action. Even those who are opposed to censorship would agree that slasher films are intolerable."[43] Again in October 1994, they issued a news release:

> *Both McLeod and Poole, the M.P.P. for Eglinton, have been pressing the government for the past 18 months to stop the proliferation of violent slasher films, which graphically depict the torture, mutilation and death of young women.*
>
> *"We are challenging the NDP government to stop giving us empty promises and finally take action to stop the proliferation of these appalling films," Poole said.*[44]

Information on this issue was also included in the political literature of the Ontario Liberal Caucus as a violence-prevention initiative. In their *Safe Communities* policy paper (May 1994), one of the solutions offered for addressing the root causes of crime was:

> *Working to bring about attitudinal changes in society by restricting or banning the sale and distribution of vicious images in media such as slasher films and serial killer cards and through programs like "Turn Off the Violence", which asks people to voluntarily abandon violent media for a 24-hour-period.*[45]

Unfortunately, nothing ever came of their efforts, or the recommendation on these films included in *Television Violence: Fraying Our Social Fabric.* Not only do the movies continue to proliferate, but the CRTC licensed a digital all-horror channel, SCREAM, on which this type of film is broadcast. Information on the licensing of SCREAM is included in the "Television and Radio, Failure of Regulation" section.

2.9. Private Member's Bill on Violent Video Games, Ontario, 1993

In 1993, the violent video game *Night Trap* arrived on the market, prompting considerable public protest. Some stores stopped selling it voluntarily, and politicians decried the game in the Ontario Legislature. Released by Sega, *Night Trap* was an interactive game that played and sounded like a movie, using "full motion video" -- footage of real people -- instead of pixilated characters. The game jacket described the action this way: "Five beautiful co-eds are being stalked in an eerie estate. Watch the murderous action from hidden cameras in eight different rooms".[46]

Conservative M.P.P. Elizabeth Witmer took up the issue and challenged the Attorney General and Minister Responsible for Women's Issues, Marion Boyd, over her inaction in bringing in legislation. On July 13, 1993, she directed these comments to Ms Boyd in the Legislature:

> *Minister, it's fine to say we need to look [at the issues], but I say to you that it's time for action. We have stood in this House on many occasions to denounce violence against women. Each year we take the opportunity to remember the horrible Montreal massacre. More recently, we have denounced the cruel and the very violent deaths of young women such as Leslie Mahaffy and Kristen French.*
>
> *I strongly believe that the time for action is now. It is more important than ever before that we do everything we can to combat any and all acts and words that in any way condone violence against women. In my view, allowing our young people to purchase and, as a result, play these games without legal limitations is simply unacceptable and irresponsible.*[47]

[43] *McLeod Calls for Ban on Slasher Films,* Ontario Liberal Caucus news release, July 19, 1993
[44] *Liberals Call for Action to Curb Violence, Exploitation,* Ontario Liberal Caucus news release, October 13, 1994
[45] *Safe Communities,* Ontario Liberal Caucus policy paper, May 1994
[46] *Ban violent videos, opponents demand,* Kitchener-Waterloo Record, July 15, 1993
[47] Legislative Assembly of Ontario, Hansard, July 13, 1993

Another Conservative M.P.P, Margaret Marland, joined in criticizing the Minister:

> *Madam Minister, you say that you hesitate because I think you said we enter the realm of controlling people. We control people every day. We have the Liquor Control Act, we have the Highway Traffic Act, we have municipal bylaws. There is a responsibility on us as legislators... In fairness to the company, which puts out Night Trap, it has instituted a rating system. However, without government leadership, this is not legally binding... Minister, I want to ask you one more time: Are you, as the member of your cabinet responsible for women's issues, prepared to show some leadership by giving legal force to a rating system to ensure that video games, just like films that depict violence against women -- which we haven't been able to get anywhere with, with the Minister of Consumer and Commercial Relations -- that these kinds of material are not available to our young people?*[48]

Ms Boyd, however, did nothing while in power to address the concerns raised by the opposition Conservatives. This led Ms Witmer to introduce a Private Member's Bill to permit review and classification of video games by the Ontario Film Review Board. Unfortunately, it was never passed, and Ms Witmer, who became a cabinet minister when the Conservatives were elected, did not carry her strong commitment to a legislated classification system with her into power.

In the fall of 1999, Ontario's Minister of Consumer Affairs, Robert Runciman, indicated that the government was looking at implementing a mandatory rating system for video games with enforcement from the Ministry's theatres branch, but nothing materialized during the Conservative's two terms in office.

2.10. Standing Committee on Justice and Legal Affairs, Report on Crime Cards and Board Games, 1994

The government examination of this issue resulted from the introduction of sadistic board games and collector cards that featured serial killers and other notorious criminals in collector sets. One type of card featured a picture of the murderer on the front, with victim statistics on the back. Debbie Mahaffy launched a national campaign to have these terrible cards removed from circulation, and due to her tireless efforts, the federal government took up the issue.

In February 1993, Revenue Minister Otto Jelinek said he was prepared to close the border to imports of serial killer collector cards and board games and take his chances in court should the ban be challenged. "I hope we can take definitive action in the not-too-distant future to keep this crap out of the country," he said. While he was prepared to take that step, his preferred option was to change the *Criminal Code* to deal with the problem.[49] The Conservative family caucus had proposed amending the *Criminal Code* to broaden the legal definition of obscenity to include the undue exploitation of violence. Mr. Jelinek supported the proposal, as did Justice Minister Pierre Blais.[50]

The issue was referred to the Standing Committee on Justice and Legal Affairs and in November 1994 they issued their *Report on Crime Cards and Board Games*. The Committee, which received input from individuals and several government departments, recommended against legislation to deal specifically with crime cards and board games, as it was felt that these products represented only part of the problem. The Committee, instead, supported a broader approach and recommended -- as had previous government committees -- that subsection 163(8) of the *Criminal Code*, which defines what is "obscene", be amended or that a stand-alone provision be created to prohibit the "undue exploitation or glorification of horror, cruelty or violence."[51]

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[48] Ibid
[49] *Jelinek pledges ban on killer cards, games,* Kitchener-Waterloo Record, February 26, 1993
[50] *'Killer cards' may get Easter ban,* Hamilton Spectator, March 1, 1993
[51] *Undue Exploitation of Violence Consultation Paper,* Department of Justice, Ottawa, 1996

2.11. Canadian Radio-television and Telecommunications Commission (CRTC) Hearings on Television Violence, 1995

The CRTC held national and regional public consultations on television violence in nine cities across Canada, completing the process in October 1995. The hearings allowed the public and industry to comment on specific approaches to television violence and recommend alternative or additional measures to address the problem. The hearings focused on how to establish and implement a national programming classification system, parental control technologies, and how to address the problem of the unequal application of restrictions on television violence between Canadian broadcasters and foreign and other services distributed via cable.

In March 1996, the CRTC issued a public notice (CRTC 1996-36) presenting its' policy on violence in television programming. The CRTC's focus was self-regulation by the broadcasting industry, a national programming classification system compatible with V-chip technology, and media literacy and public awareness programs.[52]

2.12. Department of Justice Consultation Paper, Undue Exploitation of Violence, 1996

In March 1996, the Department of Justice released a consultation paper on the "undue exploitation of violence" as a follow up to the report of the Standing Committee on Justice and Legal Affairs *Report on Crime Cards and Board Games.* The purpose of the paper was to gather information on the voluntary and regulatory steps that had occurred up to that point, and assess whether there were other steps, legislative or non-legislative, that the federal government should consider to address the most extreme expressions of violence in the media.

The introduction acknowledged that graphic portrayals of violence, including sexual violence, had become numerous and increasingly accessible, and that there was "growing public concern about gratuitous and excessive portrayals of violence and the potential impact on Canadian society, particularly women and young persons".[53] Concerned groups and individuals were invited to submit briefs to the Justice Department responding to key issues identified in the consultation paper (http://canada.justice.gc.ca/en/cons/uev/undue.html).

While the Justice Department stated that "reducing media violence in all forms" was "a key component of the federal strategy to reduce violence in society", no changes were made to the *Criminal Code* to control the exploitation of violence as a result of this consultation.

2.13. Government of British Columbia: Media Violence Initiatives

At various times, the government of British Columbia has engaged in aggressive and innovative strategies for reducing media violence. In 1996, B.C. Education Minister Moe Sihota expressed his intention to combat television violence by seeking to embarrass the sponsors of violent programming through identifying them publicly. This followed a visit to Ottawa where he appealed to Sheila Copps, the Minister responsible for broadcasting, to appoint a federal watchdog to monitor violence in TV programming, a suggestion Ms Copps rejected as "grandstanding".

Undeterred, Mr. Sihota and senior officials from his ministry met with representatives of the B.C. Association of Broadcasters to discuss the implications of his proposal. He also announced plans to travel to the United States to meet with activists there. In an interview with the Globe and Mail, Mr. Sihota

[52] Ibid
[53] Ibid

said he had "not met anyone who thinks there is not too much violence on television. And there is a sense that we can make a change in this."[54]

Unfortunately, he left cabinet and the initiative languished until November 1999, when he met representatives from the Coalition for Responsible Television (CRTV) in Toronto at a conference on filing lawsuits against entertainment companies. At that point, Mr. Sihota was Minister of Social Development, and the two parties teamed up with the intention of compiling a list of the five most violent television programs shown in B.C., after which Mr. Sihota planned to meet with the sponsors. Unfortunately, he once again left cabinet and nothing came of it.

In 2000, the B.C. government adopted a very strong public stance on media violence and launched a number of initiatives to combat it. Following a decision by the B.C. Film Classification Office to designate the ultra-violent video game, *Soldier of Fortune*, as an "adult" product, the province undertook a public consultation process to examine a legislated video game classification system. Later in the year, Premier Ujjal Dosanjh, Attorney General Andrew Petter and Education Minister Penny Priddy, declared media violence “a threat to children”, and launched a provincial strategy to promote "safe media". In a news release announcing the strategy, Premier Dosanjh said, “We need to help parents and communities to protect children who are being targeted with violent images every day in television, movies and video games.”[55] Following completion of the video game consultation process, the government introduced *Bill 19 2001 - Video Games Act* (http://www.legis.gov.bc.ca/2001/3rd_read/gov19-3.htm).

As the annual meeting of the Federal Provincial Territorial Justice Ministers was approaching, Attorney General Petter announced that he would call on the justice ministers to create “a national strategy to counter child and youth-targeted violence in the media"[56] and urge other provinces to institute a video game classification system. At the meeting, he was successful in convincing the Justice Ministers to form a Federal Provincial Territorial Working Group on Children and Violence in Video Games and New Media.

Bill 19 2001 - Video Games Act was passed, but when the NDP government was defeated, the incoming Liberal government scrapped the legislation in favour of industry self-regulation using the ratings assigned by the American-based and industry-run Entertainment Software Rating Board (ESRB). In November 2001, Solicitor-General Rich Coleman told reporters a voluntary scheme that provides “some discipline in the marketplace” could accomplish the same goals as legislation, and he urged parents to avoid retailers who failed to voluntarily enforce the ESRB ratings.[57]

However, early in 2004, the government proceeded to amend B.C.’s *Motion Picture Act* to permit the regulation of video games, and they are now in the process of developing Regulations such that games rated by the ESRB as Mature cannot be sold, rented, or distributed to those under the age of 17. A penalty to both the clerk and the store owner will be established.[58]

It’s worth noting, that Ujjal Dosanjh went on to run successfully for the federal Liberals following the defeat of the NDP, and has since been appointed Minister of Health. Mr. Dosanjh is ideally placed to initiate the “national strategy to counter child and youth-targeted violence in the media" that his government demanded while he was Premier of British Columbia.

2.14. Federal Provincial Territorial Working Group on Children and Violence in Video Games and New Media, 2000

This group was formed in response to a request from B.C. Attorney General Andrew Petter at the annual meeting of the federal provincial territorial justice ministers in September 2000. Co-chaired by Pierre

[54] *B.C. plans attack on TV violence,* Globe and Mail, October 24, 1996
[55] *Province Announces Strategy to Turn Off Violence,* B.C. Ministry of the Attorney General news release, October 17, 2000
[56] *B.C. Calls for National Strategy to Counter Media Violence,* B.C. Ministry of the Attorney General news release, September 7, 2000
[57] *B.C. government adopts optional video-game code*, Globe and Mail, November 16, 2001
[58] Email dated August 16, 2004 to V. Smith from Steven Pelton, A/Deputy Director, B.C. Film Classification Office

Senecal, Acting Director of Policy and Coordination at the National Crime Prevention Centre, the working group commissioned research into the violent video game situation in Canada. Because they hired a consulting firm that works in "new media", the reports produced by the company primarily reflect the industry's position that self-regulation is preferable to government legislation. While an additional research agenda was proposed by the FPT Working Group, it was abandoned and the group disbanded due, Mr. Senecal advises, to the "tragic events of September 11, 2001 and the realignment of government departmental resources".[59]

[59]Email dated January 20, 2003 to V. Smith from Pierre Senecal, Acting Director, Policy and Coordination, National Crime Prevention Centre

3. RESEARCH

3.1. Introduction

A large body of research exists on the effects of exposure to violent entertainment going back to the 1920s in the United States, relating to a variety of media which came under scrutiny following introduction: movies in the 1920s, horror or "crime comics" in the 1950s, television in the 1960s, cable television and videos in the 1980s,[60] and video games in the 1990s. Americans have been at the forefront of research on this issue, possibly because much of the violent entertainment on the market originates in their country. It would be useful to have specifically Canadian research but, as mentioned previously, the research agenda proposed by the Federal Provincial Territorial Working Group on Children and Violence in Video Games and New Media was abandoned.

While there are individuals who dispute the research findings, it appears the majority of medical and mental health experts in North America agree that exposure to violent media can have harmful effects, particularly on children. This was reflected in an unprecedented joint statement released in July 2000 by the American Academy of Pediatrics, American Psychological Association, American Academy of Child & Adolescent Psychiatry, American Medical Association, American Academy of Family Physicians and the American Psychiatric Association. Their *Joint Statement on the Impact of Entertainment Violence on Children* presented to a Congressional Public Health Summit in July 2000 stated:

> *At this time, well over 1,000 studies -- including reports from the Surgeon General's office, the National Institute of Mental Health, and numerous studies conducted by leading figures within our medical and public health organizations -- our own members -- point overwhelmingly to a causal connection between media violence and aggressive behavior in some children. The conclusion of the public health community, based on over 30 years of research, is that viewing entertainment violence can lead to increases in aggressive attitudes, values and behavior, particularly in children. Its effects are measurable and long-lasting.*[61]

In 1992, Dr. Brandon Centerwall, an epidemiologist studying the rising tide of violence in the United States, offered this disturbing conclusion: "long-term childhood exposure to TV is a causal factor behind approximately one-half of the homicides committed in the United States, or approximately 10,000 homicides committed annually". He further stated that "if, hypothetically, TV technology had never been developed, there would today be 10,000 fewer homicides each year in the United States."[62]

In their position statement, *Impact of Media Use on Children and Youth*, the Canadian Paediatric Society (CPS) stated, "The influence of the media on the psychosocial development of children is profound", "data showing the negative effects of exposure to violence, inappropriate sexuality and offensive language are convincing", and the Society advises physicians "who see a child with a history of aggressive behaviour [to] inquire about the child's exposure to violence portrayed on television".[63]

In April 2003, the CPS announced a *Media Pulse* initiative designed to "raise awareness about the potential impact of media use and messages on the health and well-being of children and youth":

[60] *Undue Exploitation of Violence Consultation Paper,* Department of Justice, Ottawa, 1996
[61] *Joint Statement on the Impact of Entertainment Violence on Children* presented to the Congressional Public Health Summit by the American Academy of Pediatrics, American Psychological Association, American Academy of Child & Adolescent Psychiatry, American Medical Association, American Academy of Family Physicians and the American Psychiatric Association, July 2000
[62] *Television and Violence*, Dr. Brandon Centerwall, Journal of the American Medical Association, June 10, 1992
[63] *Impact of Media Use on Children and Youth,* Canadian Paediatric Society position statement, 2003

TERMS USED BY MEDIA VIOLENCE RESEARCHERS

Violent Media: Violent media are those that depict intentional attempts by individuals to inflict harm on others. An "individual" can be a nonhuman cartoon character, a real person, or anything in between. Thus, traditional Saturday-morning cartoons (e.g., "Mighty Mouse," "Road Runner") are filled with violence.

Aggression: Aggression is behavior intended to harm another individual who is motivated to avoid that harm. It is not an affect, emotion, or aggressive thought, plan, or wish. This definition excludes accidental acts that lead to harm, such as losing control of an auto and accidentally killing a pedestrian, but includes behaviors intended to harm even if the attempt fails, such as when a bullet fired from a gun misses its human target.

Violence: Violence refers to extreme forms of aggression, such as physical assault and murder. All violence is aggression, but not all aggression is violence.

SOURCE: Effects of Violent Video Games on Aggressive Behavior, Aggressive Cognition, Aggressive Affect, Physiological Arousal, and Prosocial Behavior: A Meta-Analytic Review of the Scientific Literature, Craig A. Anderson and Brad J. Bushman, Psychological Science, September 2001

Media Pulse will help health professionals to understand the powerful influence of media in the lives of their young patients, become familiar with the current research and incorporate this knowledge into the practice setting.

The Media Pulse project also includes a guide for health practitioners. This handbook will present current research, provide physicians with an assessment tool for measuring media use in the home and offer practical tips for both physicians and parents. The guide will be distributed to over 15,500 paediatricians and family doctors with the May/June 2003 issue of Paediatrics & Child Health, the peer-reviewed journal of the Canadian Paediatric Society.[64]

A *Media Pulse* professional development workshop was presented at the Canadian Paediatric Society's 2003 Annual General Meeting.

The *Media Pulse* Advisory Committee includes Dr. Simon Davidson, Chief of Psychiatry at the Children's Hospital for Eastern Ontario, Dr. Arlette Lefebvre, Staff Psychiatrist at the Hospital for Sick Children in Toronto, and Dr. Peter Nieman, Paediatrician at the Alberta Children's Hospital in Calgary.[65]

In testifying before a U.S. Senate Commerce Committee hearing, Professor Craig Anderson provided the following information regarding the influence of violent television and movies:

> *Fact 1. Exposure to violent TV and movies causes increases in aggression and violence.*
>
> *Fact 2. These effects are of two kinds: short term and long term. The short-term effect is that aggression increases immediately after viewing a violent TV show or movie, and lasts for at least 20 minutes. The long-term effect is that repeated exposure to violent TV and movies increases the violence-proneness of the person watching such shows. In essence, children who watch a lot of violent shows become more violent as adults than they would have become had they not been exposed to so much TV and movie violence.*
>
> *Fact 3. Both the long term and the short-term effects occur to both boys and girls.*
>
> *Fact 4. The effects of TV and movie violence on aggression are not small. Indeed, the media violence effect on aggression is bigger than the effect of exposure to lead on IQ scores in*

[64] *Media Awareness Network and Canadian Paediatric Society Join Forces on Media's Impact on Health,* Media Awareness Network news release, Ottawa, April 10, 2003
[65] *Ibid*

children, the effect of calcium intake on bone mass, the effect of homework on academic achievement, or the effect of asbestos exposure on cancer.[66]

He also explained to the Senators why violent media increases aggression and violence:

Why does exposure to violent media increase aggression and violence? There are several different ways in which watching or playing violent media can increase aggression and violence. The most powerful and long lasting involves learning processes. From infancy, humans learn how to perceive, interpret, judge, and respond to events in the physical and social environment. We learn by observing the world around us, and by acting on that world. We learn rules for how the social world works. We learn behavioral scripts and use them to interpret events and actions of others and to guide our own behavioral responses to those events.

These various knowledge structures develop over time. They are based on the day-to-day observations of and interactions with other people, real (as in the family) and imagined (as in the mass media). Children who are exposed to a lot of violent media learn a number of lessons that change them into more aggressive people. They learn that there are lots of bad people out there who will hurt them. They come to expect others to be mean and nasty. They learn to interpret negative events that occur to them as intentional harm, rather than as an accidental mistake. They learn that the proper way to deal with such harm is to retaliate. Perhaps as importantly, they do not learn nonviolent solutions to interpersonal conflicts.

As these knowledge structures develop over time, they become more complex and difficult to change. In a sense, the developing personality is like slowly-hardening clay. Environmental experiences, including violent media, shape the clay. Changes are relatively easy to make at first, when the clay is soft, but later on changes become increasingly difficult. Longitudinal studies suggest that aggression-related knowledge structures begin to harden around age 8 or 9, and become more perseverant with increasing age.

The result of repeated exposure to violent scripts, regardless of source, can be seen in several different aspects of a person's personality. There is evidence that such exposure increases general feelings of hostility, thoughts about aggression and retaliation, suspicions about the motives of others, and expectations about how others are likely to deal with a potential conflict situation. Repeated exposure to violent media also reduces negative feelings that normally arise when observing someone else get hurt. In other words, people become desensitized to violence. Finally, exposure to violent media teaches people that aggressive retaliation is good and proper.

Much of the research has concentrated on television violence, but can, according to the experts, be extrapolated to other violent media. Professor Anderson made this point eloquently in his testimony:

Why consider the TV and movie violence research literature when discussing video game violence? There are three main reasons. First, the psychological processes underlying TV and movie violence effects on aggression are also at work when people play video games. The similarities between exposure to TV violence and exposure to video game violence are so great that ignoring the TV violence literature would be foolish. Second, the research literature on TV violence effects is vast, whereas the research literature on video game violence is small. Researchers have been investigating TV effects for over 40 years, but video games didn't even exist until the 1970s, and extremely violent video games didn't emerge until the early 1990s. Third, because the TV/movie violence research literature is so mature, there has been ample time to answer early criticisms of the research with additional research designed to address the criticisms.

[66]Testimony of Professor Craig A. Anderson, Ph.D., before the U.S. Senate Commerce Committee hearing on The Impact of Interactive Violence on Children, March 21, 2000. Reproduced with permission.

Thus, the various shoot-from-the-hip criticisms and myths created by those with a vested interest in creating and selling various kinds of violent entertainment media have been successfully tested and debunked. [67]

He also provided responses to a number of myths relating to media violence:

Myth 1. The TV/movie violence literature is inconclusive. Any scientist in any field of science knows that no single study can definitively answer the complex questions encompassed by a given phenomenon. Even the best of studies have limitations. It's a ridiculously easy task to nitpick at any individual study, which frequently happens whenever scientific studies seem to contradict a personal belief or might have implications about the safety of one's products. The history of the smoking/lung cancer debate is a wonderful example of where such nitpicking successfully delayed widespread dissemination and acceptance of the fact that the product (mainly cigarettes) caused injury and death. The myth that the TV/movie violence literature is inconclusive has been similarly perpetuated by self-serving nitpicking.

Scientific answers to complex questions take years of careful research by numerous scientists interested in the same question. We have to examine the questions from multiple perspectives, using multiple methodologies. About 30 years ago, when questioned about the propriety of calling Fidel Castro a communist, Richard Cardinal Cushing replied, "When I see a bird that walks like a duck and swims like a duck and quacks like a duck, I call that bird a duck." When one looks at the whole body of research in the TV/movie violence domain, clear answers do emerge. In this domain, it is now quite clear that exposure to violent media significantly increases aggression and violence in both the immediate situation and over time. The TV/movie violence research community has correctly identified their duck.

Myth 2. Violent media have harmful effects only on a very small minority of people who use these media. One version of this myth is commonly generated by parents who allow their children to watch violent movies and play violent games. It generally sounds like this, "My 12 year old son watches violent TV shows, goes to violent movies, and plays violent video games, and he's never killed anyone." Of course, most people who consume high levels of violent media, adults or youth, do not end up in prison for violent crimes. Most smokers do not die of lung cancer, either. The more relevant question is whether many (or most) people become more angry, aggressive, and violent as a result of being exposed to high levels of media violence. Are they more likely to slap a child or spouse when provoked? Are they more likely to drive aggressively, and display "road rage?" Are they more likely to assault co-workers? The answer is a clear yes.

Myth 3. Violent media, especially violent games, allow a person to get rid of violent tendencies in a non harmful way. This myth has a long history and has at least two labels: the catharsis hypothesis, or venting. The basic idea is that various frustrations and stresses produce an accumulation of violent tendencies or motivations somewhere in the body, and that venting these aggressive inclinations either by observing violent media or by aggressive game playing will somehow lead to a healthy reduction in these pent-up violent tendencies. This idea is that it is not only incorrect, but in fact the opposite actually happens. We've known for over thirty years that behaving aggressively or watching someone else behave aggressively in one context, including in "safe" games of one kind or another, increases subsequent aggression. It does not decrease it.

Myth 4. Laboratory studies of aggression do not measure "real" aggression, and are therefore irrelevant. This myth persists despite the successes of psychological laboratory research in a variety of domains. In the last few years, social psychologists from the University of Southern California and from Iowa State University have carefully examined this claim, using very

[67] Ibid

different methodologies, and have clearly demonstrated it to be nothing more than a myth. Laboratory studies of aggression accurately and validly measure "real" aggression.

Myth 5. The magnitude of violent media effects on aggression and violence is trivially small. This myth is related to Myth 2, which claims that only a few people are influenced by media violence. In fact, as noted earlier the TV violence effect on aggression and violence is larger than many effects that are seen as huge by the medical profession and by society at large. Furthermore, preliminary evidence and well-developed theory suggests that the violent video game effects may be substantially larger. [68]

Craig Anderson is Professor of Psychology and Chair of the Department of Psychology at Iowa State University, has studied human behaviour for over 25 years, and wrote the "Human Aggression and Violence" articles for both the *Encyclopedia of Psychology* and the *Encyclopedia of Sociology*. [69]

In their report, *Youth and Violence - Medicine, Nursing, and Public Health: Connecting the Dots to Prevent Violence*, the Commission for the Prevention of Youth Violence included reducing exposure to media violence as one of their seven priorities. Their report stated:

Children and youth are greatly influenced by what they hear and see in movies, television, the Internet, video games, and music. Extensive evidence documents the strong, pervasive, and deleterious effects of media violence on children. The media industry must be responsive to these scientific data.[70]

The organizations comprising the Commission for the Prevention of Youth Violence are the American Academy of Child and Adolescent Psychiatry, American Academy of Family Physicians, American Academy of Pediatrics, American College of Physicians-American Society of Internal Medicine, American Medical Association, American Medical Association Alliance, American Nurses Association, American Psychiatric Association, American Public Health Association, and the U.S. Department of Health and Human Services.

To recap, the following North American medical and mental health organizations have acknowledged the harmful influence of violent media and endorsed the research findings:

American Academy of Child & Adolescent Psychiatry
American Academy of Family Physicians
American Academy of Mental Health
American Academy of Pediatrics
American College of Physicians-American Society of Internal Medicine
American Medical Association
American Medical Association Alliance
American Nurses Association
American Psychiatric Association
American Psychological Association
American Public Health Association
Canadian Paediatric Society
National Institute of Mental Health (U.S.)
U.S. Department of Health and Human Services
U.S. Surgeon General

Something to remember while reviewing the findings on media violence that follow, is recent research in Canada and the United States revealing that the brains of adolescents, who are huge consumers of

[68] Ibid
[69] Ibid
[70] *Youth and Violence - Medicine, Nursing, and Public Health: Connecting the Dots to Prevent Violence*, Commission for the Prevention of Youth Violence, December 2000

violent media, are going "through a biological remodeling as critical to human development as that which takes place during the first two years of life, a discovery with profound implications for educators, behavioural scientists, pediatric health professionals and... parents".[71] Until scientists began employing MRI technology a few years ago, the teenage brain was thought to be largely complete in its development.[72] New research proves that to be false.

Richard Restak, a neuropsychiatrist and author of *The Secret Life of the Brain*, points out that "the teenage brain is a work in progress", and an "adolescent's choices determine the quality of his brain".[73] According to Ron Dahl, a pediatrician and child psychiatric researcher at the University of Pittsburgh Medical Center, adolescence "...is a sensitive time, when feelings are becoming linked with rational thought. The stakes are very high, and parents need to feel that it's OK to be monitoring what their adolescents are doing."[74]

The following provides research highlights. Complete reports are available through various web sites and URLS are provided at the end of this section.

3.2. Impact of Media Exposure on the Developing Brain

In November 2003, the Kaiser Family Foundation (U.S.) released the results of a survey that examined the media use of very young children. The results showed that two-thirds of the country's children under 6, including those as young as 6 months old, spend an average of two hours a day in front of a TV, computer or video screen. The reaction from pediatricians was one of deep concern. "My reaction was fatalistic dismay," said pediatrician Michael Rich, director of the Center on Media and Child Health at Children's Hospital in Boston. While he knew the problem existed, he was surprised at how widespread and how young it starts.[75] A policy statement written by the American Academy of Pediatrics says children under 2 should not watch TV at all, and no child of any age should have a TV in the bedroom. At the crux of this, is how the human brain develops.

An infant's brain, unlike other organs, which at birth are miniature versions of what they will be in the adult human body, continues to evolve for another two years, weeding out neural connections that aren't used. If a child is hearing-impaired, for instance, the brain will prune circuits that process spoken language and reroute those cells into visual circuits. [76]

The following, excerpted from *Understanding TV's effects on the developing brain*, explains further:

> *Neuroscientists have shown that environmental experiences significantly shape the developing brain because of the plasticity of its neuronal connectivity. Thus, repeated exposure to any stimulus in a child's environment may forcibly impact mental and emotional growth, either by setting up particular circuitry ("habits of mind") or by depriving the brain of other experiences. While appropriate stimuli — close interaction with loving caregivers; an enriched, interactive, human language environment; engrossing hands-on play opportunities; and age-appropriate academic stimulation — enhance the brain's development, environments that encourage intellectual passivity and maladaptive behavior (e.g., impulsivity, violence), or deprive the brain of important chances to participate actively in social relationships, creative play, reflection and complex problem-solving, may have deleterious and irrevocable consequences. In addition, trying to plunge youngsters into academic learning, when they should be personally investigating the three-dimensional world, risks bypassing important aspects of development.*

[71] *Please excuse the mess,* Globe and Mail, May 10, 2003
[72] *The teen brain,* USA Weekend.com, May 18, 2003
[73] Ibid
[74] Ibid
[75] *With TV so loud, no one's listening,* Boston Globe, November 6, 2003
[76] Ibid

Potential hazards in a media culture

Negative outcomes have been observed in today's schools, which appear to be related to too much of the wrong kind of media exposure. An "epidemic" of attention deficit disorder, behavioral problems, faltering academic abilities, language difficulties (which extend to reading comprehension as well as oral expression), and weak problem-solving skills are reported by teachers across the United States. Of course, parents' rushed life-styles and societal changes are partially responsible, but a growing body of research on television viewing clearly supports its causation role, with different children's tolerance thresholds varying widely.

Too much television — particularly at ages critical for language development and manipulative play — can impinge negatively on young minds in several different ways including the following:

... The nature of the stimulus may predispose some children to attention problems. Even aside from violent or overly stimulating sexual content, the fast-paced, attention-grabbing "features" of children's programming (e.g., rapid zooms and pans, flashes of color, quick movement in the peripheral visual field, sudden loud noises) were modeled after advertising research, which determined that this technique is the best way to engage the brain's attention involuntarily. Such experiences deprive the child of practice in using his own brain independently, as in games, hobbies, social interaction, or just "fussing around." I have talked to many parents of children diagnosed with attention deficit disorder who found the difficulty markedly improved after they took away television viewing privileges.

The brain's executive control system, or pre-frontal cortex, is responsible for planning, organizing and sequencing behavior for self-control, moral judgment and attention. These centers develop throughout childhood and adolescence, but some research has suggested that "mindless" television or video games may idle this particular part of the brain and impoverish its development. Until we know more about the interaction of environmental stimulation and the stages of pre-frontal development, it seems a grave error to expose children to a stimulus that may short-change this critical system.[77]

According to the Kaiser study, two-thirds of children under 6 are growing up in homes where TV is on half the time or more, even when no one is watching. Dr. Rich compares this to second-hand smoke and says there is clinical evidence showing the exposure has a cumulative effect. You might not see it for a while, maybe years, Dr. Rich says, but as they get older, children with second-hand exposure are more jittery and nervous, more irritable and more aggressive. The younger they are when it starts, the greater the accumulation. And, when parents are the ones spending hours in front of the TV, it becomes an endorsement not only of TV-watching, but also of the images and messages they watch.[78]

For parents who see screen time as benign, psychologist Jane Healy, a specialist in how children learn, has the following comments: "If you want to fool around with your child this way, that's up to you. I surely wouldn't recommend it." On the other hand, she says, we "probably should be thankful to these parents. They are giving us their kids as the guinea pigs of the future."[79]

3.3. Television and Movies

As noted in the introduction, research indicates that television and movie violence have many effects, particularly on children and youth; some will be affected more than others. But while duration, intensity, and extent of the impact may vary, there are several measurable negative effects of children's exposure to violent entertainment:

[77] *Understanding TV's effects on the developing brain*, Jane M. Healy, Ph.D., AAP News, May 1998
[78] *With TV so loud, no one's listening,* Boston Globe, November 6, 2003
[79] Ibid

Children who see a lot of violence are more likely to view violence as an effective way of settling conflicts. Children exposed to violence are more likely to assume that acts of violence are acceptable behavior.

Viewing violence can lead to emotional desensitization towards violence in real life. It can decrease the likelihood that one will take action on behalf of a victim when violence occurs.

Entertainment violence feeds a perception that the world is a violent and mean place. Viewing violence increases fear of becoming a victim of violence, with a resultant increase in self-protective behaviors and a mistrust of others.

Viewing violence may lead to real life violence. Children exposed to violent programming at a young age have a higher tendency for violent and aggressive behavior later in life than children who are not so exposed.[80]

Some facts from the Canadian Paediatric Society position statement:

The average Canadian child watches nearly 14 hours of television each week • By high school graduation, the average teen will have spent more time watching television than in the classroom • The amount of violence on television is on the rise • The average child sees 12,000 violent acts on television annually, including many depictions of murder and rape • A substantial number of children begin watching television at an earlier age and in greater amounts than what experts recommend

The following groups of children may be more vulnerable to violence on television:

- children from minority and immigrant groups
- emotionally disturbed children
- children with learning disabilities
- children who are abused by their parents
- children in families in distress[81]

As noted by Professor Anderson in his testimony before the U.S. Senate and reiterated in a report written by Professor Wendy Josephson for the Department of Canadian Heritage, research *does not* support the catharsis theory that viewing entertainment violence allows viewers to vent destructive impulses through fantasy instead of acting them out in real life.[82]

The American Academy of Pediatrics issued a *Policy Statement* on media violence in 2001 that provided the following information:

The American Academy of Pediatrics recognizes exposure to violence in media, including television, movies, music, and video games, as a significant risk to the health of children and adolescents. Extensive research evidence indicates that media violence can contribute to aggressive behavior, desensitization to violence, nightmares, and fear of being harmed.

More than 3,500 research studies have examined the association between media violence and violent behavior; all but 18 have shown a positive relationship. Consistent and strong associations between media exposure and increases in aggression have been found in population-based epidemiologic investigations of violence in American society, cross-cultural

[80] *Joint Statement on the Impact of Entertainment Violence on Children,* Presented to the Congressional Public Health Summit by the American Academy of Pediatrics, American Psychological Association, American Academy of Child & Adolescent Psychiatry, American Medical Association, American Academy of Family Physicians and the American Psychiatric Association, July 26, 2000
[81] *Impact of Media Use on Children and Youth,* Canadian Paediatric Society position statement, 2003
[82] *TV Violence: A Review of the Effects on Children of Different Ages,* Wendy L. Josephson, Ph.D, Department of Canadian Heritage, Ottawa, 1995

studies, experimental and "natural" laboratory research, and longitudinal studies that show that aggressive behavior associated with media exposure persists for decades. The strength of the correlation between media violence and aggressive behavior found on meta-analysis is greater than that of calcium intake and bone mass, lead ingestion and lower IQ, condom nonuse and sexually acquired human immunodeficiency virus infection, or environmental tobacco smoke and lung cancer - associations clinicians accept and on which preventive medicine is based without question.

Children are influenced by media - they learn by observing, imitating, and making behaviors their own. Aggressive attitudes and behaviors are learned by imitating observed models. Research has shown that the strongest single correlate with violent behavior is previous exposure to violence. Because children younger than 8 years cannot discriminate between fantasy and reality, they are uniquely vulnerable to learning and adopting as reality the circumstances, attitudes, and behaviors portrayed by entertainment media.[83]

The AAP is an organization of 55,000 primary care pediatricians, pediatric medical subspecialists and pediatric surgical specialists dedicated to the health, safety and well-being of infants, children, adolescents and young adults.[84]

In March 2002, researchers from Columbia University and Mount Sinai Medical Center in New York released the results of a long-term study that followed 700 people from youth to adulthood. Researchers found that the more television a teen watched, the more likely it would be that he or she would commit violent acts later in life. The evidence showed a correlation between watching more than one hour of TV daily and higher rates of assaults, fights, robberies and aggressive acts in later years.[85] Jeffrey G. Johnson, lead author of the study, said the link remained even after researchers statistically subtracted the effects of previous aggressive behaviour, low family income, neighborhood violence, psychiatric disorders and poor parental education, all of which have been found to influence television viewing or violent behaviour.[86] The researchers found that television-watching boys, in particular, were more likely than girls to engage in aggressive acts later in life, most commonly in the form of assaults and fighting that led to injuries. Violent behaviour by girls in the study included robberies and threats of harm.[87] Dr. Johnson, a psychiatric epidemiologist who studies patterns of behaviour, said, "The evidence has gotten to the point where it's overwhelming".[88]

One year later, in March 2003, researchers Rowell Huesmann, Leonard Eron and their colleagues at the University of Michigan, released the results of another study that examined "the longitudinal relations between TV-violence viewing at ages 6 - 10 and adult aggressive behavior about 15 years later for a sample growing up in the 1970s and 1980s". The study found that "childhood exposure to media violence predicts young adult aggressive behavior for both males and females. Identification with aggressive TV characters and perceived realism of TV violence also predict later aggression. These relations persist even when the effects of socioeconomic status, intellectual ability, and a variety of parenting factors are controlled."[89]

3.3.1. Wrestling

According to a study by Wake Forest University School of Medicine, the frequency of watching wrestling on television is positively associated with dating violence and other health risk behaviors such as weapons carrying and driving after drinking. Televised wrestling exposes adolescents to a high frequency of violence between men and women, alcohol use and hearing women referred to in

[83] Policy Statement on Media Violence, American Academy of Pediatrics,*Pediatrics,* Volume 108, Number 5, November 2001
[84] American Academy of Pediatrics web site, July 2003
[85] *Study links TV to teen aggression,* Associated Press, March 29, 2002
[86] *TV viewing raises risk teens may turn violent,* Baltimore Sun, March 29, 2002
[87] *Study finds TV time yields violence,* Boston Globe, March 29, 2002
[88] *Study links TV to teen aggression,* Associated Press, March 29, 2002
[89] *Longitudinal Relations Between Children's Exposure to TV Violence and Their Aggressive and Violent Behavior in Young Adulthood: 1977-1992,* Developmental Psychology, 2003, Vol. 39, No. 2

derogatory terms such as "bitch," the study said. In addition, many of the scenarios played out in the TV wrestling "dramas" present violence as a solution to a problem:[90]

> *"This study has tremendous implications," said Robert H. DuRant, professor and vice chair of pediatrics at Wake Forest and an author of the study. "It shows that exposure to this type of violence on television during this crucial period of time when a teen's cognitive, social and physical development is still being cemented, probably affects adolescents in a negative way."*
>
> *"The level of vulgar language, verbal abuse and physical abuse modeled, with unrealistic outcomes, is astonishing," DuRant said. "For example, during one wrestling match a man dangled a woman upside down and then dropped her on her head, knocking her unconscious. In reality, I know this act would have broken her neck and probably would have killed her. In addition, the announcer of the program, speculating on what the wrestler was going to do with the woman, stated that she 'deserved it' because she had cheated on this wrestler earlier. This teaches an adolescent that it is OK to use violence to resolve conflicts and that women deserve abusive treatment."*
>
> *"The bottom line is that we are affected by what we expose ourselves to," DuRant said. "This study shows that the incidence of date fighting and other violence increases when the exposure to violence increases. Now, wrestling doesn't in itself cause violence, but when combined with overall socialization, violence on television can affect what is perceived as socially acceptable behavior."*[91]

3.3.2. Slasher Films

In 1989, *Time* magazine ran an item on youth violence that included the following on the slasher genre of movie:

> *Among the most offensive purveyors of brutality to women are slasher films. The movies that inaugurated the trend, including Friday the 13th, Halloween and Nightmare on Elm Street, are now tame compared with such opuses as I Spit on Your Grave or Splatter University. The main features: graphic and erotic scenes of female mutilation, rape or murder...*
>
> *Slasher films are widely shown on cable TV, and video shops do a booming business in rentals, especially among eleven to 15-year-olds. Youngsters watch three or four at a clip at all-night "gross-out" parties... Many experts believe that such films may be a contributing factor in date rape, one of the most common adolescent sexual crimes.*
>
> *"Teenagers are only doing what they are told to do," says sociologist Gail Dines-Levy of Boston's Wheelock College. "They are being conformists, not deviants."*[92]

Sexual Sadism and Serial Murder

Park Dietz, Ph.D., is a forensic psychiatrist who has consulted for the FBI, CIA, various U.S. Attorneys General, U.S. Drug Enforcement Agency, U.S. military services and the U.S. Department of Justice. He has been an expert witness for the prosecution in many high-profile murder trials such as those of John Hinckley Jr., Jeffrey Dahmer, Arthur Shawcross and Joel Rifkin. Dr. Dietz believes that slasher movies are contributing to the development of serial killers and sexual sadists because of the linking of sex with brutality in movies targeted at a youth audience. He phrases his concern bluntly:

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[90] *Watching Wrestling Positively Associated with Date Fighting, Say Researchers at Wake Forest University Baptist Medical Center*, Wake Forest University Baptist Medical Center News Release, April 28, 2001

[91] Ibid

[92] *Our Violent Kids: A rise in brutal crimes by the young shakes the soul of society*, Time Magazine, June 12, 1989

If a mad scientist wanted to find a way to raise a generation of sexual sadists in America, he could hardly do better, at our present state of knowledge, than to... expose a generation of teenage boys to films showing women mutilated in the midst of a sexy scene. [93]

While acknowledging that some people become sadists after being abused as children, he says for others, "a deadly seed is planted by violent imagery, seen at a formative age, most often on television and in movies." He is "convinced that a vulnerable youngster may watch a sexy slasher movie and become conditioned to sexual arousal through such images", and that when the "boy becomes a man in his 20s or 30s, society runs the risk that he will seek sexual gratification through actual, not fantasized, brutality."[94] Serial murderer Joel Rifkin told Dr. Dietz that he'd re-enacted with live women, a strangulation scene from the film *Frenzy*; Jeffrey Dahmer tried to recreate a sequence from a movie called *Hellbent Hellraisers II*, in which a victim is hung and skinned.[95]

If you want to do a scientifically meaningful study, show "Body Double" to a group of sexual psychopaths the day before you release them.

The United States, Dr. Dietz believes, is exporting sexual sadism and serial murder to other countries through international distribution of Hollywood films. "With regard to Europe and the countries of the former Soviet Union, he says he has predicted, and is beginning to see, a pattern of increased serial killing and sexual murder 15 to 20 years after those countries began importing American-made slasher films. The interval between the advent of the movies and the spurt in crime matches the period between when a vulnerable boy might view such material and when he becomes best able to commit sexual homicides." [96]

According to Dr. Iris Jackson-Whaley, President of the Ontario Psychological Association:

If a person has psychological problems, a very scary movie can make them worse, not better. There's increasing evidence to show that violence and gore serves to increase the possibility that a disturbed person will act out the violence.[97]

It would be unethical for researchers to conduct experiments on unstable individuals in order to "prove" the connection. As Dr. Dietz points out, studies on the effects of brutally-violent media use university students as test subjects, and those with psychological abnormalities are screened out. "If you want to do a scientifically meaningful study," he says, "show *Body Double* to a group of sexual psychopaths the day before you release them."[98]

Desensitization

At the Hincks Institute conference on television violence in 1993, Dr. Edward Donnerstein told the audience about the desensitization that occurs even in "very healthy" people when exposed to brutally violent media:

In the research that we've done for many, many years, we found that if we expose very healthy individuals to ten hours over two to three weeks of very graphic forms of violence, particularly violence against women, and then have them, for instance, act as a juror in a rape trial and ask them their evaluations of a real victim of violence, we find changes in their perceptions. They don't see as much injury, they don't see as much pain, they don't see as much suffering to a

[93] ~~*Don't*~~ *Touch That Dial: The Impact of the Media on Children & the Family*, Barbara Hatemer and Robert Showers, Huntington House Publishers, Louisiana, 1993
[94] *The Dark World of Park Dietz,* Johns Hopkins Magazine, November 1994
[95] Ibid
[96] Ibid
[97] *The Fun of Fear*, Toronto Star, October 29, 1992
[98] *The Dark World of Park Dietz,* Johns Hopkins Magazine, November 1994

real victim of violence after exposure to media and fantasy violence; desensitization has occurred.

That doesn't mean these people are going to go out and commit a rape; it doesn't mean they're going to go out and commit violent acts; but how they view violence is much different. They're not as sympathetic, they're not as empathetic, and their perceptions about reality for some transient time, have been altered. That's a real affect and it occurs in study after study, and I think it's something important to think about.[99]

3.4. Video Games

Although the first video games emerged in the late 1970s, violent video games came of age in the 1990s, with the introduction of *Mortal Kombat, Street Fighter*, and *Wolfenstein 3D*.[100] At the turn of the century, ever more violent games with increasingly realistic imagery are available to players of all ages. Violent virtual reality games, with their potentially mind-altering technology, loom on the horizon.

Figure 2 - Screen shot from Manhunt

Violent games immediately raised concern among mental health professionals and researchers because the negative effects of violent television on behaviour had been extensively documented, and the games added a very troubling interactive component. The Canadian Paediatric Society policy statement says, "Violent video games should be discouraged because they have harmful effects on children's mental development".[101]

A May 2001 article in *Contemporary Pediatrics* provides the following insight:

Exposure to violent video games is of even more concern than exposure to violence on television because the games take advantage of many of the principles of learning-identification (or participant modeling), practice and repetition, and reward and reinforcement.

Identification with the aggressor increases the likelihood that the participant will imitate behavior; in most violent video games, the player must identify with one violent character and perform violent acts through his eyes. The interactive nature of video games may also increase the likelihood that the participant will learn aggressive behavior. Adding to the increase in learning, the player of a video game is required to repeat behaviors. Last, video games reinforce violent choices with rewards of additional points, longer playing time, or special effects for certain acts of aggression or violence.

A recent study shows that physiologic changes associated with learning take place while playing video games. It demonstrated that striatal dopamine release increases during video game playing and that the correlation between dopamine release and performance level was significant. Dopaminergec neurotransmission is probably related to learning, reinforcement behavior, attention, and sensorimotor integration.

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[99] *Reclaiming Childhood: Responsible Solutions to TV Violence & Our Children,* transcript of the C.M. Hincks Institute conference on television violence, Toronto, 1993

[100] *Effects of Violent Video Games on Aggressive Behavior, Aggressive Cognition, Aggressive Affect, Physiological Arousal, and Prosocial Behavior: A Meta-Analytic Review of the Scientific Literature*, Craig A. Anderson and Brad J. Bushman, Psychological Science, September 2001

[101] *Impact of Media Use on Children and Youth,* Canadian Paediatric Society position statement, 2003

The profound effects of video games on learning were summed up by researchers J. B. Funk and D. D. Buchman, who wrote: "If, as many believe, violence is primarily a learned behavior, then the powerful combinations of demonstration, reward, and practice inherent in electronic game playing creates an ideal instructional environment.... the lessons being taught are that violence is fun, obligatory, easily justified, and essentially without negative consequences." The Columbine shooters are chilling examples of this principle. They were "Doom" fanatics who reconfigured a version of "Doom" to be in the "God mode" (the format in which the player becomes indestructible). The pair graphically reenacted the behavior they learned from the video game - they said the planned shooting was "going to be like f -- ing 'Doom'... Tick, tick, tick, tick ... Haa! That f -- ing shotgun is straight out of 'Doom'."[102]

A study conducted by Simon Fraser University graduate student, Brent de Waal, examined the physiological impact of video games on players aged 10 to 16. The results showed that game play increased heartbeats and anxiety levels, with violent game play raising the levels higher than non-violent games. He discovered that the more the youths played, the lower their heart rate response, a result suggesting desensitization,[103] and that the physiological response is an almost euphoric rush, an "adrenaline hit". This rush appeals most to adolescent boys, a group he describes as "the engine of the video game industry".[104]

[Video games] are the cultural equivalent of genetic engineering, except that in this experiment, even more than the other one, we will be the potential new hybrids, the two-pound mice.

Paul Lynch of the University of Oklahoma Medical School also conducted research measuring physiological responses that again showed violent video games cause much greater physiological changes than non-violent games. His research showed increased heart rate and blood pressure, as well as the aggression-related hormones, adrenaline, noradrenaline and testosterone. Results also indicated that the harmful effect is much greater for males who already test high on measures of anger and hostility. In other words, violent games do not affect everyone the same, with angry youth reacting much more strongly to violent video games.[105]

Professor Craig Anderson explained to the March 2000 U.S. Senate hearing the reasons we can expect violent interactive media to have an even stronger effect on aggression and violence than traditional forms of media violence such as television and movies:

These several reasons all involve differences between TV and video games that influence learning processes. The following four reasons all have considerable research support behind them, but have not yet been extensively investigated in the video game domain.

Reason 1. ***Identification with the aggressor increases imitation of the aggressor.*** *In TV shows and movies there may be several characters with which an observer can identify, some of whom may not behave in a violent fashion. In most violent video games, the player must identify with one violent character. In "first person shooters," for instance, the player assumes the identity of the hero or heroine, and then controls that character's actions throughout the game. This commonly includes selection of weapons and target and use of the weapons to wound, maim, or kill the various enemies in the game environment. Common weapons include guns, grenades, chain saws and other cutting tools, cars and tanks, bombs, hands, and knives.*

[102] *How violent video games may violate children's health,* Elisa Hae-Jung Song, M.D., and Jane E. Anderson, M.D., Contemporary Pediatrics, May 2001
[103] *Kids' Heart Rates Show Effect of Video Games,* Simon Fraser University News Release, May 4, 1995
[104] *Video violence too close to the real thing,* Sterling News Service, July 26, 1995
[105] Testimony of David Walsh, Ph.D., President, National Institute on Media and the Family, before the U.S. Senate Commerce Committee Hearing on The Impact of Interactive Violence on Children, March 21, 2000

Reason 2. ***Active participation increases learning.*** *The violent video game player is a much more active participant than is the violent TV show watcher. That alone may increase the effectiveness of the violent story lines in teaching the underlying retaliatory aggression scripts to the game player. Active participation is a more effective teaching tool in part because it requires attention to the material being taught.*

Reason 3. ***Rehearsing an entire behavioral sequence is more effective than rehearsing only a part of it.*** *The aggression script being rehearsed is more complete in a video game than in a TV show or movie. For example, the video game player must choose to aggress, and in essence rehearses this choice process, whereas the TV viewer does not have to make any such choices. Similarly, in video games the player must carry out the violent action, unlike the violent TV viewer. Indeed, in many video games the player physically enacts the same behaviors in the game that would be required to enact it in the real world. Some games involve shooting a realistic electronic gun, for instance. Some virtual reality games involve the participant throwing punches, ducking, and so on. As the computer revolution continues, the "realism" of the video game environment will increase dramatically.*

Reason 4. ***Repetition increases learning.*** *The addictive nature of video games means that their lessons will be taught repeatedly. This is largely a function of the reinforcing properties of the games, including the active and changing images, the accompanying sounds, and the actual awarding of points or extra lives or special effects when a certain level of performance is reached.*[106]

Speaking to the same Senate hearing, Professor Eugene Provenzo said video games "are the cultural equivalent of genetic engineering, except that in this experiment, even more than the other one, we will be the potential new hybrids, the two-pound mice."[107] After appearing before Chicago City Council to support a proposed video game ordinance, Dr. Michael Rich of the American Academy of Pediatrics told ABC News the problem "has gone from something that was irritating and worrisome to something that is truly a public health emergency." Dr. Rich told City Council that all the available research on violent video games indicates that they desensitize and promote violent acts among those who play, particularly those who play them most -- children.[108]

An April 23, 2000, the American Psychological Association announced the results of two research studies:

"One study reveals that young men who are habitually aggressive may be especially vulnerable to the aggression-enhancing effects of repeated exposure to violent games," said psychologists Craig A. Anderson, Ph.D., and Karen E. Dill, Ph.D. "The other study reveals that even a brief exposure to violent video games can temporarily increase aggressive behavior in all types of participants."

"Violent video games provide a forum for learning and practicing aggressive solutions to conflict situations," said Dr. Anderson. "In the short run, playing a violent video game appears to affect aggression by priming aggressive thoughts. Longer-term effects are likely to be longer lasting as well, as the player learns and practices new aggression-related scripts that can become more and more accessible for use when real-life conflict situations arise."

[106]Testimony of Professor Craig Anderson, Ph.D., before the U.S. Senate Commerce Committee Hearing on The Impact of Interactive Violence on Children, March 21, 2000
[107]Testimony of Professor Eugene F. Provenzo, Jr., School of Education, University of Miami, before the U.S. Senate Commerce Committee Hearing on The Impact of Interactive Violence on Children, March 21, 2000
[108]Testimony of Dr. Michael Rich, Harvard Medical School, representing the American Academy of Pediatrics, before Chicago City Council, October 30, 2000

One major concern is the active nature of the learning environment of the video game," say the authors. "This medium is potentially more dangerous than exposure to violent television and movies, which are known to have substantial effects on aggression and violence."[109]

3.4.1. First-Person Shooter Games

Another perspective on violent video games comes from Lieutenant Colonel Dave Grossman (retired), a former West Point psychology professor and professor of military science. After more than 25 years spent researching the psychology of killing for the U.S. Army, Col. Grossman believes that the willingness to kill does not come naturally to humans, but is a learned behaviour. It requires desensitization by repeated exposure to violence, and classical conditioning by associating aggressive acts with a pleasurable experience. Willingness to kill also relies on stimulus-response training, so that the conditioned response becomes automatic with the right stimulus.[110]

First-person shooter games, notes Col. Grossman, function as conditioning devices of a type and quality used by the military and law enforcement to train personnel to both shoot with accuracy and reflexively. First-person shooter games allow the player to look along the barrel of an on-screen gun and feel as though he is pulling the trigger and killing someone. Simulators are used extensively and the scientific data on their effectiveness in behaviour modification is exhaustive.[111]

For example, one of the most effective and widely used simulators developed by the United States Army -- Multipurpose Arcade Combat Simulator (MACS) -- is a modified Super Nintendo game. The Fire Arms Training Simulator (FATS) used by most law enforcement agencies in the United States, is almost identical to the ultra-violent video arcade game *Time Crisis*. Both teach the player to hit a target and rehearse the act of killing, and both come complete with guns that have recoil. Similarly, the U.S. Marine Corps licensed the game *Doom* and used it to train their combat teams in tactics and to rehearse combat actions of killing.[112] In 1997, the New York Police Department purchased the Ontario government's firearms' training system, described by an aide to Solicitor General Robert Runciman as "a laser disk that essentially looks like a real-life video game police use for officer training."[113]

A classic case of the influence of first-person shooter games can be found in the Paducah, Kentucky school shooting. Michael Carneal, a 14-year-old boy who had never fired a handgun before, fired a few practice shots with a stolen pistol the night before he went into his school with the gun and started shooting students. In this case, 8 shots were apparently fired, with 8 hits, all of them upper torso or head shots. According to Col. Grossman, this is astounding, unprecedented marksmanship, with the only training Carneal received having come from thousands of hours playing video games.[114]

3.4.2. Virtual Reality

Virtual reality (VR) is a system in which a person interacts with a computer-generated world that appears real. Helmet-mounted systems include earphones and a screen in front of each eye onto which a computer image is projected. A pair of wired gloves can transmit motion signals to the computer, which then responds by moving the simulated objects. If the screen covers all the eye's seeing area, users feel as though they are playing inside the simulation.[115] As noted previously, there is exhaustive scientific data on the effectiveness of simulators in behaviour modification, a truly alarming situation if VR games feature violence.

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[109] *Violent Video Games Can Increase Aggression,* American Psychological Association News Release, April 23, 2000
[110] *How violent video games may violate children's health,* Contemporary Pediatrics, May 2001
[111] *Stop Teaching Our Kids to Kill: A Call to Action Against TV, Movie & Video Game Violence*, Lt. Col. Dave Grossman, Gloria DeGaetano, Crown Publishers, New York, 1999
[112] Ibid
[113] *Tory hits Big Apple in fight on crime,* Toronto Sun, July 9, 1997
[114] Statement of Lt. Col. Dave Grossman to the New York State Legislature, October 1999
[115] *Virtual reality too real for many,* Globe and Mail, March 4, 1995

The experience provided by simulators is so realistic that they are used to train people to fly airplanes and helicopters, drive tanks, pilot ships, etc. A 1995 article in the Globe and Mail reporting on the hazards of virtual reality pointed out the complete lack of government regulation, despite the well-documented physical and psychological problems the devices can cause. According to the Globe, "Various armed forces, including Canada's, as well as NASA have collected data on the negative experiences of thousands of people when they use highly realistic training simulators." [116]

The big concern is little Johnny, who is eight years old and decides by himself that he is going to spend four hours a day inside his virtual headset. And there are things that VR can do to kids that aren't good.

The Vision 1 to 1 eye-care web site offers the following caution to VR users: It may take some time (minutes for some, hours for others) to regain visual and physical balance, and they suggest that VR users should "refrain from driving or performing other exacting visual tasks after simulations and should be accompanied by persons who have not engaged in VR simulations on the same occasion".[117]

The president of a California company that makes head mount systems used in VR applications told the Globe, "The big concern is little Johnny, who is eight years old and decides by himself that he is going to spend four hours a day inside his virtual headset. And there are things that VR can do to kids that aren't good".[118] Back in 1993 when video games were much less realistic, Fred Ritchin, a teacher of interactive telecommunications and photography at New York University warned, "The potential for violence in virtual reality makes the discussion about televised violence seem prehistoric..."[119] And yet, ten years later, the technology has continued to advance in leaps and bounds, but government regulation has not kept pace.

3.5. Music

A study released in September 2001 revealed that music can stimulate the same parts of the brain as food and sex. Dr. Anne Blood, a researcher at Massachusetts General Hospital, and her co-author Robert Zatorre of McGill University in Montreal, used positron emission tomography (PET) scans to find areas of the brain stimulated by music. They found many of the brain structures activated by the euphoria of food or sex are stimulated by music too.[120] John A. Sloboda, a British music psychologist and expert in the study of the emotional response to music, says:

> *Music can arouse an emotional response of intensity rarely experienced in everyday life. Yet no one has studied the relationship between human psychology and music until recently, because music was seen to have no immediate pragmatic value by the scientific and academic communities. Music, like language, is another form of patterned information, though far more complex than language.* [121]

There are obvious differences between watching violent television and movies, playing violent video games and listening to violent music. One is the lack of a visual component, and another is that the aggressive lyrics of popular music are often not easily discernible. Violent visual media, on the other hand, make their violent content abundantly clear. Nonetheless, research has shown that there are valid reasons to worry about potentially harmful effects resulting from exposure to violent music lyrics, as "numerous studies have shown that aggressive words can prime aggressive thoughts, perceptions, and

[116] Ibid
[117] Vision 1 to 1 web site, July 2003
[118] *Virtual reality too real for many,* Globe and Mail, March 4, 1995
[119] *Arming video serial killers,* Toronto Star, August 14, 1993
[120] *Music thrills the mind just like food and sex,* Toronto Star, September 25, 2001
[121] *Music moves us,* Toronto Star, October 6, 2001

behavior" and that "such effects can occur even when the stimulus has not been consciously recognized".[122]

In December 1996, the American Academy of Pediatrics issued a Policy Statement on the impact of music lyrics and music videos on children. The AAP noted that over the past forty years, rock music lyrics have become increasingly explicit, particularly concerning sex, drugs and violence, and expressed their great concern "that negative behavioral messages [were] being recorded and repeatedly broadcast". The AAP stated that, "in some cases, lyrics communicate potentially harmful health messages".[123]

In 2003, the *Journal of Personality and Social Psychology* reported on five experiments conducted to determine the effect of violent music lyrics:

> *The consistent results from these five experiments provide strong evidence that songs with violent lyrics increase aggression-related cognition and affect and that this effect is the result of the violence in the lyrics.*
>
> *The increase in aggressive thoughts was shown in three different ways. Violent songs led to more aggressive interpretations of ambiguously aggressive words, increased the relative speed with which people read aggressive (vs. nonaggressive) words, and increased the proportion of aggressive word completions.* [124]

The researchers explained the short-term effect:

> *The violent-song-inspired increases in aggressive thoughts and feelings can influence perceptions of ongoing social interactions, coloring them with an aggressive tint. Such aggression-biased interpretations can, in turn instigate a more aggressive response (verbal or physical) than would have been emitted in a nonbiased state, thus provoking an aggressive escalatory spiral of antisocial exchanges. In sum, listening to angry, violent music does not appear to provide the kind of cathartic release that the general public and some professional and pop psychologists believe.* [125]

Researchers believe there may also be an indirect effect similar to that found in the television research literature:

> *... short-term increases in aggression due to violent lyrics affect the person's social environment as well as the person... In other words, repeated short-term media violence effects (lyrics, TV, movies, video games) can indirectly create a more hostile social environment, which further promotes the development of chronic hostility biases in the person's internal makeup -- their perceptual and social scripts and schemata and related knowledge structures -- in short, their personality.* [126]

The long-term effect of repeated exposure to violent music lyrics is that it may contribute to the development of an aggressive personality.[127]

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[122]*Exposure to Violent Media: The Effects of Songs With Violent Lyrics on Aggressive Thoughts and Feelings*, Craig Anderson, Nicholas Carnagey, Janie Eubanks, Journal of Personality and Social Psychology, 2003, Vol. 84. No. 5
[123]*Impact of Music Lyrics and Music Videos on Children and Youth,* American Academy of Pediatrics Policy Statement, December 1996
[124]*Exposure to Violent Media: The Effects of Songs With Violent Lyrics on Aggressive Thoughts and Feelings*, Craig Anderson, Nicholas Carnagey, Janie Eubanks, Journal of Personality and Social Psychology, 2003, Vol. 84. No. 5
[125]Ibid
[126]Ibid
[127]Ibid

3.5.1. Music Videos

Several experiments have examined the effects of aggressive music videos. A 1989 study found "that exposing males to nonerotic violent music videos led to a significant increase in adversarial sexual beliefs and negative affect".[128] Another found that "males who had been randomly assigned to view violent rap music videos became more accepting of the use of violence in dealing with interpersonal problems. Related research found that males and females exposed to violent rap music videos became more accepting of teen dating violence. College students exposed to rock music videos with antisocial themes produced a greater acceptance of antisocial behavior."[129]

Music videos are much like other visual media (television, movies), in that they combine a story with violent imagery. As researchers note, "the finding that they produce similar effects is not surprising".[130] Following are excerpts from statements issued by three medical organizations:

Canadian Paediatric Society:

> *… music videos may have a significant behavioural impact by desensitizing viewers to violence... more than half contain violence that is often committed against women. Attractive role models are the aggressors in more than 80% of music video violence... the potential negative impact of explicit music lyrics should put parents and paediatricians on guard -- paediatricians should bring this up in anticipatory guidance discussions with teenagers and their parents.*[131]

American Academy of Pediatrics:

> *Music video formats are popular among children and adolescents. When music lyrics are illustrated in music videos, their potential impact is magnified. Teenagers who may not "hear" or understand rock lyrics cannot avoid the often disturbing images that characterize a growing number of videos. In addition, music videos are self-reinforcing: if viewers hear a song after having seen the video version, they immediately "flash back" to the visual imagery in the video. Music videos may represent a relatively new art form, but it is one that often contains an excess of sexism, violence, substance abuse, suicides, and inappropriate sexual behavior.*
>
> *A handful of experimental studies indicate that music videos may have a significant behavioral impact by desensitizing viewers to violence, and by making teenagers more likely to approve of premarital sex. In one study, eliminating access to MTV decreased the frequency of violent acts among teenagers and young adults in a locked treatment facility.*[132]

American Medical Association:

> *The AMA is concerned about the possible impact of destructive themes depicted in certain types of popular rock music. The vivid depiction of drug and alcohol use, suicide, violence, demonology, sexual exploitation, racism and bigotry could be harmful to some young people, especially vulnerable children and adolescents who are socially alienated from traditional value systems and positive support groups.*[133]

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[128] Ibid
[129] Ibid
[130] Ibid
[131] *Impact of Media Use on Children and Youth,* Canadian Paediatric Society position statement, 2003
[132] *Impact of Music Lyrics and Music Videos on Children and Youth,* American Academy of Pediatrics Policy Statement, December 1996
[133] *Statement of Concern Regarding Destructive Themes Contained in Rock Music,* American Medical Association, 1995

3.6. Violent and/or Degrading Pornography

The word "pornography" is given many meanings. For the purposes of this report, pornography will mean sexually explicit material designed to appeal to erotic or sexual appetites or inclinations (to distinguish it from sex education material). In their landmark decision upholding the constitutionality of the *Criminal Code* obscenity law (*Butler* decision), the Supreme Court of Canada divided pornography into three categories:

- explicit sex with violence
- explicit sex without violence, but which subjects people to treatment that is degrading or dehumanizing
- explicit sex without violence that is neither degrading nor dehumanizing

The focus here will be on the first two categories because they are considered harmful. Indeed, the Ontario Attorney General's factum to the Supreme Court of Canada on *Butler* refers to "obscenity's causal role in the commission of acts of violence against women".

Criminal Neglect: Why Sex Offenders Go Free, written by Dr. W.L. Marshall, Professor of Psychology at Queen's University in Kingston, Ontario, and Co-director of the Kingston Sexual Behaviour Clinic, and journalist Sylvia Barrett,[134] provides a summary of research on the subject:

> *Numerous studies over the past decade have documented the negative influences of violent pornography on the attitudes of viewers. Even if they do not actually reenact the violent scenes witnessed, men who view material that depicts women enjoying rape and other forms of sexual violence are more accepting of violence against women and of rape myths; they have more rape fantasies, and they report a greater willingness to commit rapes themselves.*
>
> *After viewing scenes of rape, the proportion of men who admit at least some likelihood that they would commit a sexual assault if they were sure not to be caught is rarely less than thirty-five percent and has been as high as sixty-five percent. Furthermore, the increased tendency occurs irrespective of social class, intellect, or educational attainment.*
>
> *Neil Malamuth, a psychologist now working in the United States who did much of his early work at the University of Manitoba, has repeatedly found that even brief exposures to violent pornography can lead to a more callous attitude towards rape and women in general. In studies on the effects of pornography, participants are carefully counseled before being dismissed from the laboratory... The average pornography consumer, however, is not debriefed and in some cases exposure to scenes of forced sex initiates a process that eventually culminates in an overt sexual attack.*
>
> *There are two ways such men can be affected by the pornographic scenarios they have seen. The first is desensitization. Desensitization is part of the human experience; it happens with pornography just as it happens with any other emotionally provocative presentation.*
>
> *The second way pornography can affect the viewer is by provoking imitation, which again is a common experience. Indeed, the eminent psychologist Albert Bandura claims that this is the primary basis for all human learning. When we see activities that lead consistently to desirable outcomes -- in this case, sexual gratification -- with no negative consequences, the probability of at least some of us imitating them is very high. Repeated sexual arousal to these scenes can eventually break down the viewer's inhibitions and cause him to attack a victim.*
>
> *Gene Abel, director of the Sexual Behaviour Clinic at the New York Psychiatric Institute, told the United States Attorney General's Commission on Pornography in 1985 that his research*

[134] *Criminal Neglect: Why Sex Offenders Go Free,* Dr. W.L. Marshall and Sylvia Barrett, Doubleday Canada Limited, Toronto, 1990

indicated that more than fifty percent of sex offenders use pornography. Furthermore, Abel testified, the rapists and child molesters who do use pornography are less able to control their deviant behaviours than are offenders who do not. The link between pornography and sex offences was given further support by the results of a study conducted at the Kingston Sexual Behaviour Clinic, also presented to the Commission. In a survey of eighty-nine sex offenders who attended the clinic over a six-year period, one-third reported that they had used pornography immediately prior to at least one of their crimes. Although these men were all out patients, they nevertheless included some rapists and child molesters who had injured their victims in a sadistic manner.[135]

When we see activities that lead consistently to desirable outcomes -- in this case, sexual gratification -- with no negative consequences, the probability of at least some of us imitating them is very high.

Studies indicate that "depictions of noncoercive but degrading sex might even be more harmful than violent pornography".[136] A 1987 study by James Check, a professor of psychology at York University in Toronto, examined the effect of violent and degrading pornography. "The results showed that the tapes of noncoercive but degrading sex had exactly the same effect on the men's attitudes as tapes of rape."[137]

In the twelve years since *Criminal Neglect* was published, violent pornography of the most extreme and deviant variety is now just a mouse click away, while degrading pornography has entered the mainstream through the misogynist and violent gangsta rap genre of music. For instance, Snoop Dogg released a XXX-rated video in conjunction with Larry Flynt, publisher of the notoriously demeaning pornographic magazine, *Hustler*:

> *Snoop Dogg moves into the adult film arena with... Doggystyle, an XXX-rated video that features the rapper in six original music videos that serve as preludes to five hardcore sex scenes. Snoop Dogg explained, "We're rapping about it when we're doing records. We're in the studio doing it, we're making hardcore, and we should be able to put out hardcore. And this is an avenue to do it."*
>
> *In order to release Doggystyle, Snoop Dogg turned to Hustler porn king Larry Flynt, and the two agreed that Flynt's Hustler Video would distribute the film. Flynt said of the deal, "We're very excited to be releasing this video. Like myself, Snoop has had to battle for his First Amendment rights to say what he wants. My forum is Hustler magazine, Snoop's forum is rap music. This video brings together those two worlds."*[138]

Additional information on pornography's crossover into mainstream popular culture is provided in the "Pornography" section.

3.7. Research Resources

American Academy of Child and Adolescent Psychiatry
http://www.aacap.org

American Academy of Pediatrics
http://www.aap.org
***Policy Statement on Media Violence*, November 2001**
http://aappolicy.aappublications.org/cgi/reprint/pediatrics;108/5/1222.pdf

[135] Ibid
[136] Ibid
[137] Ibid
[138] *Rock meets Smut overtly! Snoop Dogg Ventures Into The World Of Porn*, Daily News Yahoo.com, February 26, 2001

Understanding TV's Effects on the Developing Brain
http://www.aap.org/advocacy/chm98nws.htm
Understanding the Impact of Media on Children and Teens
http://www.aap.org/family/mediaimpact.htm

American Psychiatric Association
http://www.psych.org
Psychiatric Effects of Media Violence
http://www.psych.org/public_info/media_violence.cfm
Testimony before the U.S. Senate Committee on Commerce, Science, and Transportation, regarding Marketing Violence To Children, September 13, 2000
http://www.psych.org/pub_pol_adv/testimonymediaviolence91800.cfm

American Medical Association
http://www.ama-assn.org

Professor Craig Anderson, Ph.D.
Professor of Psychology and Chair, Department of Psychology
Iowa State University of Science & Technology
Testimony before the Senate Commerce Committee (U.S.) hearing on "The Impact of Interactive Violence on Children", March 21, 2000
http://www.psychology.iastate.edu/faculty/caa/abstracts/2000-2004/00Senate.html
Links to other articles by Professor Anderson on violent media
http://www.psychology.iastate.edu/faculty/caa/recpub.html

Professor Brad Bushman, Ph.D.
Professor, Department of Psychology
University of Michigan
Link to articles on violent media
http://www-personal.umich.edu/~bbushman/

Canadian Paediatric Society
http://www.cps.ca
Impact of Media Use on Children and Youth
http://www.cps.ca/english/statements/PP/pp03-01.htm
Media Pulse: Measuring the Media in Kids' Lives - A Guide for Health Practitioners
http://www.media-awareness.ca/english/special_initiatives/media_pulse/resources_publications.cfm

Effects of Media Violence* on *Society
Craig Anderson and Brad Bushman
Science Magazine, March 2002
http://www.psychology.iastate.edu/faculty/caa/abstracts/2000-2004/02AB2.pdf

Effects of Violent Video Games on Aggressive Behavior, Aggressive Cognition, Aggressive Affect, Physiological Arousal, and Prosocial Behavior: A Meta-Analytic Review of the Scientific Literature
Craig A. Anderson and Brad J. Bushman
Psychological Science, September 2001
http://www.psychology.iastate.edu/faculty/caa/abstracts/2000-2004/01AB.pdf

Exposure to Violent Media: The Effects of Songs with Violent Lyrics on Aggressive Thoughts and Feelings
Craig Anderson, Nicholas Carnagey, Janie Eubanks
Journal of Personality and Social Psychology, May 2003
http://www.psychology.iastate.edu/faculty/caa/abstracts/2000-2004/03ACE.pdf

Professor Rowell Huesmann, Ph.D.
Professor of Communication Studies and
Professor of Psychology, University of Michigan
Selected publications
http://www.lsa.umich.edu/comm/detail/0,2005,4128%255Farticle%255F8666,00.html

Joint Statement on the Impact of Entertainment Violence on Children
Congressional Public Health Summit
American Academy of Pediatrics, American Academy of Child & Adolescent Psychiatry, American Psychological Association, American Medical Association, American Academy of Family Physicians, American Psychiatric Association, July 26, 2000
http://www.aap.org/advocacy/releases/jstmtevc.htm

TV Violence Key Facts
Kaiser Family Foundation
http://www.kff.org/content/2003/3335/TV_Violence.pdf

Longitudinal Relations Between Children's Exposure to TV Violence and Their Aggressive and Violent Behavior in Young Adulthood: 1977-1992
L. Rowell Huesmann, Jessica Moise-Titus, Cheryl-Lynn Podolski, and Leonard D. Eron
Developmental Psychology, Vol. 39, No. 2, 2003
http://www.apa.org/journals/dev/press_releases/march_2003/dev392201.pdf

Media Violence and the American Public: Scientific Facts Versus Media Misinformation
Brad Bushman and Craig Anderson
American Psychologist, June 2001
http://www.psychology.iastate.edu/faculty/caa/abstracts/2000-2004/01BA.ap.pdf

Video Games and Aggressive Thoughts, Feelings, and Behavior in the Laboratory and in Life
Craig Anderson and Karen Dill
Journal of Personality and Social Psychology, April 2000
http://www.psychology.iastate.edu/faculty/caa/abstracts/2000-2004/00AD.pdf

4. LEGISLATIVE AND REGULATORY HIGHLIGHTS

4.1. Introduction

This chapter provides a simple, layperson's guide to the legislation and regulation that, in theory, govern various forms of violent media. It includes excerpts from laws, acts, regulations, and codes for quick reference, along with the URL for the complete document or government web site, where available. This is not, however, an exhaustive accounting and undoubtedly some laws that could be invoked under certain circumstances have been omitted. A rudimentary description of the division of government powers is provided to help identify the level of government empowered to address different aspects of the media violence problem. The issues discussed are complex, but the chapter should provide a basic understanding of how the system operates. A brief reference chart of statutes and the media to which they apply is provided as well.

4.2. Constitutional Division of Powers: Federal, Provincial, Municipal

The development of recommendations on criminal and regulatory law in Canada must "take place within the context of constitutional law and practice", and must be sensitive to both the *Charter of Rights and Freedoms* and the division of powers established between the federal Parliament and the provincial legislatures by the *Constitution Act*.[139] *Pornography and Prostitution in Canada,* the Report of the Special Committee on Pornography and Prostitution *(Fraser Report)* states, "The division of powers within the Canadian *Constitution* is an issue which has exercised the courts since Confederation in 1867. There is accordingly a large body of case law on it, although changing and sometimes conflicting views on where the balance between federal and provincial power should lie, results in uncertainty in some areas".

If the issue "exercises" the courts, it's not one that will be easily grasped by those without expertise in constitutional law, but it is important to have some understanding of what different levels of government can accomplish when approaching politicians for action on media violence. There is, for instance, no point in lobbying a city council to regulate violent video games because it falls outside their jurisdiction. It is also important because, occasionally, politicians aren't aware that a problem falls within their jurisdiction, and providing them with evidence that it does can be of assistance.

The Canadian *Constitution* divides the power to make laws between the federal and provincial governments regarding matters that fall within two lists of “classes of subject” set out in the *Constitution Act*. Section 91 sets out the following subjects as falling within federal jurisdiction:[140]

- regulation of trade and commerce
- postal service
- criminal law
- works and undertakings connecting one province with any other or others of the provinces, or extending beyond the limits of the province

As a result, the federal government has jurisdiction over such national issues as broadcasting, Canada Post, Customs, and the *Criminal Code.* Federal legislation applies to all provinces and territories.

[139] *Pornography and Prostitution in Canada*, Report of the Special Committee on Pornography and Prostitution, Supply and Services Canada, Ottawa, 1985
[140] Ibid

Section 92 gives the provinces jurisdiction over a list of subjects including:

- property and civil rights in the province
- local works and undertakings
- the imposition of punishment by fine, penalty or imprisonment for enforcing any laws of the province
- generally all matters of a merely local or private nature in the province[141]

While there are those who maintain the province has no jurisdiction to legislate in matters of morality, insisting that this responsibility rests with the federal government under the *Criminal Code*, the *Fraser Report* states:

> *There is no bar to provincial legislatures acting out of a concern for morality. The provinces may legislate morality incidentally as part of a purpose which clearly falls within their jurisdictions, for example, "property and civil rights in the province" and "matters of a merely local or private nature". It is thus legitimate for a province to regulate a business within the province, in part, for moral reasons. Provincial attempts to regulate film distribution, sex stores, massage parlours and escort services have been upheld as legitimate exercises of the regulatory power, although the attempts reflect in part a moral impulse. What the provinces clearly cannot do is to legislate the proscription of immoral conduct.* [142]

So, provinces can, for instance, regulate theatrical-release movies and home movie rentals -- both mainstream and adult sex films. Some provinces have introduced legislation specific to video games on the assumption that they have the authority to legislate in this area as well, although this could be challenged in court.

Municipalities don't have significant power to regulate the entertainment media -- the major controls rest with the federal and provincial governments -- but they do have some, particularly in the area of adult entertainment establishments and stores selling sexually explicit products, so their involvement shouldn't be discounted.

Municipalities are corporations created by provincial governments, and have no independent constitutional status. They can, therefore, only exercise power that is delegated to them. Any by-law passed by a municipal government without enabling legislation, is invalid.[143] The *Fraser Report* explains:

> *Whether or not a particular kind of power is delegated to the municipality within a province is governed by a number of factors, including the division of law-making power between Parliament and the provincial legislatures. It is by no means certain, that a province can or will give municipalities the power they request. Even if a particular power could be delegated, a provincial government may decide that the matter in question should not be controlled at the local level. However, in the areas of pornography and prostitution, the major issue has been whether the provinces have the constitutional authority to legislate. There is no evidence that the provinces have hindered any attempts by municipalities to control these problems by refusing to delegate authority to them. It is apparent that all municipalities have authority to license and otherwise regulate business and to zone land use within their boundaries. They also have a limited power to control the highways and public places within their boundaries, to control nuisances and to legislate for the health, safety, welfare and morality of their inhabitants.*
>
> *The main sources of challenge by the courts to the exercise by municipalities of their powers in the areas of pornography and prostitution, has been to strike down provisions which are vague*

[141] Ibid
[142] Ibid
[143] Ibid

or which, while they have the stated purpose or the appearance of regulation, amount to an attempt to proscribe a particular activity or type of conduct, in effect to enact criminal law.[144]

Therefore, municipalities cannot "ban" establishments that feature adult entertainment or sell sexually explicit products, but they can zone them appropriately. They can, for example, relegate such businesses to industrial areas or specify that they be located 500 feet away from schools, churches, residential areas, etc.

4.3. *Canadian Charter of Rights and Freedoms*

The *Charter of Rights and Freedoms* is routinely raised as a barrier to controlling or limiting various forms of expression. However, while enshrining a diverse range of rights, the *Charter* also embodies the concept that rights are not absolute, but should be balanced in some situations against the greater good. Following are pertinent sections of the *Charter* (http://laws.justice.gc.ca/en/index.html):

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

2. Everyone has the following fundamental freedoms:

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice

15.(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

24.(1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

33.(1) Parliament or the legislature of a province may expressly declare in an Act of parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

Section 52(1) of the *Canadian Constitution* (of which the *Charter of Rights and Freedoms* forms a part) states:

The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

The Justice Department's *Undue Exploitation of Violence Consultation Paper* provides an explanation of how the *Charter* can affect legislation involving freedom of expression:

Canadians place a high value on freedom of expression, which is sometimes referred to as a cornerstone of democracy. This is reflected in the Charter which constitutionally entrenches a broad protection of freedom of expression in section 2(b). That subsection protects all

[144] Ibid

expression which conveys or attempts to convey meaning. This is true regardless of the form of that expression, unless the expression is by itself physically violent.

Where the purpose of a law or government action is to restrict the content of expression, to control access to certain expression or to limit a person's ability to express himself or herself, that purpose will infringe section 2(b). Even if the purpose is compatible with freedom of expression, the effect of a law or government action may be contrary to section 2(b) where the affected expression can be shown to further the purposes underlying section 2(b), including the pursuit of truth, participation in the community, individual self-fulfillment or human flourishing.

Where a law or government action is found to limit freedom of expression contrary to section 2(b), the law or government action may still be upheld under section 1 of the Charter if it is reasonable and demonstrably justified in a free and democratic society. Section 1 requires that the government establish that the limit on the Charter right is "prescribed by law" and is not vague. Section 1 also requires that a provision further a pressing and substantial objective. As well, the means chosen to attain that objective must be proportional to the end to be achieved.

Under section 1, courts will weigh other Charter rights and values that may be advanced by a challenged provision. Sections 15 (equality), 27 (protection of multicultural heritage) and 28 (rights guaranteed equally to both sexes) may be cited in defence of the regulation of representations of violence. Section 15, in particular, is designed to protect those groups who suffer social, political and legal disadvantage in our society. It, more than any other section of the Charter, "recognizes and cherishes the innate human dignity of every individual." These rights would take on even greater significance in the balancing under section 1 if the regulation of representations of violence were crafted specifically to protect vulnerable groups, such as women, children and people of colour.[145]

4.4. *Criminal Code of Canada*

The laws contained in the *Criminal Code* are national in scope and therefore apply to all provinces and territories in Canada. They also apply to all forms of media: radio, television, sound recordings, music videos, theatrical-release movies, home movie rentals, video games, books, comics, magazines, newspapers, pamphlets, flyers, posters, live performances, concerts, Internet, etc. The *Criminal Code* is where laws on obscenity, hate propaganda and child pornography are found.

Later in this chapter, the CRTC and the *Broadcasting Act* are examined as a means of addressing problems created by broadcasters, but it is important to note that the *Criminal Code* is also a tool that can be used against radio or television stations that air obscene material, hate propaganda, or child pornography, for example. Additionally, some Canadian radio stations have offered prizes to contestants to engage in activities that are illegal under the *Criminal Code* (public nudity, vandalism, theft). Such encouragement to illegal activity appears to contravene the *Criminal Code* law against counselling a person to commit an offence. The point is, that when it comes to broadcasting, there are legal options other than the CRTC and the *Broadcasting Act*.

Local police should be contacted regarding perceived violations of the *Criminal Code*. They may, in turn, direct a complainant to the RCMP or Ontario Provincial Police if they determine the matter falls within another police jurisdiction. Pertinent sections or excerpts from the *Code* follow for reference, but the entire section should be reviewed as well, and can be found at http://laws.justice.gc.ca/en/index.html.

4.4.1. Obscenity

163. (1) Every one commits an offence who

[145]*Undue Exploitation of Violence Consultation Paper,* Department of Justice, Ottawa, 1996

(a) makes, prints, publishes, distributes, circulates, or has in his possession for the purpose of publication, distribution or circulation any obscene written matter, picture, model, phonograph record or other thing whatever;

(2) Every one commits an offence who knowingly, without lawful justification or excuse,

(a) sells, exposes to public view or has in his possession for such a purpose any obscene written matter, picture, model, phonograph record or other thing whatever;

(b) publicly exhibits a disgusting object or an indecent show;

(3) No person shall be convicted of an offence under this section if the public good was served by the acts that are alleged to constitute the offence and if the acts alleged did not extend beyond what served the public good.

(5) For the purposes of this section, the motives of an accused are irrelevant.

(8) For the purposes of this Act, 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.

4.4.2. Immoral, Indecent or Obscene Theatrical Performance

167. (1) Every one commits an offence who, being the lessee, manager, agent or person in charge of a theatre, presents or gives or allows to be presented or given therein an immoral, indecent or obscene performance, entertainment or representation.

(2) Every one commits an offence who takes part or appears as an actor, a performer, or an assistant in any capacity, in an immoral, indecent or obscene performance, entertainment or representation in a theatre.

4.4.3. Mailing Obscene Matter

168. (1) Everyone commits an offence who makes use of the mails for the purpose of transmitting or delivering anything that is obscene, indecent, immoral or scurrilous.

4.4.4. Child Pornography

163.1 (1) In this section, "child pornography" means

(a) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,

(i) that shows a person who is or is depicted as being under the age of eighteen years and is engaged in or is depicted as engaged in explicit sexual activity, or

(ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of eighteen years; or

(b) any written material or visual representation that advocates or counsels sexual activity with a person under the age of eighteen years that would be an offence under this Act.

(2) Every person who makes, prints, publishes or possesses for the purpose of publication any child pornography is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding ten years; or

(b) an offence punishable on summary conviction.

(3) Every person who transmits, makes available, distributes, sells, imports, exports or possesses for the purpose of transmission, making available, distribution, sale or exportation any child pornography is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding ten years; or

(b) an offence punishable on summary conviction.

(4) Every person who possesses any child pornography is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) an offence punishable on summary conviction.

(5) It is not a defence to a charge under subsection (2) in respect of a visual representation that the accused believed that a person shown in the representation that is alleged to constitute child pornography was or was depicted as being eighteen years of age or more unless the accused took all reasonable steps to ascertain the age of that person and took all reasonable steps to ensure that, where the person was eighteen years of age or more, the representation did not depict that person as being under the age of eighteen years.

(6) Where the accused is charged with an offence under subsection (2), (3), (4) or (4.1), the court shall find the accused not guilty if the representation or written material that is alleged to constitute child pornography has artistic merit or an educational, scientific or medical purpose.

4.4.5. Hate Propaganda

318. (1) Every one who advocates or promotes genocide is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

(2) In this section, "genocide" means any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely,

(a) killing members of the group; or

(b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

(3) No proceeding for an offence under this section shall be instituted without the consent of the Attorney General.

(4) In this section, "identifiable group" means any section of the public distinguished by colour, race, religion, ethnic origin or sexual orientation.

319. (1) Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

(2) Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

(3) No person shall be convicted of an offence under subsection (2)

(a) if he establishes that the statements communicated were true;

(b) if, in good faith, he expressed or attempted to establish by argument an opinion on a religious subject;

(c) if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true; or

(d) if, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred toward an identifiable group in Canada.

It's important to note that the definition of identifiable group contained in this law "means any section of the public distinguished by colour, race, religion, ethnic origin or sexual orientation". This definition leaves women and other vulnerable groups excluded from the law in contravention of Section 15 of the *Charter*. Section 15 guarantees equal protection of Canadian laws to *everyone*:

(15) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The federal government has not amended the hate propaganda law to conform to the *Charter* despite many recommendations made over the years to do so. In September 2003, the House of Commons did, however, pass *Bill C-250*, amending the law to extend protection to those identified by "sexual orientation". Women were not added as a protected group during this process although it included a review by the Standing Committee on Justice and Human Rights and public hearings. The Senate also passed the bill without changing it to include women.

4.4.6. Counselling to Commit an Offence

22 (1) Where a person counsels another person to be a party to an offence and that other person is afterwards a party to that offence, the person who counselled is a party to that offence, notwithstanding that the offence was committed in a way different from that which was counselled.

(2) Every one who counsels another person to be a party to an offence is a party to every offence that the other commits in consequence of the counselling that the person who counselled knew or ought to have known was likely to be committed in consequence of the counselling.

(3) For the purposes of this Act, "counsel" includes procure, solicit or incite.

4.5. Canada Customs

The federal government has jurisdiction over the border, and has given Canada Customs the power to stop certain material at that entry point. All goods entering Canada are subject to examination by Customs officers for appropriate classification under the *Customs Tariff,*[146] and in some cases, products (and people) can be prohibited from entering the country. Goods that contravene Canada's hate propaganda, child pornography and obscenity laws, for instance, can be prohibited. Customs Memorandum D9-1-1 (http://www.ccra-adrc.gc.ca/E/pub/cm/d9-1-1/README.html) outlines and explains the interpretation of the tariff item dealing with obscenity. The following is a brief excerpt:

> *11. The following goods, insofar as they may constitute "undue" exploitation of sex within the meaning of the terms as set forth above, may be classified under tariff item No. 9899.00.00 and their importation into Canada may be prohibited:*
>
> *(a) goods which depict or describe sexual acts that appear to degrade or dehumanize any of the participants, including:*
>
> *(1) depictions or descriptions of sex with violence, submission, coercion, ridicule, degradation, exploitation, or humiliation of any human being, and which appear to condone or otherwise endorse such behavior for the purposes of sexual stimulation or pleasure;*
>
> *(2) depictions or descriptions of sexual assault (previously, rape). Any goods that depict or describe a sexual activity between male/ female, male/male, or female/female which appears to be without his/her consent and which appears to be achieved chiefly by force or deception;*
>
> *(3) depiction or descriptions of bondage, involuntary servitude, and the state of human beings subjected to external control, in a sexual context;*
>
> *(4) depiction or descriptions which appear to be associating sexual pleasure or gratification with pain and suffering, and with the mutilation of or letting of blood from any part of the human body, involving violence, coercion, and lack of basic dignity and respect for a human being;*
>
> *(5) depictions or descriptions of sexual gratification gained through causing physical pain or humiliation, or the getting of sexual pleasure from dominating, mistreating, or hurting a human being. This includes depictions and descriptions of physical force which appear to be used so as to injure, damage, or destroy; of extreme roughness of action; of unjust or callous use of force or power; of spanking, beating, or shoving in a sexual context;*
>
> *(6) depictions or descriptions of mutilation or removal of any part of the human body or of the taking of human life, real or implied, for the purposes of sexual arousal; and*
>
> *(7) depictions or descriptions of menstrual blood, fecal matter, urine, or the inducement of feces through enemas as part of sexual arousal;*
>
> *(b) goods describing sexual acts involving children or juveniles, and depictions or descriptions of children or juveniles in total or partial undress, alone or in the presence of other persons, and in which the context is even slightly sexually suggestive. Children and juveniles are persons actually or apparently under the age of 18;*
>
> *(c) goods depicting or describing sexual acts between members of the same family, other than between husband and wife. This includes depictions or descriptions of any sexual activity among members of a family, whether or not they are genetically related (incest), except a*

[146] *Pornography and Prostitution in Canada*, Report of the Special Committee on Pornography and Prostitution, Supply and Services Canada, Ottawa, 1985

husband and wife, which generally appear to condone or otherwise endorse this behavior for the purposes of sexual stimulation or pleasure;

(d) goods depicting or describing sexual acts between human beings and animals (bestiality). This includes depiction or descriptions of bestiality, whether there is actual copulation with animal or the animal is merely present and copulation is implied;

(e) goods depicting or describing sexual acts between live persons and dead persons or dead animals (necrophilia)[147]

4.6. Canadian Radio-television and Telecommunications Commission (CRTC)

Broadcasting is a federal responsibility, with the CRTC empowered by parliament to regulate the industry. While the CRTC is autonomous and operates independently of the government, the Department of Canadian Heritage is responsible for overall broadcasting policy and legislation. In responding to an inquiry from the Office for Victims of Crime, the Director General of Broadcasting Policy and Innovation explained some of the government's powers over the CRTC as provided by the *Broadcasting Act*:

... section 7 of the Broadcasting Act provides the Governor in Council with the power to issue the CRTC policy directions of general application on broad policy matters within its jurisdiction.

The Governor in Council also has the power under section 15 to have the CRTC hold hearings or make reports on any matter within its jurisdiction, and under section 26 to issue directions to the CRTC in respect of any matter enumerated therein. Finally, section 28 provides the Governor in Council with the power to set aside or refer back to the CRTC for reconsideration and hearing any decision by the CRTC to issue, amend or renew a licence if the Governor in Council is satisfied that the decision derogates from the attainment of the objectives of the broadcasting policy set out in section 3 of the Act.[148]

Parliament established a policy in the *Broadcasting Act* that sets goals for the Canadian broadcasting system. These goals include that the Canadian broadcasting system should serve to safeguard, enrich and strengthen the social fabric of Canada, programming should meet a high standard, and licensees should be responsible for the programs they broadcast. Section 5 of the *Act* requires the CRTC to regulate and supervise all aspects of the Canadian broadcasting system and to implement the policy established under the *Act*. Section 10 authorizes the CRTC to make regulations, including those respecting standards of programs. "These provisions, taken together, provide the CRTC with the power and authority to regulate and supervise violent television programming."[149] Should a broadcaster fail to live up to the guidelines of the *Broadcasting Act*, the CRTC may invoke a number of penalties such as imposing fines or limiting/denying a station's license renewal.[150]

The airwaves belong to the public, not broadcasters, and the *Broadcasting Act* "reaffirms the long-standing perspective that the airwaves are a public trust to be used by its trustees in the public interest".[151] The CRTC (http://www.crtc.gc.ca/) web site sets out their mandate:

The Canadian Radio-television and Telecommunications Commission (CRTC) was established by Parliament in 1968. It is an independent public authority constituted under the Canadian

[147]*Memorandum D9-1-1, Jurisprudence and Revenue Canada's Interpretative Policy for the Administration of Tariff Item No. 9899.00.00 on Goods Deemed to be Obscene Under Subsection 163(8) of the Criminal Code,* Revised, October 4, 1999
[148]Letter dated September 18, 2003 to Scott Newark, Vice Chair, Office for Victims of Crime, from René Bouchard, Director General, Broadcasting Policy and Innovation, Department of Canadian Heritage
[149]*Violence on Television,* Susan Alter, Law and Government Division for the Library of Parliament, October 1997
[150]*Media Violence: Canadian Laws & Regulations,* Media Awareness Network web site, August 2000
[151]*Our Cultural Sovereignty: The Second Century of Canadian Broadcasting,* Standing Committee on Canadian Heritage, Communication Canada Publishing, Ottawa, 2003

Radio-television and Telecommunications Commission Act *(R.S.C. 1985, c. C-22, as amended) and reports to Parliament through the Minister of Canadian Heritage.*

The CRTC is vested with the authority to regulate and supervise all aspects of the Canadian broadcasting system, as well as to regulate telecommunications common carriers and service providers that fall under federal jurisdiction. The CRTC derives its regulatory authority over broadcasting from the Broadcasting Act *(S.C. 1991, c. 11, as amended). Its telecommunications regulatory powers are derived from the* Telecommunications Act *(S.C. 1993, c. 38, as amended) and the* Bell Canada Act *(S.C. 1987, c.19 as amended).*

The June 2003 report of the Standing Committee on Canadian Heritage, *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting,* says, "the CRTC's mandate is to ensure that the terms of the *Broadcasting Act* -- particularly Canada's broadcasting policy (Section 3) -- are fulfilled. The Commission does this by seeking to maintain a balance -- in the public interest -- between the social, cultural and economic goals of the *Act*. The Commission is subject to orders from Cabinet and must take into account the needs and concerns of Canadian citizens, industries and various interest groups."[152] The Commission acts as the regulator for more than 5,900 broadcasters, including: over-the-air television; cable distribution; AM, FM and DAB radio; pay, specialty and digital television; direct-to-home satellite systems; multipoint distribution systems; and subscription television and pay audio.[153]

The "What concerns you concerns us" section on the CRTC web site reiterates that "radio, television and telecommunications should serve the public interest". The site says that public ideas, opinions and comments help the CRTC to update "policies and procedures and evaluate the performance of the television, radio, cable distribution and telecommunications carriers that [they] regulate and supervise".

With regard to content, the site notes that the "CRTC regulates and supervises all aspects of the Canadian broadcasting system and requires broadcasters to comply with its regulations", but the CRTC is "not a board of censors" and does "not have the authority to tell broadcasters what they can broadcast", nor can the CRTC "act pre-emptively before a program has been aired".

In testimony before the Standing Committee on Communications and Culture during their study of television violence, Keith Spicer, CRTC Chairman, said one of the steps that the CRTC could take was to "review, at licence renewal hearings the issue of violence with the same vigour with which the CRTC examines gender portrayal and employment equity".[154] Another step the CRTC could take, he said, was to:

... exercise our range of powers to deal with those who repeatedly violate the industry codes once they are in place. This "graduated" response can range from calling the licensee to a special public hearing to account for its programming, imposing specific conditions of licence, to giving a very short-term licence during which its programming is closely monitored.[155]

It was pointed out to the Committee that the CRTC could use strong moral suasion to deal with violent television programming, even in the absence of specific regulations, under its licence-renewal powers. The President of the Canadian Association of Broadcasters helpfully explained the broad scope of the CRTC's powers of moral suasion:

Short of very specific regulation in this area, which may be very difficult to write without creating problems under the Charter of Rights and Freedoms, the CRTC is now in a position to say to a broadcaster who they think is performing badly, to clean up, and the next time they are around for a [licence] renewal, to give a one-year renewal instead of a five- or seven-year renewal. They've done that before to people, although not on this subject matter [violent programming].

[152]Ibid
[153]Ibid
[154]*Television Violence: Fraying Our Social Fabric,* Report of the Standing Committee on Communications and Culture, Supply and Services Canada, Ottawa, 1993
[155]Ibid

Do you know what that means to a company? It costs $250,000 to do another renewal application a year later, and they love that.

Secondly, they can tell them they can't run commercials for the next weekend. They've done that on other issues. Third, many of these companies would like to buy another station when it's available or have their conditions of licence amended because the market gets tougher for them. The CRTC is not going to be too friendly to them on issues like that. The CRTC works pretty effectively by moral suasion. [156]

Unfortunately, however, this power of moral suasion appears to exist only in principle, since the CRTC does not keep a copy of the violence complaints it receives about broadcasters if the complaints are forwarded to the Canadian Broadcast Standards Council (CBSC), the industry's self-regulatory body, and does not include CBSC complaint decisions against broadcasters at licence renewal hearings.[157] See the sections on self-regulation for more on the CBSC.

Regarding powers stronger than moral suasion, the *Fraser Report* states:

The sanctions contained in the Criminal Code and the Broadcasting Act are available to the Commission and law enforcement authorities as a further method of dealing with program content.

Although [the obscenity sections] of the Criminal Code contain provisions that could result in a prosecution being brought against a radio or television broadcaster for publishing, distributing, circulating or exposing to public view any obscene picture or phonograph record, it is much more likely that criminal proceedings would be taken under the Broadcasting Act.

It contains significant criminal sanctions. Licensees who violate the provisions of any Regulation applicable to their licence commit an offence under the Act, punishable on summary conviction...

Where there has been an alleged breach of Regulation, the Commission's practise has been to proceed according to the seriousness of the allegation. If the matter is very serious, the Commission will start its own proceedings to put the broadcasting licence at risk.

If the matter is less serious, the Commission will have the licensee prosecuted for an offence under the Act.

The Commission can also simply proceed to have the licensee charged with an offence under the Broadcasting Act for either a breach of the Regulations or the conditions of licence.

The Commission has, in fact, held infrequent public hearings as a result of complaints about its licensees.

Of course, because the Commission's objects have always been to implement broadcast policy as expressed in section 3 of the Broadcast Act, Parliament has always had the power to determine the CRTC's policy direction.[158] (emphasis added)

[156] Ibid
[157] *Watching the Watchers: Gender, Justice and Co-regulation in the New Media Marketplace,* by Natalie Coulter and Catherine Murray, MediaWatch
[158] *Pornography and Prostitution in Canada,* Report of the Special Committee on Pornography and Prostitution, Supply and Services Canada, Ottawa, 1985

4.6.1. Broadcasting Act and Regulations

Some pertinent sections are provided below for reference, but the entire lengthy *Act* and *Regulations* governing various types of broadcasting are available on the CRTC web site:

3(1) It is hereby declared as the broadcasting policy for Canada that

(b) the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty.

(d) the Canadian broadcasting system should

(i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada.

9. (1) Subject to this Part, the Commission may, in furtherance of its objects…

(e) suspend or revoke any licence;

32. (2) Every person who contravenes or fails to comply with any regulation or order made under this Part is guilty of an offence punishable on summary conviction and is liable

(a) in the case of an individual, to a fine not exceeding twenty-five thousand dollars for a first offence and not exceeding fifty thousand dollars for each subsequent offence; or

(b) in the case of a corporation, to a fine not exceeding two hundred and fifty thousand dollars for a first offence and not exceeding five hundred thousand dollars for each subsequent offence.

33. Every person who contravenes or fails to comply with any condition of a licence issued to the person is guilty of an offence punishable on summary conviction.

Pay Television Regulations

3. (2) No licensee shall distribute programming

(a) that contains anything in contravention of the law;

(b) that contains any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability;

Radio Regulations

3. A licensee shall not broadcast

(a) anything in contravention of the law;

(b) any abusive comment that, when taken in context, tends to or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability;

(c) any obscene or profane language

Specialty Services Regulations

3. No licensee shall distribute programming that contains

(a) anything in contravention of the law;

(b) any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability;

(c) any obscene or profane language or obscene or profane pictorial representation

Television Broadcasting Regulations

5. (1) A licensee shall not broadcast

(a) anything in contravention of the law;

(b) any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability;

(c) any obscene or profane language or pictorial representation;

4.6.2. Self-Regulation

The CRTC has endorsed the practice of self-regulation for broadcasters, as explained on their web site:

> *For some issues, we have agreed on a set of standards, developed with input from the public and in co-operation with broadcasting, telecommunications and cable companies, to serve the public interest. In the spirit of self-regulation, companies are expected to monitor themselves to ensure that they comply with these standards.*

CRTC guidance for filing complaints against broadcasters includes this suggestion:

> *Before submitting your complaint to us, we suggest that you first contact the station or carrier directly. If you are not satisfied with the response you receive, you may then wish to contact the following organizations:*
>
> *Canadian Broadcast Standards Council*
> *Cable Television Standards Council*
> *Advertising Standards Canada*

If a complainant is still not satisfied, having gone through this process -- which takes many months, and sometimes even years -- the CRTC can then be asked to address the complaint.

Government regulations require broadcasters to keep logger tapes of their broadcasts for four weeks, and the CRTC requires that complaints be filed within that period. If a person files a complaint directly with the CRTC (rather than the broadcaster or one of the industry organizations), the Commission reviews it, and, depending on the nature of the concern, directs it to one of their broadcasting branches, the Canadian Broadcast Standards Council, or the Cable Television Standards Council.

Canadian Broadcast Standards Council (CBSC)

In announcing their acceptance of the TV violence code written by the Canadian Association of Broadcasters (CAB), the CRTC said:

> *The CRTC will make compliance with the code a condition of licence for all privately-owned television stations and networks when renewing their licenses... The Commission is prepared to suspend the condition of licence for broadcasters who are, and continue to be, members in good standing of the industry's self-regulatory body, the Canadian Broadcasting Standards Council (CBSC). The Council will administer the television violence code and handle complaints from the public. However, the CRTC will closely monitor this self-regulatory process, and anyone not satisfied with a Council decision may still ask the CRTC to examine their complaint.*[159]

The Canadian Broadcast Standards Council (http://www.cbsc.ca/) can only address complaints against member broadcasters. A broadcaster that does not belong to the CBSC will have complaints against it dealt with directly by the CRTC. Also, the CBSC can only address complaints filed under the voluntary CAB codes, or deemed by the CRTC to fall under the voluntary codes. A complaint filed with the CRTC specifically citing a contravention of the *Broadcasting Act* should be dealt with directly by the CRTC, since the CBSC has no jurisdiction over broadcasters' compliance or non-compliance with the *Act*.

A review (http://www.mediawatch.ca/research/watch/Default.asp?language=English) of broadcast and advertising self-regulation published in 2001 by the national advocacy organization, MediaWatch, revealed the following disturbing information:

> *When the CRTC receives a complaint against a broadcaster who is a member of the CBSC, it is automatically forwarded to the CBSC. The CRTC does not keep a record of complaints that it receives from the public, nor does it formally follow up the original complaint.*
>
> *A complainant dissatisfied with a CBSC ruling may ask the CRTC for a review. Out of concern by both the CRTC and the CBSC that an appeal process would undermine the CBSC's credibility, members of the public are not overtly informed of this right.*
>
> *... the CRTC does not keep a record of complaints that it forwards to the CBSC, nor does it include CBSC complaint decisions against broadcasters in licence renewal hearings.*
>
> *The CRTC is to conduct a formal review of the CBSC but has not done so. It receives annual reports from the CBSC on the outcome of complaints against broadcasters, but these reports are not placed on the public file or used during formal licence renewal hearings.*
>
> *In its strategic planning process in 1997, the CRTC promised to conduct a review of the self-regulatory system that would look at the public process, assess public confidence in the system and make recommendations. That has not been undertaken.*[160]

Information on the CAB voluntary codes on ethics, violence and sex-role portrayal are included in the "Industry Self-Regulation and Classification" section.

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[159] *Protecting Children While Protecting Creative Freedom: CRTC Accepts Private Broadcasters' Strengthened TV Violence Code,* CRTC News Release, October 28, 1993

[160] *Watching the Watchers: Gender, Justice and Co-regulation in the New Media Marketplace,* by Natalie Coulter and Catherine Murray, MediaWatch

4.7. *Canadian Human Rights Act*

Sections of this *Act* (http://www.chrc-ccdp.ca) apply to some forms of violent media, although broadcasting is exempt, and a few excerpts from the *Act* are provided below. Should there be a question about the *Act's* applicability to a specific form of media, an inquiry can be addressed to the Canadian Human Rights Commission through their web site.

> ***Publication of discriminatory notices, etc.***
>
> *12. It is a discriminatory practice to publish or display before the public or to cause to be published or displayed before the public any notice, sign, symbol, emblem or other representation that*
> *(a) expresses or implies discrimination or an intention to discriminate, or*
>
> *(b) incites or is calculated to incite others to discriminate*
> *if the discrimination expressed or implied, intended to be expressed or implied or incited or calculated to be incited would otherwise, if engaged in, be a discriminatory practice described in any of sections 5 to 11 or in section 14.*
>
> ***Hate messages***
>
> *13. (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.*
>
> ***Interpretation***
>
> *(2) For greater certainty, subsection (1) applies in respect of a matter that is communicated by means of a computer or a group of interconnected or related computers, including the Internet, or any similar means of communication**, but does not apply in respect of a matter that is communicated in whole or in part by means of the facilities of a broadcasting undertaking.*** (emphasis added)

Unlike the *Criminal Code* hate propaganda law that only protects certain identified groups, the *Canadian Human Rights Act* states:

> *3. (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.*

4.8. *Human Rights Code* - Ontario

The *Guide to the Human Rights Code* posted on the Ontario Human Rights Commission web site (http://www.ohrc.on.ca/english/index.shtml) states that every person has the right to be free from discrimination based on "race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, same-sex partnership status, family status or disability" when we “receive goods or services, or use facilities” such as “public places, amenities, malls, stores, restaurants, bars”, and “that this section applies to business, government, community agencies and other organizations in Ontario”.

It's possible that the Ontario *Human Rights Code* could be applied to some forms of media that promote violence, should it be discriminatory in nature. For instance, if a radio station was broadcasting racist, homophobic, misogynist programming (e.g., gangsta rap or Howard Stern) into an Ontario city -- the public airwaves might possibly be construed as a "public place". Or, if this discriminatory type of programming was played in a workplace, public place, mall, store, restaurant, it could "poison" the environment in which people work, receive goods, services or use facilities.

Broadcasting is exempt from the *Canadian Human Rights Act*, but the Ontario *Code* is another avenue worth exploring. Indeed, a complaint filed against the Ontario Film Review Board and two Jumbo Video outlets over their approval and rental of slasher films was accepted and adjudicated by the Ontario Human Rights Commission because of the gender focus of the films, so there is a precedent for using the *Code* against violent media.

Some relevant sections of the *Code* follow
(http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90h19_e.htm)

Preamble

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

And Whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province;

Services

1. Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, same-sex partnership status, family status or disability.

Harassment in employment

(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, same-sex partnership status, family status or disability.

Harassment because of sex in workplaces

(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee.

("harassment" means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome)

Announced intention to discriminate

13. (1) A right under Part I is infringed by a person who publishes or displays before the public or causes the publication or display before the public of any notice, sign, symbol, emblem, or other similar representation that indicates the intention of the person to infringe a right under Part I or that is intended by the person to incite the infringement of a right under Part I.

As stated on the OHRC web site, comments that constitute harassment can:

- "have a bad effect on, or "poison", the places where you live, work, or receive services. Even if the harassment is not directed at you, it can still poison the environment for you and others."

- "Silence or doing nothing will not typically make harassment go away and sometimes such behaviour can lead to violence."

The OHRC web site also states:

- "The courts have said that because of the importance of the *Code*, it should be given a broad and generous interpretation…"

- "The Commission is committed to… promoting a broad purposive interpretation of the Code."

4.9. Provincial Film Review Boards

Provincial film boards are invaluable in the regulatory scheme. While critics of film boards agitate for their elimination, the Ontario Film Review Board (OFRB) notes quite correctly on their web site that police forces do not have the resources to "check the thousands of films and videos that the OFRB and other boards check on a daily basis". Without film boards, obscene films and videos would be much more widely available.

Not all provinces and territories have film review boards -- some share the services of neighbouring provinces -- but in Ontario, films and videos must (with a few exceptions), be submitted to the Ontario Film Review Board for classification prior to being shown or distributed in this province.

The task of regulating films is made complicated in Canada by the division of powers between federal and provincial governments, because both levels of government have authority to pass legislation in this area. At the federal level are the *Criminal Code* and Canada Customs, while the provinces have film review boards that have the authority to classify and prohibit films.[161] This crossover in jurisdiction seems to be another of those issues that "exercises" the courts.

The film review board legislation in some (not all) provinces includes the authority to prohibit films. When this was challenged in Nova Scotia in the 1970s, the Supreme Court of Canada (*Nova Scotia Board of Censors v. McNeil*) held that the provinces do have the constitutional authority to permit film boards to classify and prohibit films. The Supreme Court stated in the *McNeil* case that, "in a country as vast and diverse as Canada, where tastes and standards may vary from one area to another, the determination of what is and what is not acceptable on moral grounds for public exhibition, may be viewed as a matter of a "local and private nature in a Province" and therefore within provincial competence under the *Constitution Act*, *1867*".[162] The Supreme Court also ruled that there is no constitutional reason why a prosecution cannot be brought under the obscenity provisions of the *Criminal Code* against a film that has been approved by a provincial review board.[163]

According to the Ontario Law Reform Commission in their *Report on the Powers of the Ontario Film Review Board* (1992), the *McNeil* decision has been "criticized as not clearly indicating where the line between the federal criminal law power and provincial legislative competence can be drawn. The question of when a province encroaches on the federal criminal law power is not easily ascertainable by following the reasons for judgment... It has also been suggested that 'the implications of *McNeil* are somewhat confusing... It is still unclear whether a future Court will accede to the view that the provinces' prior restraint of the medium of film is constitutionally permissible'. However, since the *McNeil* decision, it has been accepted that provinces may validly establish film review boards."[164]

In a more recent constitutional challenge to provisions of British Columbia's *Motion Pictures Act,* a petitioner submitted that the legislation fell within federal jurisdiction over interprovincial trade and commerce or criminal law, and therefore outside the province's jurisdiction[165] (*It's Adult Video Plus Ltd. v. British Columbia*, 1991). With regard to this case, the Ontario Law Reform Commission stated:

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[161]*Report on the Powers of the Ontario Film Review Board,* Ontario Law Reform Commission, 1992
[162]*Pornography and Prostitution in Canada,* Report of the Special Committee on Pornography and Prostitution, Supply and Services Canada, Ottawa, 1985
[163]Ibid
[164]*Report on the Powers of the Ontario Film Review Board,* Ontario Law Reform Commission, 1992
[165]Ibid

The Court concluded that the Act's principal objectives include the prevention of crime, the regulation of business trade practices and the protection of children, all of which fall within provincial authority... The Court went on to take the same approach as that taken in McNeil; it sought to determine whether the pith and substance of the law "is to prevent crimes as distinct from defining and punishing crime or whether it is a colourable attempt to redefine or bolster existing criminal law". In the Court's opinion, there was provincial authority to enact the legislation on the basis of suppressing conditions calculated to give rise to crime, regulating by production and quality control the trade practices or business ethics of provincial businesses, and protecting British Columbians, particularly children, from the surreptitious distribution of prohibited material. The petition was therefore dismissed. [166]

The above-noted decision includes the following comments from other Supreme Court rulings pertinent to this issue:

- *As to the argument addressed to us that the local legislatures cannot legislate to prevent crime, I cannot assent thereto for in a very wide sense it is the duty of the legislature to do the utmost it can within its power to anticipate and remove, so far as practicable, whatever is likely to tend to produce crime; and yet not produce worse forms of it, or tending thereto. (Bedard v. Dawson, 1923)*

- *It is now well established that the suppression of conditions likely to favour the commission of crimes falls within provincial competence: Bedard v. Dawson et al.*

- *In Montreal v. Arcade Amusements (1985) 29 M.P.L.R. 220 the Supreme Court of Canada acknowledged that the protection of youth and the prevention of crime are areas within the authority of the province.*[167]

In comparing the federal *Criminal Code* with the provincial Nova Scotia film board legislation, the Supreme Court stated in *McNeil,* "The areas of operation of the two statutes are... fundamentally different on dual grounds. In the first place, one is directed to regulating a trade or business where the other is concerned with the definition and punishment of crime; and in the second place, one is preventive while the other is penal."[168]

While acknowledging this as a difficult area in which to legislate, it is helpful to know that Courts have ruled several times in favour of the provinces' authority to enact legislation directed at protecting children and suppressing conditions calculated to give rise to crime. These are the very reasons for curbing violent media, so demanding provincial government action is completely legitimate.

4.10. Ontario Film Review Board - *Theatres Act*

The Ontario Film Review Board (http://www.ofrb.gov.on.ca/), operating as an arms' length agency reporting to the Minister of Consumer and Business Services, receives its mandate through the *Theatres Act.* The OFRB is comprised of people drawn from a cross-section of communities across Ontario. On the recommendation of the Minister of Consumer and Business Services and the Provincial Cabinet, members are appointed for a three-year renewable term by the Lieutenant Governor through Orders-in-Council. [169]

With some exceptions, films to be distributed or shown in Ontario, must first be submitted to the OFRB for classification. The *Theatres Act* defines "film" as meaning "cinematographic film, videotape and any other medium from which may be produced visual images that may be viewed as moving pictures and includes film that is used for advertising purposes". This broad definition of "film" includes theatrical-release

[166] Ibid
[167] *It's Adult Video Plus Ltd. v. British Columbia (Director of Film Classification), 1991*
[168] Ibid
[169] Ontario Film Review Board web site, July 2003

movies, home videos, DVDs, music videos, video games, etc. The Board has the power, under the *Theatres Act*, to refuse to approve a film for release in the province. (In April 2004, these powers were seriously limited by a decision of the Superior Court of Justice. More information on this landmark decision can be found in the "Freedom of Expression Challenges to Ontario's *Theatres Act*" section.)

The Board also reviews and approves all motion-picture advertising. Legal penalties may be assessed against companies distributing films not approved by the OFRB, as well as against movie theatres not observing the age restrictions mandated by a film's classification.

It is illegal under the *Theatres Act* to rent or sell a Restricted film to a person under the age of 18. However, the *Act* does not require OFRB classification stickers to appear on films for home use (unless they are "adult sex" films, where the requirements are strict). Into this sticker vacuum, the government has allowed the Canadian Motion Picture Distributors Association to introduce a voluntary system called the Canadian Home Video Rating (CHVR) system, and their labels appear on films for home rental and sale. It gets confusing here from an enforcement standpoint, because the CHVR can differ from the OFRB rating. For instance, the movie *Two Girls and a Guy* received a Restricted rating from the OFRB, but the CHVR that appears on the rental video jacket indicates the rating as 14A. Since the government has accepted this voluntary rating system, it would seem difficult for them to prosecute a retailer for renting this Restricted movie to a minor. More information on the CHVR system is provided in the "Industry Self-Regulation and Classification" section.

Adult Sex Videos

The OFRB screens all adult sex films in accordance with "guidelines dealing with areas such as consent, physical abuse, coercion, humiliation, degradation and so on. All adult sex films sold or rented in retail establishments in Ontario are required to be screened and approved by the OFRB".[170] Once they have been approved by the OFRB, films are required by law to display a "title-specific sticker which contains such information as the title, running time, distributor ID, and an approval certificate number".[171] Inspectors from the Ministry of Consumer and Business Services periodically visit video stores throughout the province to ensure compliance. The OFRB states that the use of the stickers has "significantly reduced piracy and instances where a distributor has chosen to by-pass Board approval".[172]

Films Exempt From Classification

Documentaries and any film designed to provide information, instruction or education may be exempt from classification, as are films that have been previously broadcast, provided they could be received in Ontario without the use of a satellite dish or electronic descrambler.[173] Films shown at film festivals are granted a blanket "Restricted" rating without being reviewed by the OFRB. If a distributor wishes a less restrictive rating for the festival, the film must be submitted for classification. Prior to general commercial release in Ontario, the films must go through the regular classification channels and be submitted to the OFRB. More detail on this can be found on the Board's web site under the section dealing with the *Theatres Act* and *Regulations*.

Music Videos

Music videos are subject to the same requirements as film in terms of being classified prior to being released in Ontario.

[170] Ibid
[171] Ibid
[172] Ibid
[173] Ibid

Video Games

While the *Theatres Act* definition of "film" does include video games, the OFRB has very limited powers to classify them at the moment. Provincial politicians have only recently begun introducing legislation specific to video games, and this developing situation, along with the OFRB's current powers, are explored in more detail in the "Provincial Video Game Regulation" section.

4.10.1. Freedom of Expression Challenges to Ontario's Theatres Act

While the Supreme Court had upheld the constitutional authority of provinces to regulate films, a legal challenge based on Section 2(b), freedom of expression, remained an option for those opposed to the regulatory scheme. A 2(b) challenge to the *Act* in the early 1980s was abandoned before it reached the Supreme Court, when the Ontario government addressed one of the important problems raised in the legal challenge by amending the *Act* to create Regulations setting out precise guidelines to govern the exercise of the Boards' discretion.[174]

In 1992, the Ontario Law Reform Commission stated their belief that the Supreme Court of Canada would uphold Ontario's *Theatres Act* against a freedom of expression challenge:

> *... given the direction taken by the Supreme Court of Canada in the Butler and Keegstra cases... we would have to conclude that limits on expression of the kind that now exist in the Theatres Act and its regulations will likely satisfy the section 1 test. The debates in the Ontario Legislature of 1984 reflect a goal of avoiding a pressing and substantial harm as opposed to controlling morality.* [175]

Unfortunately, some years later, a challenge by Glad Day Bookshops Inc. was successful, and on April 30, 2004, Justice Russell Juriansz of the Ontario Superior Court of Justice struck down various sections of the *Theatres Act* including Section 14(2) of the *Theatres Act Regulation 1031.* Section 14(2) had stated:

> *14.(2) After viewing a film, the Board may refuse to approve a film for exhibition or distribution in Ontario where the film contains,*
>
> *(a) a graphic or prolonged scene of violence, torture, crime, cruelty, horror or human degradation;*
>
> *(b) the depiction of the physical abuse or humiliation of human beings for purposes of sexual gratification or as pleasing to the victim;*
>
> *(c) a scene where a person who is or is intended to represent a person under the age of eighteen years appears,*
>
> *(i) nude or partially nude in a sexually suggestive context, or*
>
> *(ii) in a scene of explicit sexual activity;*
>
> *(d) the explicit and gratuitous depiction of urination, defecation or vomiting;*
>
> *(e) the explicit depiction of sexual activity;*
>
> *(f) a scene depicting indignities to the human body in an explicit manner;*

[174] *Report on the Powers of the Ontario Film Review Board,* Ontario Law Reform Commission, 1992
[175] Ibid

(g) a scene where there is undue emphasis on human genital organs; or

(h) a scene where an animal has been abused in the making of the film

Justice Juriansz suspended the declaration of invalidity for one year to allow the government time to "disentangle the classification system from the censorship scheme that has been found to be unconstitutional"[176]. Frank Addario, lawyer for Glad Day Bookshops, noted his client had "challenged the censorship provisions, but not the classification powers, those for example, that restrict minors from seeing inappropriate films."[177] While the Ontario government had the option to appeal the decision to a higher court, they chose not to. In commenting on this, Attorney General Michael Bryant said it was "not in the public's interest to appeal the decision which focused primarily on the censorship provisions as being over-broad". He also said the court ruling "generally upheld the classification system and scheme".[178] A government spokesperson said the Ministry of Consumer and Business Services would draft new classification Regulations "to protect the people of Ontario from obscene material".[179]

In striking down Section 14(2), Justice Juriansz removed the powers of the OFRB to prevent distribution of films that feature graphic or prolonged scenes of violence, torture, crime, cruelty, and horror. Under this section, the OFRB had, on occasion, refused to approve certain "death" videos (a genre of film that strings together scenes of real people and animals being injured and/or killed) and some slasher films. This power was eliminated in the *Glad Day* decision, leaving the public with no protection from the harm caused by such products. As there is no federal *Criminal Code* law prohibiting extreme depictions of violence (unless combined with the "undue exploitation of sex"), the only protection for the public had been at the provincial level.

It is disheartening, in light of that, to read the judge's comments regarding the government's defense of the *Theatres Act*. In his ruling, Justice Juriansz noted that, "the government did not call any evidence about the harm that may result to vulnerable groups from the exhibition of films or videos." He went on to say:

> *Generally, governments seeking to justify an infringement of a right guaranteed by the Charter are required to present evidence in support of their position.*
>
> ***The government led no evidence that harm would result to society or vulnerable groups from the exhibition of films and videos containing scenes that were not Butler material but within the ambit of the disapproval criteria in s. 14 of Reg. 1031.*** *The government relied completely and solely on the Supreme Court's decision in Butler to justify its infringement of freedom of expression in this case. The Butler decision establishes conclusively that the exhibition of films and videos containing only certain kinds of sexually explicit material would result in harm to society and vulnerable groups. However, I have found that the statutory scheme of the Theatres Act applies, as intended, to a broader subject matter than Butler materials.* (emphasis added)
>
> ***It was open to the government to attempt to establish that harm would result to society and vulnerable groups from the exhibition or distribution of films containing non-Butler material but satisfying the criteria for disapproval under the Theatres Act and Reg. 1031.*** *I do not read the Butler case to circumscribe entirely the expressive material that a government may restrict under a valid head of legislative competence outside of the specific context of the Criminal Code provision for "obscenity".* (emphasis added)
>
> ***In this case, however, the government called no social science or expert testimony about the potential harmful effects of films or videos containing scenes of the subject matter***

[176] *R. v. Glad Day Bookshops Inc.,* Ontario Superior Court of Justice, April 30, 2004
[177] *Judge censures censors,* Toronto Sun, May 1, 2004
[178] *Province won't fight movie ruling,* Toronto Star, June 1, 2004
[179] *'Era of film censorship … is over'*, Globe and Mail, June 2, 2004

listed in the criteria upon which the Board may exercise its power of disapproval. *This is not one of those rare cases in which evidence would not be required: see Oakes at p. 138.* ***It is not so obvious or self-evident that the Court can determine, without evidence, whether harm results, the level of harm that may result, and to whom harm may result from the exhibition or distribution of films containing, for example, violence without sex.*** (emphasis added)

I do consider it obvious and self-evident that some films are not suitable to be viewed by children. However, the statutory scheme applies generally and does not permit such a distinction.

I conclude that the ambit of subject matter covered by the legislation is overly broad. The government has failed to establish that those paragraphs of s. 14(2) of the Reg. 1031 that grant the Board the power to disapprove of films containing scenes of subject matter that are not Butler materials (for example a graphic or prolonged scene of violence, crime, or cruelty without sex; the explicit depiction of urination or vomiting; or a scene where an animal has been abused in its making) are reasonably necessary to achieve its legislative objective. [180]

Considering that there is a significant body of research available from reputable sources showing the harm caused by violent films of the type described in section 14(2), it's not clear why this evidence was not presented by the government to defend the *Theatres Act Regulations,* especially given the absence of legislation at the federal level.

4.10.2. Amendment to Theatres Act Regulation 1031 – Refusal to Approve Criteria

Justice Juriansz gave the government one year to re-write the *Theatres Act*, and to their credit, they made an interim revision to *Regulation 1031* to provide some protection to the public from obscene material and child pornography. On July 5, 2004, the Ministry of Consumer and Business Services issued an Information Bulletin identifying the changes made to bring the law into line with *Glad Day*. The government modified the powers of the OFRB with respect to approval of film, and narrowed the criteria for reviewing and approving film. The revised interim *Regulation* specifies that "only film that has as its primary purpose the depiction of explicit sexual activity, and contains material that is degrading or dehumanizing, that is combined with violence, or that involves a person under the age of eighteen, can be refused approval, consistent with the Criminal Code and related court decisions".[181]

The Information Bulletin also reiterated the following:

All films are required to be submitted to the OFRB for approval and classification before being exhibited or distributed (including sale or rental) in Ontario.

Compliance with the Act is mandatory and the Ministry will take enforcement action against those found in violation.

Enforcement action can include a warning, removal and forfeiture of films, licence suspension or cancellation, or prosecution.

If convicted, individuals can face fines of up to $25,000 or imprisonment for a term of not more than one year, or both. Corporations are liable to fines up to $100,000.[182]

[180] *R. v. Glad Day Bookshops Inc.,* Ontario Superior Court of Justice, April 30, 2004
[181] *Regulatory Changes to the Theatres Act Now in Effect,* Ministry of Consumer and Business Services Information Bulletin, July 5, 2004
[182] Ibid

The revised interim *Theatres Act Regulation 1031* now states:

> *Approval of Films*
>
> *14. (1) This section applies during the period beginning on the day Ontario Regulation 204/04 is filed and ending on April 30, 2005. O. Reg. 204/04, s. 1.*
>
> *(2) This section prescribes the criteria on which the Board may exercise its powers under sections 3 and 33 of the Act with respect to approval of films for exhibition or distribution. O. Reg. 204/04, s. 1.*
>
> *(3) In exercising its powers to approve a film, the Board shall consider the film in its entirety and take into account the general character and integrity of the film. O. Reg. 204/04, s. 1.*
>
> *(4) The Board may refuse to approve a film for exhibition or distribution if,*
>
> *(a) the Board considers that the film has, as its main object, the depiction of explicit sexual activity; and*
>
> *(b) the film includes a depiction of,*
>
> *(i) explicit sexual activity coupled with violence,*
>
> *(ii) explicit sexual activity that is degrading or dehumanizing, or*
>
> *(iii) a person who is under the age of eighteen, or is intended to represent someone under that age, where that person appears,*
>
> *(A) nude or partially nude in a sexually suggestive context, or*
>
> *(B) in a scene of explicit sexual activity. O. Reg. 204/04, s. 1.*
>
> *(5) The Board shall approve a film for exhibition or distribution if the criteria on which the Board may refuse to approve a film for exhibition or distribution as set out in subsection (4) are not met. O. Reg. 204/04, s. 1.*

The Ministry has since advised that, "Other changes to the *Theatres Act* itself are being proposed at this time to modernize the legislative framework and fully respond to the Superior Court ruling",[183] and it is anticipated that the above criteria for refusing films will be incorporated into the revised *Theatres Act*.[184]

The OFRB's rare decisions to prohibit films often result in considerable controversy and criticism from columnists, editorial writers, pundits, and entertainment industry representatives. The following thoughtful explanation of why the Board has the power to refuse to approve films and, more importantly, why it exercises that power in the face of such harsh criticism, is posted on the Board's web site:

> *Why does the Ontario Film Review Board have the power to refuse to approve films?*
>
> *We often get asked the above question, usually closely followed by "Why not just let the marketplace or the police do the job?"*

[183]Memorandum dated August 3, 2004 from Barry Goodwin, Director, Policy Branch, Ministry of Consumer and Business Services to Linda Spears, A/Director, Victim Policy and Program Development Branch, Ontario Victim Services Secretariat

[184]Conversation between V. Smith and Randy Hopkins, Senior Policy Advisor, Ministry of Consumer and Business Services, August 20, 2004

The OFRB is one of many film boards that have the ability to refuse to approve film. Other countries, including Britain, Australia, New Zealand, Denmark, France and Germany, all have this authority. At the federal level, Canada Customs may seize films and videos that contravene guidelines that are very similar to those in place in Ontario.

Film boards are responsible for drawing boundaries around activities that are acceptable for public display and consumption, according to community standards. The Ontario Film Review Board has the authority - and the responsibility - to refuse to approve films that contain depictions of extreme violence and brutality, explicit sexual assault, degrading and dehumanizing activities, sexual activities with minors, cruelty to animals, and so on.

Most societies have value systems that are created to allow their members to live in relative peace and security. The checks and balances that prevent seriously harmful activities from becoming prevalent and undermining these value systems are usually enshrined in the laws of the land. The ability to limit public exposure to extremely brutal or violent images is one of the safeguards that helps to prevent seriously harmful activities from becoming the normative values of society.

The police do not have the resources to check the thousands of films and videos that the OFRB and other boards check on a daily basis. The marketplace is also not a good safeguard as there will always be a minority of citizens that will create a market for these portrayals.

Therefore, the Ontario Film Review Board, through the Theatres Act, continues to limit access to films in those areas where there is a potential for harm to society, particularly to those who are most vulnerable.[185]

4.11. Provincial Video Game Regulation

Despite the fact that they employ potentially behaviour-modifying technology, politicians have been slow to introduce legislation to regulate video games. It is encouraging to note, however, that the situation appears to be changing. Since the beginning of the year, Ontario, British Columbia, Manitoba and Nova Scotia have all introduced video game initiatives that are working their way through the system.

4.11.1. Ontario - Theatres Act

The Ontario Film Review Board presently has some limited powers to classify video games under the *Theatres Act*, powers the Board had never used until March 2004, when the violent game *Manhunt* was assigned a Restricted rating. The power they have results from an exemption to an exemption contained in the *Theatres Act Regulation 1031*, which states:

31. (1) Film and projection equipment in the format commonly known as a "video game", where the nature or sequence of the visual images may be varied by operation of the device producing the images, is exempt from the provisions of the Act and the regulations. R.R.O. 1990, Reg. 1031, s. 31 (1).

(2) Subsection (1) does not apply to a film that contains a scene or scenes of a type referred to in subsection 28 (3). R.R.O. 1990, Reg. 1031, s. 31 (2).

28.(3) Subsection (1) does not apply to the exhibition or distribution of film that contains,

(a) the graphic depiction of violence involving bloodletting, torture, mutilation or criminal activity;

[185]Ontario Film Review Board web site, August 20, 2004

(b) a scene of intense horror;

(c) the depiction of the physical abuse or humiliation of human beings for purposes of sexual gratification or as pleasing to the victim;

(d) a scene where a person who is or is intended to represent a person under the age of eighteen years appears,

(i) nude or partially nude in a sexually suggestive context, or

(ii) in a scene of explicit sexual activity;

(e) the explicit depiction of urination, defecation or vomiting;

(f) the depiction of explicit sexual activity or acts of force or restraint associated with such activity;

(g) a scene depicting the genital organs of a person in the film;

(h) a scene where an animal has been abused in the making of the film;

(i) a scene depicting the taking of a drug in a manner that encourages the unlawful use of a drug; or

(j) frequent use of coarse language,

The move by the OFRB to exercise this little-known power in the case of *Manhunt* was made in response to a December 2003 decision by the New Zealand Office of Film & Literature Classification to ban the game entirely. Following their review of the game, the New Zealand Office determined that it was "likely to be injurious to the public good", and assigned a classification of "objectionable", meaning that anyone who supplies, distributes, exhibits, displays, possesses for the purpose of supply or advertises *Manhunt*, could face a fine or imprisonment.[186]

The situation in Ontario is similar. The selling or renting of *Manhunt* to people under the age of 18 can be punished with fines of up to $100,000 or imprisonment, or both. Not surprisingly, Rockstar Games issued a one-sentence press release saying they would appeal the OFRB decision. Undeterred, Bill Moody, Chair of the OFRB, indicated the Board would be establishing a protocol for reviewing other violent games.

While some control is better than none, there are serious limitations under the current system. For instance, a decision to review a game is discretionary,[187] and there is no legislated requirement for video games to carry OFRB ratings, making retailer compliance with the *Act* difficult, although non-compliance carries significant financial penalties.

The province is moving ahead with additional legislation to strengthen the rating system, and in April 2004, the Ministry of Consumer and Business Services (MCBS) introduced *Bill 70*, the *Ministry of Consumer and Business Services Statute Law Amendment Act.* This Act, expected to be passed in the Fall 2004 session, authorizes the OFRB to establish as the provincial video game classifications, the ratings assigned by the industry-run Entertainment Software Rating Board. As part of the legislative package, the government will be able to prohibit the sale or rental of adult-oriented video games to underage audiences. The OFRB will also retain the authority to reclassify video games that are the

[186] *How the banning of Manhunt affects you,* New Zealand Office of Film & Literature Classification, December 17, 2003

[187] This power is so discretionary that it wasn't used until 2004, although the issue of classifying violent video games to reduce their availability to minors had been the subject of vigorous debate in the Ontario legislature in 1993. At that time, and in response to the lack of government action, an opposition MPP introduced a Private Member's Bill to classify games.

ESRB RATINGS – T, M, AO

TEEN (T): Titles rated T have content that may be suitable for persons 13 and older. May contain violent content, mild or strong language, and/or suggestive themes.

MATURE (M): Titles rated M have content that may be suitable for persons 17 and older. Titles in this category may contain mature sexual themes, more intense violence and/or strong language.

ADULTS ONLY (AO): Titles rated AO have content suitable only for adults. Titles in this category may include graphic depictions of sex and/or violence. Adult Only products are not intended for persons under the age of 18.

SOURCE: ESRB web site, September 2004

subject of significant public complaint, and will have the power to prohibit video games that meet established criteria for criminal obscenity.[188]

Since 2003, the MCBS has been working with its counterparts in other provinces and territories as part of a national working group to harmonize film classification services and develop a common approach to classifying film and video games. In January 2004, the working group tabled a report before Ministers responsible for film classification that recommended mandating the classification of video games (based on ESRB ratings). The working group also recommended that provinces enforce these ratings such that selling or renting mature-rated video games to under-age persons would be prohibited and punishable as an offence.[189]

A national classification system for film and video games is obviously preferable to a provincial approach, but it requires co-operation among such a diverse group that it remains to be seen whether this goal is achievable.

4.11.2. British Columbia's Bill 19-2001 - Video Games Act

In a highly unusual decision during the summer of 2000, the British Columbia Film Classification Office classified the violent video game, *Soldier of Fortune,* as an "adult motion picture",[190] making it illegal to sell or rent the game to those under 18. Under "B.C. *Motion Picture Act* regulations, the B.C. Film Classification Office classifies movies shown publicly, and it approves “Adult” home video.”[191] (It does not classify home video in general, only that considered “Adult”.) The *Soldier of Fortune* decision states:

> *The assignment of the adult classification recognises the concerns expressed by researchers that access to this product should be restricted to adults as violent interactive movies may have the effect of encouraging aggressive behaviour. Hopefully, adults are more capable than minors of resisting such influences.* [192]

This was not a decision without ramifications for retailers, as Director Mary-Louise McCausland explained in her ruling:

> *I recognize that the impact of an "adult motion picture" designation will mean that Soldier of Fortune distributors will have to recall the product from the shelves, become licensed distributors and provide the approved decalled product to appropriately licensed retailers. If this*

[188]Memorandum dated August 3, 2004 from Barry Goodwin, Director, Policy Branch, Ministry of Consumer and Business Services to Linda Spears, A/Director, Victim Policy and Program Development Branch, Ontario Victim Services Secretariat
[189]Ibid
[190]B.C. Film Classification *Soldier of Fortune* Decision Document, B.C. Film Classification Office, July 11, 2000
[191]Email to V. Smith from Steven Pelton, A/Deputy Director, B.C. Film Classification Office, June 24, 2004
[192]B.C. Film Classification *Soldier of Fortune* Decision Document, B.C. Film Classification Office, July 11, 2000

inconveniences distributors, I believe that the inconvenience is necessary to protect the interests of the public.[193]

(The American distributors of the game, Activision Inc., appealed on the grounds that the game was not a "motion picture" and therefore not covered by the B.C. *Motion Picture Act*. The appeal was dismissed by the Motion Picture Appeal Board.[194] It's interesting to note that the distributors did not proceed to challenge the decision in court, although court challenges of similar regulation issues are routine in the United States.)

Andrew Petter, the B.C. Attorney General, then announced the government's intention to enact a legislated classification system for video games, and he undertook a period of public consultation, following which *Bill 19 - Video Games Act* was introduced.

The bill's Explanatory Note states:

This Bill establishes a broad framework for the regulation of video games and imposes various obligations on video game retailers and video game distributors. This Bill requires the classification of video games, and the licensing of persons who operate a business that includes the distribution or operation of video games. It also requires that adult and mature video games not be distributed or operated until examined by the director [Director of Film Classification under the Motion Picture Act] to ensure that they do not contain prohibited material as defined in the Act.

This Bill includes a power to regulate the access to a video game by children who are younger than the appropriate age established by the classification of the video game.

This Bill also establishes a Video Game Advisory Board to advise the minister on policy matters respecting the regulation of video games under this Bill.

Bill 19 empowered the Director of Film Classification to refuse to approve a video game if it contained "prohibited material", defined as:

"Prohibited material" means a depiction of any of the following:

(a) the coercing, through the use or threat of physical force or by other means, of a person to engage in a sexual act, if the sexual act that was coerced is depicted in explicit sexual scenes;

(b) incest or necrophilia;

(c) bondage in a sexual context;

(d) persons who are or who appear to be under the age of 14 years involved in sexually suggestive scenes, whether or not they appear nude or partially nude;

(e) persons who are or who appear to be under the age of 18 years involved in explicit sexual scenes;

(f) explicit sexual scenes involving violence;

(g) scenes of brutality to or torture, maiming or dismemberment of persons or animals that are portrayed with such a degree of reality and explicitness that the scenes would, in the director's opinion, be intolerable to the community;

[193]Ibid
[194]Email to V. Smith from Steven Pelton, A/Deputy Director, B.C. Film Classification Office, June 24, 2004

(h) sexual conduct between a human being and an animal;

(i) conduct or activity that is prescribed;

The bill passed, but was not given a proclamation date. When the NDP government was defeated in the election, the new government abandoned legislation in favour of existing self-regulation.[195] The defeat of the legislation did not occur in a vacuum. The involvement of the Canadian Interactive Digital Software Association (CIDSA) was mentioned by the Federal Provincial Territorial Working Group on Children and Violence in Video Games and New Media in their *Research Agenda* document:

> *[CIDSA's] primary activities are focused on lobbying for favourable tax and regulatory treatment, and encouraging its members to submit all new products for ESRB ratings. The CIDSA infrastructure appears to be housed within the Toronto offices of Hill & Knowlton, a well-known lobbying and communications company. Its most recent high-profile undertaking was mounting a very aggressive campaign against the B.C. government's proposed legislation on the labelling and retailing of video games.*[196]

While the bill was never put into practice, it is a comprehensive piece of legislation that could be used as a template for other provinces.

The B.C. government seems to have changed their position on self-regulation since then, and early in 2004, amended the B.C. *Motion Picture Act* to permit the regulation of video games. They are now in the process of developing Regulations so that games rated as Mature by the ESRB cannot be sold, rented, or distributed to those under the age of 17. A penalty to both the clerk and the store owner will be established.[197] Penalizing the clerk, as well as the store owner, makes staff adherence to the scheme much more likely. B.C. also participates in the national working group to harmonize film and video game classification.

[195] *B.C. government adopts optional video-game code,* Globe and Mail, November 16, 2001
[196] Research Agenda for the Federal Provincial Territorial Working Group on Children and Violence in Video Games and New Media, March 26, 2002
[197] Conversation between V. Smith and Elaine Ivancic, Director, B.C. Film Classification Office, August 20, 2004

4.12. Chart of Statutes and Possible Remedies

Below is a brief reference chart of laws and *possible* remedies discussed in this chapter, along with the body to contact in the event of a perceived contravention of the legislation. A local police service should be able to provide a referral to another branch of law enforcement (e.g., Ontario Provincial Police or RCMP) if a situation falls outside their jurisdiction.

MEDIA	APPLICABLE STATUTES OR POSSIBLE REMEDIES FEDERAL AND ONTARIO	CONTACT
Internet	Criminal Code Canadian Human Rights Act	Local police service Canadian Human Rights Commission
Movies: **Theatrical Release and Home Rentals and Sales** **Music Videos**	Criminal Code Theatres Act, Ontario Customs Act/Customs Tariff	Local police service Ontario Film Review Board Commissioner of the CCRA*
Music: Recordings, Concerts	Criminal Code Human Rights Code, Ontario Customs Act/Customs Tariff	Local police service Ontario Human Rights Commission Commissioner of the CCRA*
Public Performances	Criminal Code	Local police service
Publications: Books, Magazines, Newspapers, Flyers, Pamphlets	Criminal Code Customs Act/Customs Tariff	Local police service Commissioner of the CCRA*
Television and Radio	Criminal Code Broadcasting Act Human Rights Code, Ontario	Local police service CRTC Ontario Human Rights Commission
Video Games	Criminal Code Theatres Act, Ontario Customs Act/Customs Tariff	Local police service Ontario Film Review Board Commissioner of the CCRA*
*Canada Customs and Revenue Agency		

5. SUPREME COURT OF CANADA DECISIONS

There have been several challenges to Canadian laws that limit various forms of expression -- e.g., hate propaganda, obscenity, child pornography -- and most have been upheld by the Supreme Court of Canada (SCC) as a justifiable infringement of the Section 2(b) right to freedom of expression, under Section 1 of the Canadian *Charter of Rights and Freedoms*. Section 1 of the *Charter* states:

> *The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.*

As the *Charter* freedom of expression guarantee is routinely raised as a seemingly insurmountable barrier to legislation, it is important to know that the Supreme Court of Canada has a significant record of upholding limits on freedom of expression, provided the limits can be justified. The following are excerpts from important decisions that highlight the SCC's rationale for upholding the laws being challenged. Complete SCC decisions are available at http://www.lexum.umontreal.ca/csc-scc/en/.

5.1. R. v. Keegstra (1990) - Hate Propaganda

In upholding the constitutionality of the hate propaganda law, Section 319(2) of the *Criminal Code*, against a 2(b) challenge, the SCC stated:

> *Section 319(2) of the Code constitutes a reasonable limit upon freedom of expression. Parliament's objective of preventing the harm caused by hate propaganda is of sufficient importance to warrant overriding a constitutional freedom. Parliament has recognized the substantial harm that can flow from hate propaganda and, in trying to prevent the pain suffered by target group members and to reduce racial, ethnic and religious tension and perhaps even violence in Canada, has decided to suppress the wilful promotion of hatred against identifiable groups. Parliament's objective is supported not only by the work of numerous study groups, but also by our collective historical knowledge of the potentially catastrophic effects of the promotion of hatred. Additionally, the international commitment to eradicate hate propaganda and Canada's commitment to the values of equality and multiculturalism in ss. 15 and 27 of the Charter strongly buttress the importance of this objective.*
>
> *Section 319(2) of the Code is an acceptably proportional response to Parliament's valid objective. There is obviously a rational connection between the criminal prohibition of hate propaganda and the objective of protecting target group members and of fostering harmonious social relations in a community dedicated to equality and multiculturalism. Section 319(2) serves to illustrate to the public the severe reprobation with which society holds messages of hate directed towards racial and religious groups. It makes that kind of expression less attractive and hence decreases acceptance of its content. Section 319(2) is also a means by which the values beneficial to a free and democratic society in particular, the value of equality and the worth and dignity of each human person can be publicized.*
>
> *Section 319(2) of the Code does not unduly impair freedom of expression. This section does not suffer from overbreadth or vagueness; rather, the terms of the offence indicate that s. 319(2) possesses definitional limits which act as safeguards to ensure that it will capture only expressive activity which is openly hostile to Parliament's objective, and will thus attack only the harm at which the prohibition is targeted.*

... while other non-criminal modes of combating hate propaganda exist, it is eminently reasonable to utilize more than one type of legislative tool in working to prevent the spread of racist expression and its resultant harm. To send out a strong message of condemnation, both reinforcing the values underlying s. 319(2) and deterring the few individuals who would harm target group members and the larger community by communicating hate propaganda, will occasionally require use of the criminal law.[198]

5.2. R. v. Butler (1992) - Obscenity

In unanimously upholding the obscenity law, Section 163 of the *Criminal Code*, against a Section 2(b) challenge, the SCC issued one of its' most important decisions on freedom of expression. A complete reading of this enlightened decision is recommended. Pertinent excerpts:

In order for the work or material to qualify as "obscene", the exploitation of sex must not only be its dominant characteristic, but such exploitation must be "undue". In determining when the exploitation of sex will be considered "undue", the courts have attempted to formulate workable tests. The most important of these is the "community standards of tolerance" test.

The community standards test has been the subject of extensive judicial analysis. It is the standards of the community as a whole which must be considered and not the standards of a small segment of that community such as the university community where a film was shown... or a city where a picture was exposed... The standard to be applied is a national one...

There has been a growing recognition in recent cases that material which may be said to exploit sex in a "degrading or dehumanizing" manner will necessarily fail the community standards test.

Among other things, degrading or dehumanizing materials place women (and sometimes men) in positions of subordination, servile submission or humiliation. They run against the principles of equality and dignity of all human beings. In the appreciation of whether material is degrading or dehumanizing, the appearance of consent is not necessarily determinative. Consent cannot save materials that otherwise contain degrading or dehumanizing scenes. Sometimes the very appearance of consent makes the depicted acts even more degrading or dehumanizing.

This type of material would, apparently, fail the community standards test not because it offends against morals but because it is perceived by public opinion to be harmful to society, particularly to women. While the accuracy of this perception is not susceptible of exact proof, there is a substantial body of opinion that holds that the portrayal of persons being subjected to degrading or dehumanizing sexual treatment results in harm, particularly to women and therefore to society as a whole. ... It would be reasonable to conclude that there is an appreciable risk of harm to society in the portrayal of such material.

Pornography can be usefully divided into three categories: (1) explicit sex with violence, (2) explicit sex without violence but which subjects people to treatment that is degrading or dehumanizing, and (3) explicit sex without violence that is neither degrading nor dehumanizing.

In making this determination with respect to the three categories of pornography referred to above, the portrayal of sex coupled with violence will almost always constitute the undue exploitation of sex. Explicit sex which is degrading or dehumanizing may be undue if the risk of harm is substantial. Finally, explicit sex that is not violent and neither degrading nor dehumanizing is generally tolerated in our society and will not qualify as the undue exploitation of sex unless it employs children in its production.

[198] *R v. Keegstra*, Supreme Court of Canada, 1990

The courts must determine as best they can what the community would tolerate others being exposed to on the basis of the degree of harm that may flow from such exposure. Harm in this context means that it predisposes persons to act in an anti-social manner as, for example, the physical or mental mistreatment of women by men, or, what is perhaps debatable, the reverse. Anti-social conduct for this purpose is conduct which society formally recognizes as incompatible with its proper functioning. The stronger the inference of a risk of harm the lesser the likelihood of tolerance. The inference may be drawn from the material itself or from the material and other evidence. Similarly evidence as to the community standards is desirable but not essential.

The foregoing deals with the interrelationship of the "community standards test" and "the degrading or dehumanizing" test. How does the "internal necessities" test fit into this scheme? The need to apply this test only arises if a work contains sexually explicit material that by itself would constitute the undue exploitation of sex. The portrayal of sex must then be viewed in context to determine whether that is the dominant theme of the work as a whole. Put another way, is undue exploitation of sex the main object of the work or is this portrayal of sex essential to a wider artistic, literary, or other similar purpose? Since the threshold determination must be made on the basis of community standards, that is, whether the sexually explicit aspect is undue, its impact when considered in context must be determined on the same basis. The court must determine whether the sexually explicit material when viewed in the context of the whole work would be tolerated by the community as a whole. Artistic expression rests at the heart of freedom of expression values and any doubt in this regard must be resolved in favour of freedom of expression.

This Court has... recognized that the harm caused by the proliferation of materials which seriously offend the values fundamental to our society is a substantial concern which justifies restricting the otherwise full exercise of the freedom of expression. In my view, the harm sought to be avoided in the case of the dissemination of obscene materials is similar. In the words of Nemetz C.J.B.C. in R. v. Red Hot Video Ltd. (1985), 45 C.R. (3d) 36 (B.C.C.A.), there is a growing concern that the exploitation of women and children, depicted in publications and films, can, in certain circumstances, lead to "abject and servile victimization" (at pp. 43-44). As Anderson J.A. also noted in that same case, if true equality between male and female persons is to be achieved, we cannot ignore the threat to equality resulting from exposure to audiences of certain types of violent and degrading material. Materials portraying women as a class as objects for sexual exploitation and abuse have a negative impact on "the individual's sense of self-worth and acceptance".

Finally, it should be noted that the burgeoning pornography industry renders the concern even more pressing and substantial than when the impugned provisions were first enacted. I would therefore conclude that the objective of avoiding the harm associated with the dissemination of pornography in this case is sufficiently pressing and substantial to warrant some restriction on full exercise of the right to freedom of expression.

The message of obscenity which degrades and dehumanizes is analogous to that of hate propaganda. As the Attorney General of Ontario has argued in its factum, obscenity wields the power to wreak social damage in that a significant portion of the population is humiliated by its gross misrepresentations.

While a direct link between obscenity and harm to society may be difficult, if not impossible, to establish, it is reasonable to presume that exposure to images bears a causal relationship to changes in attitudes and beliefs.

Similarly, in Keegstra, supra, the absence of proof of a causative link between hate propaganda and hatred of an identifiable group was discounted as a determinative factor in assessing the constitutionality of the hate literature provisions of the Criminal Code. Dickson C.J. stated:

First, to predicate the limitation of free expression upon proof of actual hatred gives insufficient attention to the severe psychological trauma suffered by members of those identifiable groups

targeted by hate propaganda. Second, it is clearly difficult to prove a causative link between a specific statement and hatred of an identifiable group.

McLachlin J. (dissenting) expressed it as follows:

> *To view hate propaganda as "victimless" in the absence of any proof that it moved its listeners to hatred is to discount the wrenching impact that it may have on members of the target group themselves.*[199]

5.2.1. Ministry of the Attorney General of Ontario - Intervenor's Factum

There were several Interveners in the *Butler* case, one of which was the Ontario Ministry of the Attorney General. Some comments from their Factum illustrate the government's position on the need to prohibit harmful forms of expression:

> *By now it is well settled that expression deserves constitutional protection in part because it is "little less vital to man's mind and spirit than breathing is to his physical existence". Thus one presumes a close and intimate connection between expression and human flourishing for purposes of constitutional analysis. Expression is a powerful human ability than can affect us deeply. However it is submitted that that is precisely why it is also constitutionally appropriate to prohibit certain forms of harmful expression. Expression's power can be employed for <u>either</u> good or ill. Harmful expression has no less destructive potential than benign or benevolent expression has constructive potential. As this Court concluded in Keegstra, supra, "It is indisputable that the emotional damage caused by words may be of grave psychological and social consequence". Thus the acknowledged power of expression in human affairs is a double edged sword. And both edges are equally sharp, something which those who argue for a robust freedom of expression based on its value to human flourishing cannot ignore. Consequently, it is submitted that the ultimate constitutional contours of freedom of expression must be set purposively, both including benevolent or benign expression and excluding harmful expression.*
>
> *As this Court held in Keegstra, "a person's sense of human dignity and belonging to the community at large is closely linked to the concern and respect accorded the groups to which he or she belongs". Material portraying women as a class as objects for sexual use or abuse humiliates and degrades, which "has a severely negative impact on the individual's sense of self- worth and acceptance".*
>
> *The crucial difference with obscenity [vs hate propaganda] is the much greater potential for social damage: fully one half of the population is degraded by the gender based messages of obscenity, and the other half is placed in jeopardy of desensitization.*
>
> *It is respectfully submitted that a third type of harm is associated with obscenity, namely obscenity's causal role in the commission of acts of violence against women.*

5.3. R. v. Mara (1997) - Immoral, Indecent or Obscene Performance

In this decision, the SCC ruled that the activity commonly referred to as "lap dancing" exceeded the Canadian community standard of tolerance. While not a 2(b) challenge, it nevertheless is important as an examination of the concept of "community standards" as they relate to obscenity. Section 167 (a) of the *Criminal Code* states:

[199] *R v. Butler,* Supreme Court of Canada, 1992

Every one commits an offence who, being the lessee, manager, agent or person in charge of a theatre, presents or gives or allows to be presented or given therein an immoral, indecent or obscene performance, entertainment or representation.

The *Mara* decision is also important because it builds on the *Butler* ruling in attempting to prevent harm to society, and particularly women, in matters of obscenity:

Aside from the question of intent, conviction or acquittal in this case turns only on whether the performances were indecent. The appropriate test to determine indecency is the community standard of tolerance. A performance is indecent if the social harm engendered by the performance, having reference to the circumstances in which it took place, is such that the community would not tolerate it taking place. The relevant social harm to be considered under s. 167 of the Criminal Code is the attitudinal harm on those watching the performance as perceived by the community as a whole. Here, as found by the Court of Appeal, the conduct exceeded the standard of tolerance in contemporary Canadian society. The activities were indecent insofar as they involved sexual touching between dancer and patron. This type of activity... is harmful to society in many ways: it degrades and dehumanizes women; it desensitizes sexuality and is incompatible with the dignity and equality of each human being; and it predisposes persons to act in an antisocial manner. This analysis is sufficient to ground the finding that the performances were indecent. The potential harm to the performers themselves -- the risks of harm from sexually transmitted diseases and from the activities' similarity to prostitution -- while obviously regrettable is not a central consideration under s. 167. The risk of harm to the performers is only relevant insofar as that risk exacerbates the social harm resulting from the degradation and objectification of women. Finally, the physical contact between patron and dancer and the public nature of the activity are the central points distinguishing this case from Tremblay and Hawkins.

The conduct in the present case, the court [of Appeal for Ontario] concluded, exceeded what is acceptable for the proper functioning of our society, exceeded community standards of tolerance and was indecent.

As set out in Tremblay, supra, at p. 958, the appropriate test to determine indecency is the community standard of tolerance. Dickson C.J. stated in Towne Cinema, supra, at p. 508:

> *The cases all emphasize that it is a standard of tolerance, not taste, that is relevant. What matters is not what Canadians think is right for themselves to see. What matters is what Canadians would not abide other Canadians seeing because it would be beyond the contemporary Canadian standard of tolerance to allow them to see it.*

... Butler set out that harm is the principle underlying the notion of what Canadians would tolerate. The majority stated in that case at p. 485:

> *The courts must determine as best they can what the community would tolerate others being exposed to on the basis of the degree of harm that may flow from such exposure. Harm in this context means that it predisposes persons to act in an anti-social manner as, for example, the physical or mental mistreatment of women by men, or, what is perhaps debatable, the reverse. Anti-social conduct for this purpose is conduct which society formally recognizes as incompatible with its proper functioning.*

While Butler concerned the obscenity of particular pornographic materials, the present case concerns the indecency of live performances. The tolerance basis of the community standards test is the same in indecency cases as in obscenity cases (see Tremblay), but indecency, unlike obscenity, entails an assessment of the surrounding circumstances in applying the community standards test. As the majority stated in Tremblay at p. 960:

> *In any consideration of the indecency of an act, the circumstances which surround the performance of the act must be taken into account. Acts do not take place in a vacuum. The community standard of tolerance is that of the whole community. However just what the community will tolerate will vary with the place in which the acts take place and the composition of the audience.*

Putting the above observations together, a performance is indecent if the social harm engendered by the performance, having reference to the circumstances in which it took place, is such that the community would not tolerate it taking place. I agree with the Court of Appeal that the activities in the present case were such that the community would not tolerate them and thus were indecent.

The relevant social harm to be considered pursuant to s. 167 is the attitudinal harm on those watching the performance as perceived by the community as a whole. In the present case, as outlined in the facts, the patrons of Cheaters could, for a fee, fondle and touch women and be fondled in an intimately sexual manner ... in a public tavern. In effect, men, along with drinks, could pay for a public, sexual experience for their own gratification and those of others. In my view, such activities gave rise to a social harm that indicates that the performances were indecent. I agree with the Court of Appeal, which stated (at p. 650 O.R.):

> *The conduct in issue in this case in the context in which it takes place is harmful to society in many ways. It degrades and dehumanizes women and publicly portrays them in a servile and humiliating manner, as sexual objects, with a loss of their dignity. It dehumanizes and desensitizes sexuality and is incompatible with the recognition of the dignity and equality of each human being. It predisposes persons to act in an antisocial manner, as if the treatment of women in this way is socially acceptable and is normal conduct, and as if we live in a society without any moral values.*

Any finding of indecency must depend on all the circumstances. I am satisfied that the activities in the present case were indecent insofar as they involved sexual touching between dancer and patron... It is unacceptably degrading to women to permit such uses of their bodies in the context of a public performance in a tavern. Insofar as the activities were consensual, as the appellants stressed, this does not alter their degrading character. Moreover, as I stated in Butler, at p. 479, "[s]ometimes the very appearance of consent makes the depicted acts even more degrading or dehumanizing".

This analysis, in my view, is sufficient to ground the finding that the performances were indecent. However, I agree with the Court of Appeal that it is also relevant that the Municipality of Metropolitan Toronto recently passed a by-law prohibiting contact between anyone who provides services designed to appeal to erotic or sexual appetites or inclinations at an adult entertainment parlour from touching or having physical contact with any other person in any manner whatsoever involving any part of that person's body, and prohibits the owner from permitting such conduct. While the by-law has been challenged unsuccessfully as being ultra vires the municipality, I agree with the Court of Appeal that, aside from its validity, the by-law is instructive in the present case as evidence confirming that community standards of tolerance were exceeded by the activities in question.

In summary, on the undisputed facts as described by the trial judge in the facts set out above, the performances in the present case were indecent. By finding them to be otherwise, in my view the trial judge erred in law and the Court of Appeal was correct to overturn this finding.[200]

[200] *R. v. Mara,* Supreme Court of Canada, 1997

5.4. Little Sisters Book and Art Emporium v. Canada (2000) - *Customs Act*

The federal government has given Customs the authority to "intercept and exclude from this country obscene, hateful, treasonable or seditious goods".[201] A gay and lesbian bookstore, Little Sisters Book and Art Emporium (the "appellants"), challenged the "constitutionality of the administrative review process in the *Customs Act*, and in the *Customs Tariff*, as violating their rights under sections 2(b) and 15(1) of the *Charter"*, and attempted, with the challenge "to get rid of the legislation altogether".[202]

The SCC ruled that the *Customs Act* does infringe section 2(b) of the Charter, but that the infringement is justified under Section 1, and also that the appellants' equality rights under section 15 are not infringed by the *Customs Act*. The Court acknowledged that "Customs treatment was high-handed and dismissive of the appellants' right to receive lawful expressive material which they had every right to import", but noted, "there is nothing on the face of the Customs legislation, or in its necessary effects, which contemplates or encourages differential treatment based on sexual orientation. The definition of obscenity, as already discussed, operates without distinction between homosexual and heterosexual erotica. The differentiation was made here at the administrative level in the implementation of the Customs legislation". Some other important comments from the decision:

> *I have already rejected, for the reasons given, the appellants' position that the Butler standard is so vague as not to be a limitation "prescribed by law" within the meaning of s. 1 of the Charter when applied to gay and lesbian erotica.*
>
> *Section 163 having been upheld in Butler, and the Customs Tariff having incorporated s. 163 and the related jurisprudence, it follows that the Customs Tariff prohibition is not void for vagueness or uncertainty, and is therefore validly "prescribed by law". The appellants argued that a legal standard which may be intelligible to a judge in a criminal trial surrounded with all the appropriate procedural protections is not necessarily intelligible to a Customs official left to his or her own devices supplemented by Memorandum D9-1-1. I do not think "intelligibility" varies with the level of procedural sophistication. The standards set out in s. 163(8) of the Criminal Code either affords a reasonable guide to well-intentioned individuals seeking to keep themselves within the law or it does not. Butler held that it did. The standard is related to the community's tolerance of harm. It is the severity of the potential consequences that requires a judge to preside over a criminal trial, not the intelligibility of the "community tolerance' standard.*
>
> ***Parliament's legislative objective is to prevent Canada from being inundated with obscene material from abroad. As in Butler, the ultimate objective was the avoidance of harm that Parliament had a reasonable apprehension would be caused by exposure to obscene material. This is a valid objective.*** (emphasis added)
>
> *Canadian sovereignty includes the right to inspect and if considered appropriate to prohibit the entry of goods which Parliament, in the valid exercise of its criminal law power, has prohibited. Customs procedures are rationally connected to that objective.*
>
> *In my view the basic statutory scheme set forth in the Customs legislation, properly implemented by the government within the powers granted by Parliament, was capable of being administered with minimal impairment of the s.2 (b) rights of importers, apart from the reverse onus provision which should be declared inapplicable to the obscenity issue for the reasons previously mentioned.*

[201] *Little Sisters Book and Art Emporium v. Canada (Minister of Justice),* Supreme Court of Canada, 2000
[202] Ibid

The problem here is not with the legislators but with the failure of those responsible to exercise the powers that they possess, including, according to the trial judge, the failure of Customs to make available adequate resources to do the job effectively.

In my view Parliament has struck an appropriate balance between the limiting effects of the Customs legislation and the legislative objective of prohibiting the entry of socially harmful material. As held in Butler, at p. 509, the benefits sought by the criminalization of obscenity are the avoidance of harm and the enhancement of respect for all members of society, and the promotion of non-violence and equality in their relations with each other. If I am correct that the source of the appellants' problem lies at the administrative level rather than the legislative level, the restriction imposed by Parliament to catch expressive materials that violate s. 163 of the Criminal Code at the international border does not outweigh the importance of the legislative objective.

The deleterious effects on the appellants found by the trial judge went way beyond any salutary benefits for Canadian society in this case, but that is not the test. The test is whether the deleterious effects of the Customs legislation, properly administered, exceed the salutary effect of the Customs legislation. The Customs legislation, properly administered, is designed to prevent entry into Canada of material that in all probability is obscene, i.e., likely to cause harm in excess of the community's standard of tolerance. That is a salutary benefit... Against this, the deleterious effect on importers of lawful material is expected by Parliament to be no more than temporary detention and the various costs in time and money reasonably occasioned by the processing of the goods.

5.5. R. v. Sharpe (2001) - Possession of Child Pornography

This controversial and confusing decision upheld the constitutionality of the law prohibiting the possession of child pornography, *Criminal Code* Section 163.1(4), with two exceptions. Pertinent excerpts follow:

[John Robin] Sharpe contends that the prohibition of possession, without more, violates the guarantee of freedom of expression in s. 2(b) of the Canadian Charter of Rights and Freedoms. The trial judge ruled that the prohibition was unconstitutional, as did the majority of the British Columbia Court of Appeal. The Crown appeals that order to this Court.

Parliament is not required to adduce scientific proof based on concrete evidence that the possession of child pornography causes harm to children. Rather, a reasoned apprehension of harm will suffice.

Expression that degrades or dehumanizes is harmful in and of itself as all members of society suffer when harmful attitudes are reinforced. The possibility that pornographic representations may be disseminated creates a heightened risk of attitudinal harm. The violation of the privacy rights of the persons depicted constitutes an additional risk of harm that flows from the possibility of dissemination. Child pornography is harmful whether it involves real children in its production or whether it is a product of the imagination. Section 163.1 was enacted to protect children, one of the most vulnerable groups in society. It is based on the clear evidence of direct harm caused by child pornography, as well as Parliament's reasoned apprehension that child pornography also causes attitudinal harm. The lack of scientific precision in the social science evidence relating to attitudinal harm is not a valid reason for attenuating the Court's deference to Parliament's decision.

The importance of the protection of children is recognized in both Canadian criminal and civil law. The protection of children from harm is a universally accepted goal. International law is rife with instruments that emphasize the protection of children and a number of international bodies have recognized that possession of child pornography must be targeted to effectively address the harms caused by this type of material.

Furthermore, in prohibiting the possession of child pornography, Parliament promulgated a law which seeks to foster and protect the equality rights of children, along with their security of the person and their privacy interests. The importance of these Charter rights cannot be ignored in the analysis of whether the law is demonstrably justified in a free and democratic society and warrants a more deferential application of the criteria set out in the Oakes test. ***Finally, Parliament has the right to make moral judgments in criminalizing certain forms of conduct. The Court should be particularly sensitive to the legitimate role of government in legislating with respect to our social values.*** (emphasis added)

Section 163.1(4) of the Code constitutes a reasonable and justified limit upon freedom of expression. In proscribing the possession of child pornography, Parliament's overarching objective was to protect children. Any provision which protects both children and society by attempting to eradicate the sexual exploitation of children clearly has a pressing and substantial purpose.

Given the low value of the speech at issue in this case and the fact that it undermines the Charter rights of children, Parliament was justified in concluding that visual works of the imagination would harm children.

In sum, the legislation benefits society as a whole as it sends a clear message that deters the development of antisocial attitudes.

I conclude that the law is constitutional, except for two peripheral applications relating to expressive material privately created and kept by the accused, for which two exceptions can be read into the legislation. The law otherwise strikes a constitutional balance between freedom of expression and prevention of harm to children.

Accordingly, s. 163.1(4) should be upheld on the basis that the definition of "child pornography" in s. 163.1 should be read as though it contained an exception for: (1) any written material or visual representation created by the accused alone, and held by the accused alone, exclusively for his or her own personal use; and (2) any visual recording, created by or depicting the accused, provided it does not depict unlawful sexual activity and is held by the accused exclusively for private use. These two exceptions apply as well to the offence of "making" child pornography under s. 163.1(2) (but not to printing, publishing or possessing child pornography for the purpose of publication). The exceptions will not be available where a person harbours any intention other than mere private possession.[203]

[203] *R. v. Sharpe,* Supreme Court of Canada, 2001

6. INDUSTRY SELF-REGULATION AND CLASSIFICATION

6.1. Introduction

In addition to federal and provincial legislation to which adherence is mandatory, systems of voluntary product classification and self-regulation are administered by different segments of the entertainment industry. Video games are classified by the American video game industry according to an age-based system; music producers provide "parental advisory" labels on some recordings with explicit content; mainstream films released for home rental in Ontario are classified under a national voluntary rating system; and, as discussed in the CRTC section, self-regulation has been sanctioned for television and radio. Basic information on industry-administered classification and self-regulation schemes is provided in this section.

6.2. Television and Radio

6.2.1. Canadian Broadcast Standards Council

The Canadian Broadcast Standards Council (http://www.cbsc.ca/) is the industry organization responsible for dealing with public complaints against private broadcasters, but only those that are members of the Council. If a broadcaster is not a member of the CBSC, the CRTC must address the complaint. The CBSC web site identifies their role:

> *The Canadian Broadcast Standards Council plays a special role in the Canadian broadcasting industry. It deals with complaints and queries from the public about Canada's private broadcasters' programming.*
>
> *Many similar bodies have been statutorily created in other parts of the world and some even function on a quasi-judicial basis. Not so the CBSC, which is a creature of the private broadcasters and plays an intermediate role in the regulatory process. With the support of the Canadian Association of Broadcasters and the approval of the Canadian Radio-television and Telecommunications Commission, but without the heavy club or formalities of government sanctions, the Council promotes self-regulation in programming matters by Canada's private sector broadcasters.*[204]

The CBSC assesses complaints against various codes adopted by the Canadian Association of Broadcasters, e.g., Code of Ethics, Voluntary Code Regarding Violence in Television Programming, and the Sex-Role Portrayal Code for Radio and Television Programming, and then issues a written ruling and news release announcing their decision. If the CBSC finds a broadcaster in violation of one of the codes, the broadcaster is required to read the CBSC decision on the air. That is the extent of the punishment meted out under this self-regulatory scheme, although a broadcaster can face ejection from the CBSC for repeated failure to abide by the codes. Details on filing complaints can be found on the CBSC web site, along with the codes. Excerpts from the ethics, violence and sex-role portrayal codes follow.

Code of Ethics

> ***Clause 2 - Human Rights***
>
> *Recognizing that every person has the right to full and equal recognition and to enjoy certain fundamental rights and freedoms, broadcasters shall ensure that their programming contains no abusive or unduly discriminatory*

[204] Canadian Broadcast Standards Council web site, July 2003

material or comment which is based on matters of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status or physical or mental disability.

Clause 9 - Radio Broadcasting

Recognizing that radio is a local medium and, consequently, reflective of local community standards, programming broadcast on a local radio station shall take into consideration the generally recognized access to programming content available in the market, the demographic composition of the station's audience, and the station's format. Within this context, particular care shall be taken by radio broadcasters to ensure that programming on their stations does not contain:

(a) Gratuitous violence in any form, or otherwise sanction, promote or glamorize violence;
(b) Unduly sexually explicit material; and/or
(c) Unduly coarse and offensive language.

Clause 10 - Television Broadcasting
Scheduling

(a) Programming which contains sexually explicit material or coarse or offensive language intended for adult audiences shall not be telecast before the late viewing period, defined as 9 pm to 6 am. Broadcasters shall refer to the Voluntary Code Regarding Violence in Television Programming for provisions relating to the scheduling of programming containing depictions of violence.

Clause 12 - Contests and Promotions

All on-air contests and promotions shall be conceived and conducted fairly and legitimately and particular care shall be taken to ensure that they are not misleading, potentially dangerous or likely to give rise to a public inconvenience or disturbance and that any prizes offered or promises made are what they are represented to be.

Code Regarding Violence in Television Programming

The Guidelines set out in this Voluntary Code are provided to CAB members to assist them in the creation, scheduling, purchase, broadcast and distribution of their programs, as they carry out their responsibilities as licensed television programming undertakings under the provisions of the Broadcast Act. The Guidelines are also designed to complement the general principles set out in the CAB Code of Ethics.

1.0 CONTENT

1.1 Canadian broadcasters shall not air programming which:

- *contains gratuitous violence in any form**
- *sanctions, promotes or glamorizes violence*

("Gratuitous" means material which does not play an integral role in developing the plot, character or theme of the material as a whole).*

***2.0 CHILDREN'S PROGRAMMING** (Children refers to persons under 12 years of age)*

2.1 As provided below, programming for children requires particular caution in the depiction of violence; very little violence, either physical, verbal or emotional shall be portrayed in children's programming.

2.2 In children's programming portrayed by real-life characters, violence shall only be portrayed when it is essential to the development of character and plot.

2.3 Animated programming for children, while accepted as a stylized form of storytelling which can contain non-realistic violence, shall not have violence as its central theme, and shall not invite dangerous imitation.

2.4 Programming for children shall deal carefully with themes which could threaten their sense of security, when portraying, for example; domestic conflict, the death of parents or close relatives, or the death or injury of their pets, street crime or the use of drugs.

2.5 Programming for children shall deal carefully with themes which could invite children to imitate acts which they see on screen, such as the use of plastic bags as toys, use of matches, the use of dangerous household products as playthings, or dangerous physical acts such as climbing apartment balconies or rooftops.

2.6 Programming for children shall not contain realistic scenes of violence which create the impression that violence is the preferred way, or the only method to resolve conflict between individuals.

2.7 Programming for children shall not contain realistic scenes of violence which minimize or gloss over the effects of violent acts. Any realistic depictions of violence shall portray, in human terms, the consequences of that violence to its victims and its perpetrators.

2.8 Programming for children shall not contain frightening or otherwise excessive special effects not required by the storyline.

3.0 SCHEDULING

3.1 Programming

3.1.1 Programming which contains scenes of violence intended for adult audiences shall not be telecast before the late evening viewing period, defined as 9 pm to 6 am.

3.1.2 Accepting that there are older children watching television after 9 pm, broadcasters shall adhere to the provisions of article 5.1 below (viewer advisories), enabling parents to make an informed decision as to the suitability of the programming for their family members.

3.1.4 Broadcasters shall exercise discretion in employing substitution in accordance with article 3.1.3 and shall at no time avail themselves of substitution rights over programming which contains gratuitous violence in any form or which sanctions, promotes or glamourizes violence.

3.1.5 Broadcasters shall take special precautions to advise viewers of the content of programming intended for adult audiences which is telecast before 9 pm in accordance with article 3.1.3.

(Note: To accommodate the reality of time zone differences, and Canadian distant signal importation, these guidelines shall be applied to the time zone in which the signal originates.)

3.2 Promotional material which contains scenes of violence intended for adult audiences shall not be telecast before 9 pm.

3.3 Advertisements which contain scenes of violence intended for adult audiences, such as those for theatrically presented feature films, shall not be telecast before 9 pm.

5.0 VIEWER ADVISORIES

5.1 To assist consumers in making their viewing choices, broadcasters shall provide a viewer advisory, at the beginning of, and during the first hour of programming telecast in late evening hours which contains scenes of violence intended for adult audiences.

5.2 Broadcasters shall provide a viewer advisory at the beginning of, and during programming telecast outside of late evening hours, which contains scenes of violence not suitable for children.

6.0 NEWS & PUBLIC AFFAIRS PROGRAMMING

6.1 Broadcasters shall use appropriate editorial judgment in the reporting of, and the pictorial representation of violence, aggression or destruction within their news and public affairs programming.

6.2 Caution shall be used in the selection of, and repetition of, video which depicts violence.

6.3 Broadcasters shall advise viewers in advance of showing scenes of extraordinary violence, or graphic reporting on delicate subject matter such as sexual assault or court action related to sexual crimes, particularly during afternoon or early evening newscasts and updates when children could be viewing.

6.4 Broadcasters shall employ discretion in the use of explicit or graphic language related to stories of destruction, accidents or sexual violence, which could disturb children and their families.

6.5 Broadcasters shall exercise particular judgment during live coverage of domestic terrorist events or civil disorders, to ensure news coverage does not become a factor in inciting additional violence.

6.6 While broadcasters shall not exaggerate or exploit situations of aggression, conflict or confrontation, equal care shall be taken not to sanitize the reality of the human condition.

7.0 VIOLENCE AGAINST WOMEN

7.1 Broadcasters shall not telecast programming which sanctions, promotes or glamorizes any aspect of violence against women.

7.2 Broadcasters shall ensure that women are not depicted as victims of violence unless the violence is integral to the story being told. Broadcasters shall be particularly sensitive not to perpetuate the link between women in a sexual context and women as victims of violence.

7.3 Broadcasters shall refer to the Canadian Association of Broadcasters' code on Sex Role Portrayal for guidance regarding the portrayal of women in general.

8.0 VIOLENCE AGAINST SPECIFIC GROUPS

8.1 Broadcasters shall not telecast programming which sanctions, promotes or glamorizes violence based on race, national or ethnic origin, colour, religion, gender, sexual orientation, age, or mental or physical disability.

9.0 VIOLENCE AGAINST ANIMALS

9.1 Broadcasters shall not telecast programming which sanctions, promotes or glamorizes violence against animals.

10.0 VIOLENCE IN SPORTS PROGRAMMING

10.1 Broadcasters shall not promote or exploit violent action which is outside the sanctioned activity of the sport in question.

Sex-Role Portrayal Code

INTRODUCTION

Negative or inequitable portrayal and representation of women or men can be expressed explicitly in programs and commercial messages, as well as implicitly through images, dialogue and character portrayal. Canadian broadcasters recognize the cumulative effect of negative and inequitable sex-role portrayal, and seek to address this issue effectively and responsibly with this Code, which replaces the previous CAB Voluntary Guidelines on Sex-Role Stereotyping.

The purpose of this Code is to serve as an effective guide to program development, production, acquisition and scheduling, recognizing that there can be no clearly defined set of criteria universally applicable to all Canadian communities at all times.

This Code of conduct dealing with sex-role portrayal in television and radio programming is designed to complement the general principles of the CAB Code of Ethics and other CAB voluntary codes.

STATEMENT OF INTENT

It is the intent of this Code that broadcasters shall advance the awareness of, and sensitivity to, the problems related to the negative or inequitable sex-role portrayal of persons. This Code is intended to assist in overcoming systemic discrimination portrayed in broadcast programming, based on gender.

It is the responsibility of television and radio broadcasters to ensure that the provisions of the Code are brought to the attention of those persons within their employ entrusted with program development and production, program acquisition decisions, and commercial message production.

GENERAL PRINCIPLES

[c] Nothing in this Code should be interpreted as censoring the depiction of healthy sexuality. However, broadcasters shall avoid and eliminate the depiction of gratuitous harm toward individuals in a sexual context, as well as the promotion of sexual hatred and degradation.

Neither sex should be subject to degradation from gratuitous acts of violence. Television broadcasters and the public should also refer to the CAB Voluntary Code Regarding Violence in Television Programming, which contains a general provision concerning violence against women.

[d] Broadcasters shall be sensitive to the sex-role models provided to children by television and radio programming. In this context, programmers shall make every effort to continue to eliminate negative sex-role portrayals, thereby encouraging the further development of positive and progressive sex-role models. The "sexualization" of children in programming is not acceptable, unless in the context of a dramatic or information program dealing with the issue.

THE CANADIAN ASSOCIATION OF BROADCASTERS SEX-ROLE PORTRAYAL GUIDELINES FOR TELEVISION AND RADIO PROGRAMMING

4. Exploitation

Television and radio programming shall refrain from the exploitation of women, men and children. Negative or degrading comments on the role and nature of women, men or children in society shall be avoided. Modes of dress, camera focus on areas of the body and similar modes of portrayal should not be degrading to either sex. The sexualization of children through dress or behaviour is not acceptable.

Guidance: "Sex-ploitation" through dress is one area in which the sexes have traditionally differed, with more women portrayed in scant clothing and alluring postures.

8. Program Development and Acquisition

Broadcasters shall exercise sensitivity to and awareness of the problems associated with sex-role portrayal in the development of domestic programming, and in the acquisition of non-Canadian programming for broadcast.

Guidance: In the development of domestic programs, broadcasters shall make station production staff aware of the Code, to ensure that local station programming conforms to the various aspects of sex-role portrayal outlined in the Code.

In the development, financing or acquisition of domestic programs produced by other than station or network staff, broadcasters shall ensure that participating independent producers and syndicators are aware of the Code.

In the acquisition of, or involvement in, non-Canadian programming, broadcasters should make every effort to evaluate program concepts relative to the Code. [205]

6.2.2. Classification System, V-Chip, Viewer Advisories

The CRTC's Policy on Violence in Television, released in 1996 following public hearings, mandated broadcasters to develop a classification system that would work with V-chip technology, once it was introduced.[206] The classification system was approved by the CRTC in June 1997, and broadcasters began to encode their programming for use with V-chip technology in March 2001.

All new televisions sold in Canada over 13 inches in screen size have some form of V-chip technology built in, although not all sets are compatible with the Canadian rating systems, as inclusion of the Canadian classification system is not legislated. However, according to V-Chip Canada (http://www.vchipcanada.ca), most television set manufacturers have begun to add the Canadian rating

[205] Ibid
[206] V-Chip Canada web site, July 2003

systems to their V-chip technology on a voluntary basis.[207] Refer to the V-Chip Canada web site for instructions on determining whether new television sets are equipped with Canadian settings.

Not all programming is subject to classification. The CRTC decreed that children's programming, drama, feature films and reality-based programming must be rated, but newscasts, magazine programs, documentaries, talk shows, variety programming, sports and music videos are exempt from classification. Broadcasters are required to classify their own material, as well as foreign programming. If a program is delivered to a Canadian broadcaster with a U.S. rating, it is evaluated using Canadian standards and a Canadian rating is applied to the show.[208] Ratings are not provided in printed television guides, but are flashed on the screen for a few seconds when a program begins.

How the V-Chip Works

The V-chip is filtering technology built into television sets (the "V" stands for "viewer control"), and the device was invented by a Canadian, Professor Tim Collings of Simon Fraser University in British Columbia. Once a broadcaster has assigned a rating to a program, an electronic code is inserted into that program when it is broadcast. When the signal arrives at the TV set, it triggers the V-chip (provided that feature has been activated). Parents select a rating level and all programs at that level and below are allowed to pass through the V-chip for viewing, while programs with a rating above that level will be blocked and the screen will go black.[209] The V-Chip Canada web site is a useful resource for information on this technology and the classification system.

Viewer Advisories

A variety of viewer advisories are broadcast prior to and during some programs that supposedly alert parents to violent and/or sexual content. Unfortunately, however, a study conducted by the University of Western Ontario's Richard Ivey School of Business[210] and released in 1997, indicates the advisories can act as advertisements that attract children and teenagers to violent programs. So, while the industry touts viewer advisories as an important part of the solution, they may actually be counter-productive.

6.3. Home Movie Rental and Sale

Under provincial legislation in Ontario, distributors are required, with a few exceptions, to submit their films to the Ontario Film Review Board for approval and classification prior to distribution in this province, but the legislation does not require mainstream films for home use to carry OFRB classification labels. (Adult sex films are subject to separate, stringent regulations.) There is, however, a voluntary, age-based rating system in place called the Canadian Home Video Rating (CHVR) system, administered by the Canadian Motion Picture Distributors Association.

After the six film review boards across Canada have classified a film, an average is taken which then becomes the video's classification under this system.[211] This means it is possible for a rental video to have a different classification than the same film did when it appeared in a theatre in Ontario. Videos often also display the U.S. Motion Picture of America Association (MPAA) classification as well, which is different from both the OFRB and CHVR. Currently, the Canadian Home Video Rating system does not have a web site, but additional information can be found on the Ontario Film Review Board web site (http://www.ofrb.gov.on.ca/).

[207] Ibid
[208] Ibid
[209] Ibid
[210] *TV violence warnings tune teens into ads*, Globe and Mail, May 1, 1997
[211] Ontario Film Review Board web site, July 2003

6.4. Recording Industry

Neither Canada nor the United States, where much of the music sold in this country originates, have an age-based classification system for music recordings. The recording industries in both countries do place a "Parental Advisory: Explicit Content" label on some products. In the United States, the Recording Industry Association of America (RIAA) administers the parental advisory program. Information on RIAA is provided in the "United States, Voluntary Classification Systems" section.

In Canada, the music industry is represented by the Canadian Recording Industry Association (CRIA), whose web site states that "over 95% of all recordings made and sold in this country emanate from its member companies", and identifies itself as "the voice and guardian of the record industry in Canada". CRIA posts their parental advisory policy on their site at http://www.cria.ca:

> *Because it is recognised that there will always be gaps and voids in everyone's ability to shield and protect society's kids, CRIA and its members, some years ago, embarked on a communications initiative to assist parents in the identification of recordings whose content might be inappropriate for younger children to hear.*
>
> *Each member record company of CRIA establishes it's own set of "community standards and values" which it uses as a framework for responsibly addressing these issues. While respecting the artistic vision of the artist and recognising the value of freedom of expression, the record company may, in some instances, ask an artist to re-record certain songs or to revise lyrics because a creative and responsible view of the music demands such a revision.*
>
> *In instances where the artist and the record company agree that there is musical and artistic credibility in the work even when the lyrics are too explicit for mainstream distribution, the industry's "Parental Advisory" label is applied prominently to the outside of the permanent packaging.*
>
> *All product identified in this way is also brought to the attention of retailers in the distribution process and most Canadian retailers offer yet a 'second layer' of checks and balances to support the labelling system in-store, having staff keep watch on who is purchasing these products and asking for age-proof I.D. when necessary.*[212]

According to a spokesperson for the Ontario Ministry of Consumer and Business Services, "Major retailers offering explicitly-rated music have indicated their commitment to only sell this material to persons over the age of 18."[213]

6.5. Video Games

The Canadian Interactive Digital Software Association (CIDSA), comprising major Canadian video game manufacturers, has adopted the American industry's voluntary, age-based classification system, administered in the U.S. by the Entertainment Software Rating Board (ESRB). The ratings applied by the ESRB appear on video games sold in Canada. CIDSA member companies are encouraged, but not mandated, to submit their wares to the U.S. board for rating before sending them to Canadian stores. According to Harvey Nightingale, CIDSA Executive Director, the purpose of the board is "not to censor, but to provide consumer information".[214]

[212] Canadian Recording Industry Association web site, August 2003
[213] Memorandum dated August 3, 2004 from Barry Goodwin, Director, Policy Branch, Ministry of Consumer and Business Services to Linda Spears, A/Director, Victim Policy and Program Development Branch, Ontario Victim Services Secretariat
[214] *Video games make censorship look good*, NOW, December 10-16, 1998

CIDSA does not have a web site, but their "infrastructure appears to be housed within the Toronto offices of Hill & Knowlton, a well-known lobbying and communications company".[215] Information on the American ESRB rating system for video games can be found at http://www.esrb.org/. Please also see the "United States, Voluntary Classification Systems" section.

[215]Research Agenda for the Federal Provincial Territorial Working Group on Children and Violence in Video Games and New Media, March 26, 2002

7. UNITED STATES

7.1. Introduction

As the United States heavily influences what we see, read and hear in Canada, some basic information on their approach to obscenity (violent/degrading pornography), video games, movies and television is provided here. As a sovereign nation, however, Canada has its own laws and authority to regulate these products. Indeed, some material that is legal in the United States, may be illegal in Canada under the *Criminal Code* and Canadian human rights legislation, so the two systems have significant differences when it comes to the media.

As in Canada, America's freedom of expression guarantee prompts court challenges to legislation dealing with forms of expression. The *Constitution of the United States of America* sets out as Amendment I:

> *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.*

A report prepared by the National Research Council (NRC) on the exposure of children to Internet pornography -- *Youth, Pornography, and the Internet* -- provides insight into the American approach:

> *Through a complex process of constitutional amendment and judicial interpretation, over the past 150 years the Constitution has come to mean that "government shall make no law abridging the freedom of speech" -- that is, the First Amendment restricts the actions not only of the Congress, but also of the President, the State of Montana, the city of Pittsburgh, the University of Nebraska, and police officers in Decatur.*
>
> *On the other hand, like other provisions of the Constitution, the First Amendment restricts only the government. It does not restrict private individuals. Thus, a private individual cannot be said to unconstitutionally "abridge" another private individual's "freedom of speech and press". Only the government, or its agents, can be charged with violating the First Amendment.*
>
> *... the [U.S.] Supreme Court has identified several very basic principles that have shaped its interpretation and application of the First Amendment. Three such principles are most directly relevant to the issues of interest to this committee:*
>
> - *First, the Supreme Court has held that the government cannot constitutionally restrict speech because the speech advocates ideas, opinions, or values that the government (pr perhaps more accurately the majority of citizens) believe to be "wrong" or "improper".*
> - *Second, the Court has generally held that, except in the most extraordinary circumstances, the government cannot constitutionally restrict speech because the ideas expressed might cause readers or listeners to engage in unlawful or otherwise socially undesirable conduct.*
> - *Third, the Court has generally held that the second principle is inapplicable to specific categories of speech that the Court has defined as having only "low" First Amendment value. That is, as the Court explained some 60 years ago:*

There are certain well defined and narrowly limited classes of speech, [such as the obscene and the libelous, that] are no essential part of any exposition of ideas and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.

For these categories of expression, which include not only the obscene and the libelous, but also fighting words, commercial advertising, express incitement, and threats, the Court has held that some forms of government regulation are permissible.[216]

7.2. Violent and/or Degrading Pornography

In the United States, unlike Canada, each of the states is free to enact its own set of criminal prohibitions to deal with pornography. There are also several federal laws in the *United States Code* (http://www4.law.cornell.edu/uscode/):

TITLE 18
Sec. 1460. Possession with intent to sell, and sale, of obscene matter on Federal property
Sec. 1461. Mailing obscene or crime-inciting matter
Sec. 1462. Importation or transportation of obscene matters
Sec. 1464. Broadcasting obscene language
Sec. 1465. Transportation of obscene matters for sale or distribution
Sec. 1466. Engaging in the business of selling or transferring obscene matter
Sec. 1468. Distributing obscene material by cable or subscription television
Sec. 1470. Transfer of obscene material to minors
TITLE 47
Sec. 231. Restriction of access by minors to materials commercially distributed by means of World Wide Web that are harmful to minors

Regarding U.S. Supreme Court decisions on the issue, the NRC report explains the history:

The U.S. Supreme Court did not have occasion to rule on the constitutionality of anti-obscenity legislation until its 1957 decision in Roth v. United States. The Court reasoned as follows:

All ideas having even the slightest redeeming social importance -- unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion -- have the full protection of the [First Amendment]. But implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance. Indeed, it is apparent that obscenity, like libel, is outside the protection intended for speech and press. Accordingly, obscene material may be suppressed without proof that it will create a clear and present danger of antisocial conduct.

However, sex and obscenity are not synonymous. Obscene material is material which deals with sex in a manner appealing to prurient interest... It is therefore essential that the standards for judging obscenity safeguard the protection of freedom of speech and press for material which does not treat sex in a manner appealing to prurient interest. The proper test is whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to the prurient interest.

[216] *Youth, Pornography, and the Internet,* Dick Thornburgh and Herbert S. Lin, Editors, Committee to Study Tools and Strategies for Protecting Kids from Pornography and Their Applicability to Other Inappropriate Internet Content, National Research Council, National Academy Press, Washington, D.C., 2003.

Thus, the specific holding of Roth was that if material meets the definition of obscenity, it is not protected by the First Amendment and may thus be restricted without any showing that its sale, exhibition, or distribution will cause any particular harm to any particular person. [217]

For the next seventeen years, the Court wrestled with the problem of refining the *Roth* definition of obscenity, which proved difficult because of its inherent subjectivity.[218] In 1973, the issue was revisited. In *Miller v. California*, the Court reaffirmed the idea that obscene expression is outside the protection of the First Amendment, but redefined the test for obscenity into three components:

(a) whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interests;

(b) whether the work depicts or describes sexual conduct in a particularly offensive manner; and

(c) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

All three of these questions need to be answered in the affirmative for the material to lose the protection of the First Amendment.[219] Under this regime and, as community standards have relaxed, it is generally understood that only the most hard-core forms of pornography will meet the constitutional definition of obscenity. Nonetheless, it remains the case that the government can prohibit the sale, exhibition, or distribution of obscene material, and there is no constitutional obstacle to a more aggressive policy of prosecuting obscenity.[220]

In addition to federal laws, all states prohibit the production, sale, or exhibition of obscenity. A typical state law on this subject would incorporate the *Miller* definition, as applied to the community standards of the state. [221]

7.2.1. Enforcement -- and the Lack Thereof

Laws are only as effective as their enforcement. The National Research Council report says, "as of this writing (May 2002), prosecutions for obscenity are rare though not unheard of at both the federal and local level". Testimony before the NRC committee by U.S. Department of Justice officials in 2000 revealed that current department policy is to prosecute those involved in major production and distribution of obscene material, rather than local cases. Also, the department's priorities are to prosecute matters related to the production and online distribution of child pornography and the luring of minors into illegal sexual activity. As a consequence, federal obscenity prosecutions have declined significantly. The NRC report points out that this policy emphasis indicates a significant change from the previous administration, which had prosecuted obscenity cases with greater vigour:

This is an important point. In the 1980s, the Department of Justice undertook an aggressive approach to the prosecution of obscenity. ... many of the most graphic forms of sexually explicit material that can now readily be found on the Internet (including graphic depictions of... incest, and bestiality) would have fallen within the prosecutorial policies of the Department of Justice in the 1980s.

By the mid-1990s, however, prosecutorial attention began to shift to concerns about child pornography and sexual predators of children. Because resource limitations inevitably constrain what investigators and prosecutors can do, this shift of attention led to a substantial

[217] Ibid
[218] Ibid
[219] *Pornography and Prostitution in Canada,* Report of the Special Committee on Pornography and Prostitution, Supply and Services Canada, Ottawa, 1985
[220] *Youth, Pornography, and the Internet,* Dick Thornburgh and Herbert S. Lin, Editors, Committee to Study Tools and Strategies for Protecting Kids from Pornography and Their Applicability to Other Inappropriate Internet Content, National Research Council, National Academy Press, Washington, D.C., 2003
[221] Ibid

reduction at both the national and local levels in the number of prosecutions for the sale, production, or exhibition of traditional obscenity.

... Because of the relative dearth of obscenity prosecutions in recent years, it is in fact impossible to say for certain that a more aggressive prosecutorial strategy directed at online "obscenity," as legally defined by the Supreme Court in Miller, could not have a significant impact on the availability of such material on the Internet. Whether the current state of affairs with respect to obscenity prosecutions is due to changes in community standards or a mere lack of prosecutions is an open question. [222]

This lack of enforcement has not only contributed to the proliferation of Internet obscenity, but also that distributed through very traditional and mainstream channels. As revealed during an exposé of Canadian pay-per-view pornography channels prepared by the CBC news program, *The Fifth Estate* (broadcast in March 2001), violent and degrading movies are produced in significant quantities by a company called Extreme Associates of Los Angeles, California. They, in turn, sell it to another company, New Frontier Media, where it "goes out to cable television operators and satellite broadcasters" across North America.[223] (More information on *The Fifth Estate* program and the Canadian situation is found in the "Television and Radio, Failure of Regulation" section.)

We have just had a proliferation of this type of material that has been getting increasingly worse and worse. And that's why it's important to enforce the law, and to show the producers that there are limits.

Rob Black, the owner of Extreme Associates, told *The Fifth Estate* that his "highest paying customers are the cable and satellite providers", and he's proud of the fact that "his movies are the most shocking" of the 10,000 pornographic videos shot in and around Los Angeles every year.[224] A Time magazine article noted that even among hard-core pornographers, Rob Black is "considered a sleazebag". His movies are "packed with images that the porn industry itself has long censored", including rape.[225] Extreme Associates' web site celebrates the fact that the company makes the "nastiest, most degrading, degenerate movies", and Black described his movies during an interview with CBC reporter Hannah Gartner as, "horrible. It's all horrible, horrible stuff".[226] This "horrible stuff" is being broadcast across North America on cable and satellite.

The situation may be about to change, however. In November 2003, *60 Minutes* reported that the Justice Department is prosecuting Extreme Associates in the first major obscenity case brought by the federal government in more than a decade. "We have just had a proliferation of this type of material that has been getting increasingly worse and worse. And that's why it's important to enforce the law, and to show the producers that there are limits," said Mary Beth Buchanan, the U.S. Attorney assigned as the Justice Department's point person in their campaign to rein in pornography. "There are limits to what they can sell and distribute throughout the country," she said. One of the movies she cited was *Forced Entry* that includes shots of women being raped and murdered. It also includes suffocation, strangulation, beatings and urination. Rob Black calls it a "slasher film with sex", loosely based on the Hillside Strangler case. "They made absolutely no attempt to comply with federal law. In fact, it was probably their intent not to," said Ms Buchanan. "Because what they wanted to do was to make the most disgusting material available on the market. And they succeeded."[227]

[222] Ibid
[223] *The Pious Pornographers,* The Fifth Estate, broadcast by CBC, March 28, 2001
[224] Ibid
[225] *Porn Goes Mainstream,* Time, September 7, 1998
[226] *The Pious Pornographers,* The Fifth Estate, broadcast by CBC, March 28, 2001
[227] *Porn in the U.S.A.,* 60 Minutes transcript, CBSNews.com, November 21, 2003

7.3. Obscene With Respect to Minors/Harmful to Minors

In recognition of the problems posed by the exposure of children to sexually explicit material, the U.S. Supreme Court ruled in *Ginsberg v. New York* that the government can prohibit "the sale to minors... of material defined to be obscene on the basis of its appeal to them whether or not it would be obscene to adults."[228] So, the government can prohibit children from having access to certain types of sexually explicit material that it cannot constitutionally ban for adults, thus enabling authorities to prohibit minors from buying, renting, or viewing certain sexually explicit movies, magazines, or books. The Court will not, however, permit the broad suppression of expression intended for adults just because minors might be exposed to it:

> *Although acknowledging the importance of the government's interest "in protecting children from harmful materials," the Court reaffirmed that that "interest does not justify an unnecessarily broad suppression of speech addressed to adults," and that the government "may not reduce the adult population to only what is fit for children."*[229]

The U.S. government has enacted legislation aimed at protecting minors from exposure to Internet pornography. The Child Online Protection Act (COPA) amended Title 47 of the *United States Code* to prohibit the communication of material that is "harmful to minors" over the Internet. Section 231 (Title 47) defines material "harmful to minors" as:

> ... any communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that is obscene or that:
>
> - the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, is designed to appeal to, or is designed to pander to, the prurient interest;
>
> - depicts, describes, or represents, in a manner patently offensive with respect to minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post-pubescent female breast; and
>
> - taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

"Minor", under this section, means any person under 17 years of age.

To regulate the distribution to minors of pornography that does not meet the *Miller* test for obscenity, states often use the phrase "harmful to minors", which derives from the Supreme Court *Ginsberg* decision. For example, the California penal code defines "harmful matter" as matter that, "taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest, and is matter which, taken as a whole, depicts or describes in a patently offensive way sexual conduct and which, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors".[230]

7.4. Voluntary Classification Systems

Movies, television and video games in the United States are assigned ratings on a voluntary, non-legislated basis by industry-run organizations using an age-based classification system. The recording industry provides only a single stickered warning to parents of "explicit content" on some recordings.

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[228] *Youth, Pornography, and the Internet,* Dick Thornburgh and Herbert S. Lin, Editors, Committee to Study Tools and Strategies for Protecting Kids from Pornography and Their Applicability to Other Inappropriate Internet Content, National Research Council, National Academy Press, Washington, D.C., 2003

[229] Ibid

[230] Ibid

Criticism of the various rating systems is widespread. In June 2001, the National Institute on Media and the Family, American Medical Association, American Psychological Association, and other leading authorities, wrote to members of Congress asking for changes to the media ratings systems. In a news release and open letter, they said the "industry media ratings are not useful to parents because they are confusing and inaccurate", and they asked Congress "to explore stricter ratings, creation and implementation of an independent ratings oversight committee to monitor all media ratings for accuracy, and the implementation of a universal ratings system" (http://www.mediaandthefamily.org). Their letter said, "Parents and child development experts disagree with the current ratings. The current ratings are not sufficiently health based nor designed to protect children".[231] In response to this letter, the United States Senate Committee on Governmental Affairs held a hearing on the issue, "Rating Entertainment Ratings: How Well are They Working for Parents and What can be Done to Improve Them?" in July 2001.

7.4.1. Television

The Americans have a voluntary classification system for television programming similar, in many respects, to the Canadian system, although the ratings themselves are different. Information on the television classification system can be found on the Motion Picture Association of America web site, and also at http://www.tvguidelines.org/. The following is excerpted from the TV Parental Guidelines web site:

> *... the television industry designed a TV ratings system to give parents more information about the content and age-appropriateness of TV programs. These ratings, called the TV Parental Guidelines, are modeled after the familiar movie ratings which parents have known and valued for nearly 30 years. They are designed to be simple to use, easy to understand and handy to find. The Guidelines apply to all television programs, including those directed specifically to young children. Sports and news shows will not carry the Guidelines.*
>
> *The TV Parental Guidelines can be used in conjunction with the V-Chip - a device built into most newer television sets - to allow parents to block out programs they don't want their children to see. The V-Chip electronically reads television-programming ratings and allows parents to block programs they believe are unsuitable for their children.*
>
> *The TV Parental Guidelines Monitoring Board comprises a broad range of experts drawn from the television industry to make sure that there is as much uniformity and consistency in applying the Parental Guidelines as is possible. The Board examines programs whose ratings may have been inappropriate to ensure the accuracy of the Guidelines. Individuals can contact the Board via mail, phone or e-mail to voice complaints.*

7.4.2. Movies

The United States film industry provides the majority of video/DVDs seen in millions of homes throughout the world[232] and, as a result, their ratings usually appear on home rentals in Ontario. Unlike Ontario, however, the American classification system is voluntary, not legislated. In effect since 1968, the system is sponsored by the Motion Picture Association of America (MPAA), an industry trade group (http://www.mpaa.org/), and the National Association of Theatre Owners.

The MPAA web site says that it acts as "the voice and advocate of the American motion picture, home video and television industries, domestically through the MPAA and internationally through the MPA (Motion Picture Association)". These organizations "serve as leader and advocate for major producers and distributors of entertainment programming for television, cable, home video and future delivery systems not yet imagined".[233] "On its board of directors are representatives of the seven major producers and distributors of motion picture and television programs in the United States, including: Walt Disney

[231] *G... TV-Y... E, What do these letters mean to parents? Researchers say - "Not enough -- Congress should act!",* National Institute on Media and the Family news release, June 19, 2001
[232] Motion Picture Association of America web site, July 2003
[233] Ibid

Company, Sony Pictures Entertainment, Inc., Metro-Goldwyn-Mayer Inc., Paramount Pictures Corporation, Twentieth Century Fox Film Corp., Universal Studios, Inc., and Warner Bros." [234]

The following information on the MPAA movie classification system is excerpted from http://www.filmratings.com:

> ***What is the purpose of the rating system?*** *The movie rating system is a voluntary system sponsored by the Motion Picture Association of America and the National Association of Theatre Owners to provide parents with advance information on films, enabling parents to make judgments on movies they want or do not want their children to see.*
>
> ***Who gives movies their ratings?*** *Parents give the movies their ratings - men and women just like you. They are part of a specially designed committee called the film rating board of the Classification and Rating Administration. As a group they view each film and, after a group discussion, vote on its rating, making an educated estimate as to which rating most American parents would consider the most appropriate.*
>
> ***What criteria do they use?*** *The rating board uses the criteria you as a parent use when deciding what is suitable viewing for your child. Theme, language, violence, nudity, sex and drug use are among those content areas considered in the decision-making process. Also assessed is how each of these elements is employed in the context of each individual film. The rating board places no special emphasis on any of these elements; all are considered and examined before a rating is given.*
>
> ***Is the rating system a law?*** *No, the rating system is strictly voluntary and carries no force of law.*
>
> ***Do all movies have to be rated?*** *No. Submitting a film is purely a voluntary decision made by the filmmakers. However, the overwhelming majority of the producers creating entertaining, responsible films do in fact submit their films for ratings. All five Classification and Rating Administration rating symbols have been trademarked and may not be self-applied.*
>
> ***Who enforces the ratings?*** *While the decision to enforce the rating system is purely voluntary, the National Association of Theatre Owners estimate that the majority of theaters observe the Classification and Rating Administration's guidelines.*

It would be something of an understatement to say that everyone agrees with the MPAA's claim that "the rating board uses the criteria you as a parent use when deciding what is suitable viewing for your child", as their classification decisions are routinely criticized by advocacy organizations and film makers alike. The MPAA, for instance, gave the *Texas Chainsaw Massacre* remake an "R" rating, meaning that children under 17 can watch it if accompanied by an adult. In commenting on this, noted film critic Roger Ebert said, "This film is so gruesome, sick and explicitly violent that if it doesn't deserve an adults-only rating, you have to wonder what does".[235] At a preview screening of *Massacre* in New York, 7-year-olds were in attendance, something the producer, Michael Bay, said was "completely wrong", and he posed the disingenuous question, "How did they even get into the screening?"[236] They got into the screening because the MPAA gave the movie an R rating instead of an NC-17 rating (no children under 17 admitted).

7.4.3. Recording Industry

The Recording Industry Association of America (RIAA) administers the parental advisory program. Individual record companies decide which of their releases should be assigned parental advisory labels.

[234] Ibid
[235] *Is Pacino in Scarface an Italian in Cuban clothing?,* National Post, October 24, 2003
[236] *Baying for blood (but it's all in fun),* CanWest News Service, October 13, 2003

the Senate hearing into the effectiveness of rating systems, Senator Joe Lieberman offered the following comments on the RIAA:

> *For some time now many of us have voiced dissatisfaction with the recording industry's one size-fits-all parental advisory program, which provides a solitary stickered warning to parents of "explicit content." We have urged the major record companies to expand and clarify their system and tell parents what kinds of explicit content are in the lyrics. Those same criticisms and calls for change were repeated vociferously at a hearing before the House Telecommunications Subcommittee last week... and Ms [Hilary] Rosen [of RIAA] ruled out adding any content descriptions to the recording industry's labeling system.*[237]

The following information is excerpted from the RIAA web site (http://www.riaa.com):

> *In 1985, the RIAA reached an agreement with the National Parent Teacher Association and the Parents Music Resource Center. That agreement specified that music releases which contain explicit lyrics, including explicit depictions of violence and sex, be identified so parents can make intelligent listening choices for their children.*
>
> *The RIAA created and now administers the Parental Advisory program. Individual record companies, working with their artists, decide which of their releases should be labeled.*
>
> *In some instances, record companies ask an artist to re-record certain songs or to revise lyrics because a creative and responsible view of the music demands such a revision. Sometimes songs are simply taken off an album. In other instances, the artist and the record company agree that there is musical and artistic credibility in the whole of the work even when the lyrics may be too explicit for mainstream distribution. In those instances, the RIAA's Parental Advisory Label is applied prominently to the outside of the permanent packaging.*
>
> *The RIAA does not represent the record retailers, but RIAA works closely with the National Association of Recording Merchandisers (NARM) on this issue. Many retailers have in-store policies forbidding the sale of records containing the Parental Advisory Label to those younger than 18. And some retail outlets will not even carry stickered product. The decision is made by the retailer according to how that store feels it can best serve its own community.*
>
> *The Parental Advisory is a notice to consumers that recordings identified by this logo may contain strong language or depictions of violence, sex or substance abuse. Parental discretion is advised.*
>
> *If an edited version of an album designated with the Parental Advisory Label is released, it should include an Edited Version Label plainly displayed either on the front of the album (on the cellophane wrapper or on the album cover itself), or on the top spine of the CD.*
>
> *The Edited Version Label is a notice to consumers that the album has been modified from the original, and does not include all of the same content contained in the labeled version. The use of the Edited Version Label does not necessarily mean that all content that all listeners might find objectionable has been removed from the album.*

[237] *Opening Statement of Senator Joe Lieberman,* U.S. Senate Committee on Governmental Affairs Hearing, Rating Entertainment Ratings: How Well are They Working for Parents and What can be Done to Improve Them?, July 25, 2001

7.4.4. Video Games

Voluntary Classification System

A voluntary, age-based classification system for video games is administered by the Entertainment Software Ratings Board (ESRB), with the ratings assigned by the Board appearing on the video game packaging, along with content "descriptors". The ESRB was established in 1994 as a means of forestalling government legislation. Senator Joseph Lieberman had co-sponsored a bill in Congress that would have made a ratings system legally binding, but withdrew it with the promise of effective self-regulation.[238]

In June 2003, the ESRB announced, with some fanfare, that it would be adding four additional violence descriptors to video game packaging, and also specifying the classification age range on the package. One of the new descriptors is "Sexual violence: Depictions of rape or other violent sexual acts". The fact that such a descriptor is necessary is truly alarming, considering the interactive nature of the technology. Information on the rating system can be found at http://www.esrb.org.

Legislation

As concern over the graphic and violent content of video games has grown, and the failure of self-regulation has become evident, attempts have been made by American lawmakers to limit the access of children and youth to violent games through legal means. Several states and municipalities have introduced legislation, but the bills are routinely challenged in court by the Interactive Digital Software Association (IDSA), a gaming industry trade group that includes Sony Corp., Microsoft Corp., and Nintendo, and some laws have been struck down as a result.

In commenting on one such challenge to a Washington state law in June 2003, Doug Lowenstein, IDSA's President said:

> *While we share the state's objective to restrict the ability of children to purchase games that might not be appropriate for them, we passionately oppose efforts to achieve this goal by running roughshod over the constitutional rights of video game publishers, developers and retailers to make and sell games that depict images some find objectionable.*[239]

The video game industry already applies ratings to video games based on the understanding that some content is not appropriate for children and youth, so why replacing their voluntary system with a mandatory system would run "roughshod" over their constitutional right isn't clear. A legislated system would, however, run "roughshod" over the industry's ability to profit from selling mature-rated games to minors.

In responding to the Washington lawsuit, State legislator Mary Lou Dickerson who sponsored the bill said, "The lawsuit filed today against Washington's ban on sales or rentals of cop-killing games to children comes as no surprise. Certain elements of the video-game industry clearly want the right to sell any game, no matter how brutal, racist or sick, to any child, no matter how young."[240]

The legislation introduced by states and municipalities has been varied, as have the responses from the courts, so the question of whether governments can legislate has not been decided. A web site providing information on the status of legislation pertaining to violent media, including violent video games, is maintained by an American organization, Citizens for Responsible Media at www.medialegislation.org.

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[238] *BC passes video game legislation, industry ESRB ratings likely to be adopted,* Canadian New Media, April 19, 2001
[239] *Video Game Makers File Suit to Block Washington Law,* Reuters, June 5, 2003, Yahoo! News
[240] Ibid

8. MEDIA CONSUMPTION AND PARENTAL GUIDANCE

8.1. Kaiser Family Foundation Studies

A 1999 report by the American Kaiser Family Foundation (KFF),[241] *Kids & Media @ the New Millennium*, contained the results of a study on the media use of more than 3,000 children aged 2 - 18. This comprehensive study examined their non-school use of television, videos, movies, video games, CDs and tapes, radio, books, magazines, newspapers and computers. We don't have equivalent Canadian data, but because our media diet and societies are similar, an examination of KFF information is provided as an introduction to the topic.

Kids & Media revealed that the "typical American child spends an average of more than 38 hours a week -- nearly five and a half hours a day (5:29) -- consuming media outside of school". The amount is "even higher -- nearly six and three-quarter hours a day (6:43) -- for kids eight and older".[242] Drew Altman, Ph.D., president of the Kaiser Family Foundation said, "Watching TV, playing video games, listening to music and surfing the Internet have become a full-time job for the typical American child. This study really underscores the importance of paying attention to the messages and the information kids are getting from the media, both good and bad."

Among kids eight and older, 24% spend more than five hours a day watching TV. While computer access is widespread, "kids still spend a comparatively small amount of time with computers, averaging less than half an hour a day (:21) using a computer for fun, compared to two and three quarters hours a day (2:46) watching TV". Vicky Rideout, director of the Foundation's *Program on the Entertainment Media and Public Health*, said, "Computers may be the wave of the future, but TV still dominates kids' time and attention today."

Kids still spend a comparatively small amount of time with computers, averaging less than half an hour a day… compared to two and three quarters hours a day watching TV. Computers may be the wave of the future, but TV still dominates kids' time and attention today.

A more recent KFF study examined the media habits of children age zero to six and found that even children in this age group spend "an average of two hours a day using screen media (1:58)". The study, *Zero to Six: Electronic Media in the Lives of Infants, Toddlers and Preschoolers*, revealed:

> *New interactive digital media have become an integral part of children's lives. Nearly half (48%) of children six and under have used a computer (31% of 0-3 year-olds and 70% of 4-6 year-olds). Just under a third (30%) have played video games (14% of 0-3 year-olds and 50% of 4-6 year-olds). Even the youngest children -- those under two -- are widely exposed to electronic media. Forty-three percent of those under two watch TV every day, and 26% have a TV in their bedroom (the American Academy of Pediatrics 'urges parents to avoid television for children*

[241] The Henry J. Kaiser Family Foundation is a non-profit, independent national health philanthropy dedicated to providing information and analysis on health issues to policymakers, the media, and the general public.

[242] *New Study Finds Kids Spend Equivalent of Full Work Week Using Media*, Kaiser Family Foundation news release, November 17, 1999

under 2 years old'). In any given day, two-thirds (68%) of children under two will use a screen media, for an average of just over two hours (2:05).[243]

Many children, the study said, are "growing up in homes where the TV is an ever-present companion: two-thirds (65%) live in homes where the TV is left on at least half the time or more, even if no one is watching, and one-third (36%) live in homes where the TV is on 'always' or 'most of the time'".

Video Games

An American Gallup poll conducted in August 2003, revealed that 71% of boys aged 13 to 17 had played *Grand Theft Auto*, an M-rated game (suitable for age 17 and over), along with 34% of girls.[244] A survey of students in grades 4 - 12 done by the National Institute on Media and the Family (U.S.)[245] revealed that:

- 87% of students play games regularly
- Games are more popular with boys (96% play) than girls (78% play)
- Only 50% of parents understand the ratings according to students
- 87% of boys play M-rated games as do 46% of girls
- 78% of boys report that M-rated games are among their top five favourites, and 40% say their favourite game is rated M
- 77% of boys own M-rated games with one in five reporting that they purchased an M-rated game without their parent's knowledge
- Only one in five students report that their parents have ever prevented them from purchasing a game because of its rating

The survey shows that M-rated games are both very popular with those under 17 and easily accessible.

8.2. Canadian Data

Canadian information on media consumption is more piecemeal than that provided by the Kaiser study. In a 1999 position statement, *Impact of Media Use on Children and Youth*, the Canadian Paediatric Society stated:

- the average Canadian child watches nearly 23 hours of television each week, with some children watching up to five hours daily[246]
- the average child spends more time watching television than performing any other activity, excluding sleep
- by high school graduation, the average teen will have spent more time watching television than in the classroom

In an updated version of the position statement (2003),[247] that figure dropped to 14 hours of television viewing each week, based on more recent figures collected by Statistics Canada.[248] However, pollsters and youth marketers contend that, while children and youth are watching less television than they did a decade ago, they are simply spending more time on other screens, e.g., a computer screen, a video game console or a cell phone screen.[249]

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[243] *New Study Finds Children Age Zero to Six Spend as Much Time With TV, Computers and Video Games as Playing Outside,* Kaiser Family Foundation news release, October 28, 2003
[244] *Most Teens Play Violent Video Games, Study Says,* Reuters, September 16, 2003
[245] *MediaWise Video Game Report Card,* National Institute on Media and the Family, December 8, 2003
[246] AC Nielson Company 1992-1993. Report on Television. New York: Nielson Media Research, 1993
[247] *Impact of Media Use on Children and Youth,* Canadian Paediatrics Society, 2003
[248] Statistics Canada. Average hours per week of television viewing, Fall 2001. Catalogue No. 87F0006XPE
[249] *Putting media under the microscope: Understanding and challenging media's influence on the health and well-being of children and youth,* Paediatric Child Health, May/June 2003

The Canadian Teachers' Federation (CTF) commissioned a national survey of 5,700 children in Grades 3 to 10 to examine their use of television, video and computer games. Released in November 2003 (http://www.ctf-fce.ca/en/), *Kids' Take on Media*,[250] revealed the following:

- Watching TV is a daily pastime for 75% of children, both boys and girls from Grade 3 to Grade 10
- Video and DVD - 24% in Grades 3 to 6 and 17% in Grades 7 to 10 watch them almost every day. An additional 42% screen them a few times a week
- 48% of children surveyed have their own TV set, 35% have their own VCR, 28% have a computer with an internet connection for their personal use
- By Grade 6, half of all kids surveyed have seen an unsuitable movie, video or DVD. ("Unsuitable" is a product classified as unsuitable for their particular age group). In Grades 7 and 8, that figure rises to more than 75%.
- The proportion of Grade 7 to 10 kids who have seen restricted movies in a theatre ranges from 24% in Quebec to 44% in Ontario to 57% in B.C.
- In Grade 7, 76% of students have watched restricted movies on video in their home. In Grade 7, about one-quarter of children have personally rented an R-rated video. Many of the R-rated movies that children watch are, apparently, already in the home or have been rented by older siblings, friends or parents.

Figure 3 - Screen shot from GTA Vice City

- Boys are more likely to have used both unsuitable movies and unsuitable computer games.

This study also indicated that 51% of kids in Grades 7 - 10 had witnessed imitation of some "violent act" from a movie or TV show. "Violent act" included imitating a dangerous stunt and was not restricted to aggressive violence directed against another person.[251]

Video Games

The level of violence in the video gaming habits of young Canadians is high. In a 2001 study conducted by the Media Awareness Network, *Young Canadians in a Wired World*, 60% cited action/combat as their favourite type of game.[252] In a study by Stephen Kline, Professor of Communications at Simon Fraser University in Burnaby, B.C., teenagers he surveyed identified their choice of games as "overwhelmingly" in the action/adventure genre.[253] Professor Kline's study also found that over 90% of B.C. kids play video games at least occasionally, 20 - 25% report playing more than one hour per day,[254] and roughly one in four is addicted to gaming, specifically, 24% play between seven and 30 hours a week.[255] The rate of addiction was higher among males, with 30% spending more than seven hours a week playing video games.[256] The study surveyed 650 boys and girls ranging in age from 11 to 18. Girls were less interested in video gaming generally, and preferred different games to the fighting, adventure, sports and racing themes favoured by boys.[257]

[250] *Kids' Take on Media,* Canadian Teachers' Federation 2003
[251] Ibid
[252] Media Awareness Network web site, July 2003
[253] Ibid
[254] *Study sounds alarm over video game use,* Simon Fraser News, April 2, 1998
[255] *Video games get very, very ugly*, Globe and Mail, September 5, 1998
[256] *One in four youths in study addicted to video games,* Globe and Mail, August 14, 1998
[257] *Study sounds alarm over video game use,* Simon Fraser News, April 2, 1998

The CTF *Kids' Take on Media* reported:

- The youngest kids are the most frequent video and computer-game players. Almost 60% of boys in Grades 3 - 6 play video or computer games almost every day; even in Grade 10, 38% of boys chart it as a daily activity. For girls, the picture is very different: 33% of Grade 3 girls play interactive games every day; by Grade 10, the figure dropped to 6%

- One of the top choices for both Francophone and Anglophone boys in Grades 3 - 6 is *Grand Theft Auto* (rated M). For Anglophone boys in the Grade 7 - 10 category, *Grand Theft Auto* is the run-away favourite title.

- M-rated games never really catch on among girls. Among boys, however, there is a steady increase in use up to grade 8, where their popularity appears to plateau [258]

Internet

In 2001, the Media Awareness Network (MNet) conducted research into the manner in which Canadian children and young people use the Internet. Funded by the federal government and carried out by Environics Research Group, the study -- *Young Canadians in a Wired World: The Students' View* -- revealed that Canadian youth are "highly engaged participants in the online world", but that there is a "substantial discrepancy between how parents see their children using the Internet, and what their children are actually doing online".[259]

Some statistics from the MNet survey (http://www.media-awareness.ca):

- 99% of the students surveyed report that they've used the Internet at some point
- 79% say they have Internet access at home
- 48% say they use the Internet from home at least an hour every day (compared to 79% who say they watch television for an hour or more every day)

Profiles of Internet users by age group

- 13 - 14 age group - boys are more likely to push the boundaries online. Four times as many boys as girls list attitude-laden humour, gore, or explicit adult sites as favourites
- 15 -17 age group - Explicit adult sites continue to attract boys at this age, who list adult Web sites sixteen times more often than girls

Analysis of risky behaviour

- 26% of 9 - 10 year olds visit private and adult-only chat rooms. This percentage increases to 37% for 11 - 12 year olds, 54% for 13 - 14 year olds and 66% for 15 - 17 year olds.
- both boys and girls visit chat rooms at similar rates across all age groupings but boys are more likely than girls to visit private and adult-only chat rooms
- 56% of the young people who visit private and adult-only chat rooms are boys compared to 44% who are girls

Exposure to sexually explicit material

- 24% have received pornography on the Internet from someone they have met only online

[258] *Kids' Take on Media,* Canadian Teachers' Federation 2003
[259] *Young Canadians In a Wired World,* Overview, Media Awareness Network web site, August 2003

- across all age groups, boys are more likely than girls to have received pornographic junk mail and to have received pornography from online acquaintances[260]

8.3. Parental Guidance

The lack of adult involvement in children's media consumption illustrates the urgent need for a public education campaign to inform parents and caregivers about both the content of entertainment media available and the research on harmful effects. *Kids' Take on the Media* reports:

- A large number of children claim to have experienced no parental guidance on what they can watch, what they can play, or for how long.

- In Grades 3 to 6, roughly 30% of kids claim that they never have any adult input about what TV shows they can watch. By Grade 6, 50% report no adult input as to how long they can watch. In Grade 8, the figures for those who experience no parental supervision of their TV viewing rises to approximately 60%.

- Even for children in Grades 3 and 4, the top figure for parental involvement of any kind never rises above 50%. By the time students reach Grade 7, almost 75% of adults never tell children what video or computer games they can or cannot play.

- Boys whose parents take no part in indicating what games they can or cannot play are in the majority. 84% of Grade 7 boys have played video and computer games with a mature rating (suitable for 17 years of age or older)

The Media Awareness Network Internet survey revealed:

- 50% of young people say they are alone online most of the time; 33% say they are alone some of the time
- most young people say they are not supervised regularly when they go online
- 68% say their parents never sit with them while they surf
- 65% say their parents never use filters to block sites they don't want them to visit
- 54% say their parents never check to see which sites they've visited
- 55% say their parents do "check in" on them, sometimes or often, when they go online[261]

This lack of adult involvement is something to remember while reading the sections describing the content of popular culture.

[260] *Young Canadians In a Wired World: The Students View,* Media Awareness Network web site, August 2003
[261] *Young Canadians In a Wired World,* Overview, Media Awareness Network web site, August 2003

9. TELEVISION AND RADIO

9.1. Introduction

While there are unquestionably many positive aspects to the broadcasting system, there are unfortunately many harmful aspects as well. Problems highlighted here will include gratuitous violence, the degradation and demeaning of women, and exposing children to violent and deviant sexual activities through broadcast of programs such as the *Howard Stern Show, Jerry Springer Show*, and *World Wrestling Federation* (now known as *World Wrestling Entertainment* or *WWE*), during hours when children are listening and watching. While the influence of violence on children has been extensively examined, the latter problem is relatively new, and the impact on their development is in urgent need of study.

For instance, Lyba Spring, a sexual health educator with the Toronto District Public Health Department, has noted a profound change in the kinds of questions children in grade 5 and 6 are asking about sex, and credits the change to such shows as *Jerry Springer* and *Howard Stern,* as well as the Internet. Several years ago, Ms Spring says, a standard question would have been "What is oral sex?", but these days, "it's questions about bestiality and several people having sex together". She notes, "There's a precocious sexuality that's disturbing."[262] Disturbing indeed, considering the age of the children involved. More information on this topic is provided in the "Pornography" section.

The data collected revealed that the amount of violence has increased regularly since 1993 despite the stated willingness on the part of broadcasters to produce programs with less violence. The total number of violent acts, as well as the number of violent acts per hour, is increasing.

In *Television Violence: Fraying Our Social Fabric*, the Standing Committee on Communications and Culture noted that "... the current public concern over this issue is not a new phenomenon", and stated, "What is needed is for government, the federal regulator and broadcasters to act." While neither the government nor federal regulator have acted in any meaningful way, broadcasters have, and, unfortunately, it hasn't been positive. Between 1995 and 1998, for instance, the quantity of violence on Canadian television went up by almost 50%.[263]

The CRTC, tasked with regulating broadcasting in the public interest, has failed abysmally. The wishes of federal politicians as expressed through the *Broadcasting Act,* various government reports and other initiatives directed at reducing televised violence, are at odds with the practice of the CRTC. This regulatory failure will be examined here, as well as the possible role of advertisers in bringing about change.

[262] *Puberty strikes hard and early in the '90s*, Toronto Star, July 10, 1998
[263] Violence on Television, Policy Statement by Bernard Bigras, MP for Rosemont, April 2000

9.2. Content - Violence

> *Some of the post popular, mainstream prime-time programs now traffic in images so gruesome that until recently you would only have seen them in a theatrical movie like "Halloween" or "Hannibal": graphic depictions of human beings maimed, crushed, blistered like overcooked hot dogs. And body parts, lots of body parts.*
>
> New Gore Values, Newsday[264]

Canadian broadcasters like to point the finger of blame at the United States for television violence, and there is no question that most of it is produced south of the border. However, much of it is then purchased by Canadian networks -- it doesn't just arrive on their doorstep unbidden -- and they must take responsibility for that. In *Television Violence* (1993), the Standing Committee on Communications and Culture concluded that:

> *Canadian children, teenagers and adults who watch a large number of American television programs are exposed to a high level of televisual violence. This conclusion is based on the following findings:*
>
> 1. *American research has shown that American television programs tend to be violent (eight acts of violence per hour during prime time on the three major American television networks);*
>
> 2. *overall, Canadians watch a large number of American television programs (73% and 37% of the time for anglophone and francophone Canadians respectively); and*
>
> 3. *children and teenagers watch relatively more American television programs than adults (75% and 83% of the time for English-speaking children and teenagers respectively; 46% and 48% for French-speaking children and teenagers respectively)*[265]

A more recent study of Canadian television carried out by Professors Jacques de Guise and Guy Paquette of Laval University (released in 1999) found that "over 80% of the TV violence aired in Canada originates in the U.S."[266] The study also indicated that the quantity of violence shown on dramatic programs carried by the non-specialist Quebec and Canadian networks had grown significantly:

- Between 1995 and 1998, the quantity of violence shown went up by almost 50%;
- The quantity of violence accessible to children (on programs broadcast before 9:00 p.m.) also went up markedly. In 1998, 92% of violent acts were shown before 9:00 pm;
- The study found that approximately one violent act out of two was gratuitous or unnecessary for comprehension of the storyline.[267]

In a *Paediatric Child Health* article, Professor Paquette described the study:

> *A thousand programs aired between 1993 and 2001 on major non-specialty television networks in Canada were analyzed... The data collected revealed that the amount of violence has increased regularly since 1993 despite the stated willingness on the part of broadcasters to produce programs with less violence. The total number of violent acts, as well as the number of violent acts per hour, is increasing. Private networks deliver three times more violence than*

[264] *New Gore Values,* Newsday, November 3, 2002
[265] *Television Violence: Fraying Our Social Fabric,* Report of the Standing Committee on Communications and Culture, Supply and Services Canada, Ottawa, 1993
[266] Media Awareness Network web site, April 2003
[267] Violence on Television, Policy Statement by Bernard Bigras, M.P. for Rosemont, April 2000

public networks. Researchers have also noted that a high proportion of violence occurs in programs airing before 2100 hours (9:00 pm), thereby exposing a large number of children to this violence.[268]

National Television Violence Study (U.S.)

Because so much of the content broadcast in Canada is American, it is useful to examine the National Television Violence Study (http://wwwccsp.ucsb.edu/ntvs.htm). URLS for other content studies are provided in the Resources section. In response to political pressure in the United States, the National Cable Television Association funded a three-year research study on American television, with four universities selected to assess the nature, not just the number, of violent scenes across the TV landscape.

From 1994 to 1997, data gathered from almost 10,000 hours of programming made this the largest sample and most detailed analysis of television content ever undertaken. In an article in the *AAP News,* Dr. Donald Shifrin, the American Academy of Pediatrics' representative to the Oversight Council of the National Television Violence Study, summarized some of the important findings:

Across the study's three years, a steady 60 percent of sampled programs contained violent scenes. More important than prevalence was the finding that violence often was portrayed in the contextual manner that earlier research suggested would increase the likelihood of negative effects on viewers, especially children. More than one-third of violent scenes featured "bad" characters who were never punished; 70 percent showed no remorse or penalty at the time violence occurred; 40 percent of all violence included humor; more than 50 percent of the scenes studied showed no pain cues; more than 50 percent of the violent incidents would be lethal or incapacitating if they occurred in "real life." More disturbing, especially for younger viewers is that 40 percent of the violence was perpetrated by attractive (hero) role models.

TV violence that is glamorized, trivialized and sanitized teaches that violence is a solution, and less than 5 percent of violent programs incorporated anti-violence messages.

For younger viewers, many harmful contextual features were seen most often in cartoons. The typical preschooler who daily watches about two hours of cartoons will be exposed to 10,000 violent incidents per year, of which 500 are at high risk of modeling aggressive attitudes and behaviors. One of the most critical and disconcerting NTVS findings suggests that for preschoolers, who have difficulty distinguishing fantasy from reality, the lesson is violence is "desirable, necessary and painless."

Studying ratings and advisories yielded the finding that motion picture type ratings may actually attract preteen and teen boys viewing alone.

The NTVS summary included a warning that, depending on the child's developmental level, cartoon and fantasy-type violence, i.e. sanctioned violence, cannot be dismissed simply because it is unrealistic.

Because television is our children's No. 1 leisure activity, we should not minimize the ongoing impact of its thousands of visual messages on children, especially those at risk for behavioral problems. [269]

[268] *La violence sur les réseaux canadiens de télévision,* Guy Paquette, Ph.D., Paediatric Child Health, May/June 2003
[269] *Three-year Study Documents Nature of Television Violence,* AAP News, Dr. Donald Shifrin, AAP representative to the Oversight Council of the National Television Violence Study, August 1998

Current Situation

The situation has continued to deteriorate as violence has become more brutal and explicit even on the mainstream, non-discretionary networks. The following is from a Washington Post article about *The Shield*, a police drama that premiered on the Fox-owned FX network in March 2002. The show was picked up by Global television for broadcast in Canada:

> *Virtually every episode... includes, raw, coarse language, rougher even than that heard on ABC's "NYPD Blue", and scenes of extremely gory, graphic violence. During the opening credits of last week's season premiere, gang members murdered a police informant by putting a gasoline-soaked tire around his neck and lighting it. The screams of agony were chilling, as were shots of the body being consumed by flames.*
>
> *On tonight's show, a cocaine addict vomits blood copiously and, later in the show, the reckless Mackey mercilessly brutalizes a suspected gang leader -- first by beating him so furiously that Mackay himself gets splattered in blood, then by forcing the man's face down, repeatedly, on a scalding hot plate.*
>
> *Sickening violence isn't just implied or suggested; it's wallowed in.*
>
> *Some major advertisers have declined to advertise on the series because of its incendiary and offensive content. But the TV Academy conferred a certain respectability on "The Shield" when it gave [Michael] Chiklis the Emmy, and the show has received bouquets and bonbons from some TV critics. Certainly tonight's episode is gripping and gritty, well shot and well acted, and qualifies as high-impact television.*[270]

The Parents' Television Council, an American watchdog group, logged 70 instances of scenes of graphic torture or sadism on network entertainment television in the year ended August 2002. In the two-year period previous to that, it logged 79 -- scenes of torture and sadism had nearly doubled.[271] For instance:

> *A character on a show aimed at teenagers is shown being tied up and skinned alive, and his remains incinerated. In a spy drama, a woman has her teeth pulled out as a means of torture. In another drama, a captive, who can breathe only through straws in her nose, is chained, beaten, and finally suffocated.*[272]

Those scenes are from *mainstream* television series, *Buffy the Vampire Slayer, Alias* and *CSI*. A Newsday article described the situation this way:

> *Some of the post popular, mainstream prime-time programs now traffic in images so gruesome that until recently you would only have seen them in a theatrical movie like "Halloween" or "Hannibal": graphic depictions of human beings maimed, crushed, blistered like overcooked hot dogs. And body parts, lots of body parts.*
>
> *In a recent "CSI: Miami", a medical examiner handled a severed human arm and shoulder as casually as you or I might brandish a leg and thigh combo from KFC. On "Presidio Med" doctors treated a firefighter so hideously burned that half his body was a red, raw sore. In "24's" season opener last Tuesday, federal anti-terrorist agent Jack Bauer shot a man point-blank in the chest, then sized up the thickness of his victim's neck and requested a hacksaw. The severed head makes it inevitable appearance in episode two on Tuesday.*[273]

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[270] *'The Shield', Offering no Buffer From Brutality,* Washington Post, January 14, 2003
[271] *TV's higher threshold of pain,* The Christian Science Monitor, August 23, 2002
[272] Ibid
[273] *New Gore Values,* Newsday, November 3, 2002

One of the main reasons for the increase in graphic violence seems to be that "networks are under ratings pressure from cable channels such as HBO, whose 'Sopranos' and 'Oz' have been praised by critics for their strong writing and acting but are also marked by frequent and graphic violence".[274] In Canada, CTV and Showcase broadcast *The Sopranos* and *Oz,* respectively.

Frank Spotnitz, producer of the X-Files and the CBS drama *Robbery Homicide Division,* says, "Over the years, the [Fox] network got more and more lax about what they would allow on X-Files. Things you would have argued about for two hours in Season 2, there wasn't even a memo about in Season 9... The networks are more liberal about what they will let [producers] get away with."[275] Robert Cochran, co-creator and executive producer of the series *24*, acknowledged that in the second season the show had to live up to a reputation for jolting viewers: "We did things you normally don't see on TV. Not for gruesome. Not to shock. It's about coming up with things you can't turn to four other channels and see on television."[276] For the premiere of *CSI* in the 2002 season, creator and executive producer Anthony Zuiker said, "We elected to cut over the forehead [of a corpse], pull off the face and have spattering blood on our assistant coroner. That was our way of saying, 'Hey, we're going to push the envelope this year. Welcome back. Things are gonna be a little edgier.'"[277] *CSI* is a co-production of the Canadian entertainment conglomerate, Alliance Atlantis Communications Inc., and CBS Broadcasting Inc.[278]

Canadian mainstream broadcasters also air brutally-violent movies like *The Cell, Seven, Scream 3* (Showcase), *Silence of the Lambs* (City TV, Toronto 1), *Scream* (CTV). The digital all-horror TV channel, SCREAM, licensed by the CRTC, shows slasher films such as *Massacre at Central High, Prom Night*, and *Friday the 13th*.

"Gratuitous Violence" - Supposedly Banned in Canada

The Canadian Association of Broadcasters (CAB), Canadian Broadcast Standards Council (CBSC), and the CRTC continually state that the CAB violence code "bans" gratuitous violence. This is misleading to the public because they are using the CAB definition of gratuitous ("material which does not play an integral role in developing the plot, character or theme of the material as a whole") instead of a dictionary definition of gratuitous ("without good reason or cause; unjustifiable, unwarranted").

The CAB definition means that if a program is **about** a serial killer, then showing the horribly violent crimes of a serial killer is integral to the plot and therefore not gratuitous. If a show is **about** the Mafia, which is notorious for engaging in brutal violence and murder, then brutal violence is integral to the plot and therefore not gratuitous. Under the CAB definition, it seems very little violence would be considered gratuitous.

In responding to concerns about the launch of SCREAM, a TV channel that publicised its intention to broadcast slasher films, Paul Robertson, President of Corus Television said, "Scream will be programmed in a manner to comply with the ... programming codes administered by the CBSC" including the code on violence that he said, "prohibits the exhibition of programming which contains gratuitous violence in any form".[279]

This illustrates the flexibility of the "gratuitous violence" definition crafted by the CAB. Slasher films are, by definition, gratuitously violent, i.e., the violence is unjustifiable and unwarranted. Gratuitous violence is not a secondary feature in slasher films, it is the reason they exist, to showcase over-the-top, sadistic violence, quite often perpetrated against women and girls. However, given the CAB definition of "gratuitous", it is entirely possible that even the broadcast of films such as these will not fall afoul of the CAB violence code. If the movie is **about** a killer who murders and dismembers women, then showing that violence could be considered integral to the plot, and therefore not gratuitous under the CAB code.

[274] *TV's higher threshold of pain,* The Christian Science Monitor, August 23, 2002
[275] Ibid
[276] *New Gore Values,* Newsday, November 3, 2002
[277] Ibid
[278] *Alliance Atlantis eyes more CSI,* Globe and Mail, September 25, 2003
[279] Letter dated July 9, 2001 to V. Smith from Paul Robertson, President, Corus Television

9:00 pm Watershed Hour for Violent Programming

The CRTC approved 9:00 pm as a so-called "watershed" hour, after which violent programming intended for adults is supposed to be shown. This was incorporated into the CAB violence code under Section 3.1.1:

> *Programming which contains scenes of violence intended for adult audiences shall not be telecast before the late evening viewing period, defined as 9 pm to 6 pm*

It should be noted, that televised violence does not only have harmful effects on children and youth, so moving graphic violence to later broadcast does not render it harmless. Nevertheless, the CRTC adopted this watershed hour as a means of providing some protection to children and youth, but many broadcasters ignore even this small safeguard. Violent programs are, or have been, broadcast throughout the day: Global broadcast *The Jerry Springer Show* at 2 pm in Halifax/Dartmouth and 5 pm in Montreal; TSN broadcast *WWF Raw* from 3 pm to 5 pm in Winnipeg; CKVR in Barrie broadcast *Walker Texas Ranger* at 4:00 pm; Showcase broadcasts the adult British crime dramas *Cracker* and *Prime Suspect* at 4 pm and 6 pm respectively in Ontario.

When Showcase added another violent series, *Touching Evil,* to their Sunday afternoon line up in Fall 2000, the move elicited these comments from John Doyle, television critic for the Globe and Mail:

> *I'm astonished that Showcase is airing the grim, often grisly Touching Evil at this time on a Sunday afternoon (2:00 pm). This is adult drama that relies heavily on menace. Sometimes the details are deeply disturbing -- in the first new episode today the serial killer hunted by the cop characters preys on young women, murders them, removes their hearts and leaves the hearts in a garbage bag beside the bodies. That's nighttime viewing, not material for a weekend afternoon. I rarely protest this kind of scheduling shenanigan, but we're not talking hard-to get premium cable or pay-TV here. Besides, Touching Evil is good crime drama for grown-ups and, to show it on a Sunday afternoon is simply a bad tactic....*[280]

Some broadcasters have also interpreted the acceptance of the 9:00 pm watershed hour as meaning they can show brutally-violent programming in an unedited form. For example, CTV purchased *The Sopranos* for broadcast, although it was rejected by American non-discretionary networks and purchased by speciality pay-channel HBO. Commenting on the graphic content of the series, CTV Vice President Trina McQueen said *The Sopranos* wouldn't fall afoul of the CAB code on violence because the bloody assaults and murders are "absolutely essential to the telling of the story and completely ungratuitous"[281] CTV rejected the "sanitized" version of *The Sopranos* created for international markets because programming chief Susanne Boyce said it was "too watered down."

9.3. Content - Reality Programming

A particularly disturbing trend in violent programming was introduced several years ago with reality specials such as *When Animals Attack, When Good Pets Go Bad,* and *World's Scariest Police Chases*, programs that string together scenes of real people being injured and/or killed. The ubiquitous nature of video cameras makes this type of footage increasingly available for broadcast as entertainment. In July 2003, two such "specials" were broadcast in Canada:

[280] *Critical List*, Broadcast Week, August 26 - September 1, 2000
[281] *CTV takes on the Olympics with the Sopranos*, Globe and Mail, June 8, 2000

Sports Disasters: *This grisly reality-disaster program recaps spectator catastrophes at mostly European soccer stadiums, including several tragic fires and the collapse of stands. Frightening to watch, yet hard to look away.*[282]

101 Things Removed from the Human Body: *This new Fox special makes their previous rabid reality outings pale by comparison. It's a collection of video clips of horrible accidents. The common thread: The victims survived and a camera was running. Among the footage is a man impaled through the neck with a javelin, and another man with an anchor spire through his skull. There aren't really 101 things removed, but just as well. Please, please don't let the kids watch.*[283]

On shows such as Fear Factor or Dog Eat Dog, which resumed this week, it seems like only a matter of time before a contestant dies while jumping from a helicopter or dunking his head in some vile concoction.

A different type of dangerous "reality" show was spawned by the success of *Survivor.* Some examples: a series called *Wanted!* set loose three teams of "runners" in different cities each week to be tracked and captured by retired bounty hunters and former police officers for a cash prize. Citizens and would-be vigilantes were encouraged to collect the cash jackpot by trapping the fugitives themselves.[284] "*The Chair* features contestants strapped to a kind of 23rd century dentist's chair. Their heart rates are tested by having a tarantula dropped near their heads… surrounded by shooting flames, they have to keep their pulse low enough to answer questions… *The Chamber*… ratchets up the pain-pleasure principle -- pain for the contestant, pleasure for the audience -- by dousing contestants with icy water, hitting them with hurricane-force winds and holding them above flames like meat over a barbeque".[285] *Scare Tactics* creates situations in which people are plunged into frightening, scripted scenarios with their reactions broadcast.

Toronto Star columnist, Vinay Menon, described the latter show as "*Candid Camera* as reinvented by demented sadists". He commented that, "*Scare Tactics* takes the shopworn concept of "tricking somebody" and adds a dimension of visceral horror that, depending on your sensibility, is either hilarious or disturbingly cruel."[286]

Writing in the Toronto Star in 2001 about the reality phenomenon, television columnist Antonia Zerbisias warned, "So, brace yourself for more money, more masochism, more violence, more starvation, more humiliation, more hanky-panky, more shock, more live larvae lunches."[287] During the Summer 2001 press tour, TV critics savaged network representatives over the trend, but the criticism had no effect, and the concept of showing real people engaging in real violence, degradation, and sexual activity has continued unabated since then, with Canadian broadcasters enthusiastically hopping on the bandwagon with their American counterparts. Global broadcasts *Fear Factor*, described as a "sickfest" in the Globe and Mail's television guide, and for Hallowe'en 2003, they featured a special edition:

> *... a haunted house feel pervades the stunts tonight, including burying people in snake-filled coffins, and later the contestants have to bob for pigs' hearts in a bucket of cow eyeballs. You'd hope this is all fake, but with this show you never know.*[288]

Judd Apatow, producer of the critically-acclaimed NBC teen show *Freaks and Geeks*, predicted someone will be killed.[289] Vinay Menon ended his *Scare Tactics* column with a similar thought:

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[282]Globe Television, July 26 - August 1, 2003
[283]Ibid
[284]*A good idea is worth having again*, National Post, June 20, 2000
[285]*Torture TV,* Washington Post, January 26, 2002
[286]*Scare Tactics proves joke's on us,* Toronto Star, May 30, 2003
[287]*Brace for more 'reality'*, Toronto Star, May 6, 2001
[288]Globe Television, October 25 - 31, 2003
[289]*The unpleasant realities of reality TV*, Globe and Mail, July 13, 2000

On shows such as Fear Factor or Dog Eat Dog, which resumed this week, it seems like only a matter of time before a contestant dies while jumping from a helicopter or dunking his head in some vile concoction.

As with the rest of "reality" television, the prank shows are getting more extreme, deliberately ratcheting up the shock in an effort to capture young viewers, who regard comparatively tamer shows such as Just for Laughs with yawn-inducing insouciance.

So what's next? How far will these shows go? That depends on when we stop laughing.[290]

9.4. Content - Voyeur Programming

Another concern is the normalization of criminal sexual conduct -- voyeurism -- through broadcast of series like *Big Brother* or *U8TV: The Lofters*. *U8TV* was a Canadian series (now cancelled) that brought together eight young people to live together in a Toronto loft equipped with 21 cameras including some trained on the shower stall and bedrooms. In commenting on the show broadcast on the Life Network, Atlantis Alliance president Phyllis Yaffe "predicted there will be some sexual activity, acknowledging that 'if there's more than smooching, that's okay.'"[291]

The Fox network created *Paradise Hotel*, a show in which "11 hot singles are put in an 'exclusive hotel resort' to cavort, and their every move is caught on tape. Even the canoodling, apparently."[292] In reporting on the show in the Globe and Mail, TV columnist John Doyle said he was "intrigued by a mention that 'subscription video will be available to bring uncut footage and other material not available on Fox'. That means, apparently, that on the Web site you can see really lurid carry-on."[293]

While it is illegal to creep up to windows and spy on people in their own bathrooms and bedrooms, or to set up cameras to secretly film people engaged in private acts in these rooms, series like these present the activity as entertainment, with broadcasters acting as surrogate video voyeurs. Sex offenders who start out as voyeurs (Peeping Toms) can progress to more violent crimes including rape and murder. We should examine the consequences for society when deviant, illegal sexual behaviour is normalized and encouraged through broadcast on mainstream networks.

9.5. Failure of Regulation - Examples

While the *Broadcasting Act* and various *Regulations* supposedly provide safeguards to protect the public from such things as abusive comment and obscenity, the *Act* is not effectively enforced by the CRTC. The voluntary CAB codes on ethics, violence and sex-role portrayal are just that, voluntary, and are routinely ignored by Canada's major broadcast conglomerates. The situation is clearly illustrated by studies conducted in both Canada and the United States indicating that violence on television has increased dramatically over the past several years. Obviously, if the voluntary system worked, violence would have decreased, not increased -- but neither is actual legislation like the *Broadcasting Act* being enforced by the federal regulator.

This section provides examples of how broadcasters have contravened the voluntary CAB codes, the *Broadcasting Act* and possibly even the *Criminal Code,* with impunity. This three-legged stool -- CAB codes, the *Broadcasting Act* and *Criminal Code* -- form the basis for regulation of broadcasting in Canada. If they are being flouted without consequence then, in effect, there is no meaningful regulation of the public airwaves.

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[290] *Scare Tactics proves joke's on us,* Toronto Star, May 30, 2003
[291] *Camera crew, like, candid about naked ambition*, Globe and Mail, January 10, 2001
[292] *Dar Heatherington meets Marshall McLuhan*, Globe and Mail, June 18, 2003
[293] Ibid

9.5.1. Unedited Rap Music

In September 2002, an Ontario radio station, CKEY FM in Niagara Falls, changed to a hardcore rap format and broadcast, among other songs, the unedited version of *Move Bitch* by Ludacris. The situation was made public by columnist Anthony Violanti of the Buffalo News:

> *The F word. The N word. Rape, homophobia, drug abuse, sex and violence. All those are part of the music broadcast menu for the new radio station known as the Wild, CKEY-FM 101. Based in Niagara Falls, Ont., the station was formerly known as the River. But this week CKEY switched formats from adult alternative to playing hardcore rap. Make that unedited hardcore rap, something no other station in the United States regularly broadcasts due to regulations by the Federal Communications Commission.*
>
> *In other words, no U.S. radio station could play an unedited version of "Move Bitch" by the rapper known as Ludacris that's filled with obscenities, as are many other songs on the station's play list.* [294]

Move Bitch lyrics include these (and many other misogynist comments):

> *Move bitch, get out the way*
> *Get out the way bitch, get out the way*
> *Move bitch, get out the way*
> *Get out the way bitch, get out the way*

Joy Scharf of Cheektowaga turned on the radio, unaware of the change in format and was "absolutely appalled" at what she heard. She said, "I can't believe they are allowed to broadcast this kind of stuff".[295] In actual fact, Canadian broadcasters aren't allowed to broadcast that "kind of stuff" -- abusive comment is prohibited by legislation -- and complaints were accordingly filed with the CRTC. The station's response was to say that the situation had been a mistake that occurred during the format change. In a letter to the CRTC in response to one complaint, David Dancy, President of the company that owns CKEY FM, said:

> *Although we believed that the appropriate precautions had been taken, some songs were broadcast... that should have been played only in their "radio-edited" version. Although these songs appeal to a large audience, are readily available at record stores and are frequently played in local clubs, we recognize that the unedited versions of these songs are not suitable for radio play at all times throughout the broadcast day, and some unedited versions may not be suitable for broadcast at all. It had been our intention to play only edited versions of these songs. CKEY FM recognizes that it erred in playing the unedited versions of some songs... that should only have been played in an edited format*[296]*.*

Broadcasters are required to keep logger tapes of their programming for thirty days. Interestingly enough, no logger tapes were kept of this incident due to a "technical error, which occurred during [the] studio refitting".[297] The CRTC was satisfied with this explanation and the station was not penalized.

9.5.2. XXX-Rated Misogynist Rap Music Video, "Doggystyle"

On December 31, 2001, Bell ExpressVu offered a pay-per-view showing of a sexually explicit music video called *Doggystyle*, performed by Snoop Dogg, a well-known rap star. Published reports indicate the video contains several of Dogg's songs including "Pussy Sells" and "In Love With a Thug"[298] in which

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[294] *Wild pushing morality to the edge*, The Buffalo News, Anthony Violanti, September 6, 2002
[295] *Ibid*
[296] Letter dated September 12, 2002 to Diane Rheaume, Secretary General, CRTC from David Dancy, President, CJRN 710 Inc.
[297] Ibid
[298] News release, Music Video Distributors, undated

women are routinely called "bitch" and "whore". It is therefore no surprise to find that *Doggystyle* is distributed by Larry Flynt's *Hustler Video.*[299] Flynt is the publisher of *Hustler,* a pornographic magazine well known for its abusive and degrading treatment of women.

National Post columnist Elizabeth Nickson reported on the *Doggystyle* broadcast and said the film contained "... deeply offensive lyrics about hos [whores]".[300] The misogynist language is one of the hallmarks of the gangsta rap genre to which Dogg belongs, an issue that has been protested since its creation, and one that continues to be raised at government hearings in the United States.

In her column, Ms Nickson expressed her opposition to the broadcast:

> *Those naked black girls in Doggystyle, performing like bear cubs in front of a roomful of fully clothed contemptuous black men, are not sexy. Watching it, for women, is humiliating and abusive, and the participants criminal.*
>
> *So what on earth was Bell ExpressVu thinking? Oh gee whiz, this means that in 15 years, we'll get more subscribers from all the seven-year-olds we turned on tonight? Because that is the age that porn reaches now. The only thing that will stop this revolting wallpaper is for ordinary men and women, not the judiciary, not the police or the intelligentsia, who should shut up for once, saying no. We don't want this filth in our communities, on our airwaves or in our magazines, and we want its purveyors prosecuted and convicted. The laws are on the books. You have the power.* [301]

A complaint was filed with the CRTC regarding this broadcast citing the *Pay Television Regulations, Specialty Services Regulations,* and *Television Broadcasting Regulations*, all of which prohibit the distribution of programming that "contains any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability".[302] However, the only communication sent to the complainant from the CRTC on this file was an automatic confirmation email that stated: "If a further response is required, we'll contact you within 10 working days".

9.5.3. World Wrestling Federation (WWF)

There has been considerable press coverage of the trend to sado-masochism, adult sexual themes, negative stereotyping of women, profanity and excessive violence in televised wrestling by the World Wrestling Federation. (The company is now called "World Wrestling Entertainment". As the events described here took place prior to the name change, "WWF" will be used where applicable.)

A WWF star -- Road Rage Al -- carried around a female doll's head with the words "help me" scrawled on the forehead. This offensive accessory was offered for sale in the toy department of Wal-Mart in Canada and the United States until it was taken off the shelves following protests.[303] During one WWF event, a Canadian woman who “wrestles” for the WWF, Trish Stratus, was forced by Vince McMahon, Chairman of the WWF, to strip down to her underwear, get on all fours and bark like a dog.[304]

There have been several deaths in the United States allegedly connected to the influence of televised wrestling. In Fort Lauderdale, Florida, a 12-year-old boy was accused of murdering a six-year-old girl by using simulated wrestling moves,[305] and New York chiropractor Victor Dolan says he sees a lot of kids

[299] *Snoop Dogg Ventures Into the World of Porn*, Yahoo daily news, February 26, 2001
[300] *We can stop porn's proliferation*, National Post, January 4, 2002
[301] Ibid
[302] Letter dated January 9, 2002 from V. Smith to Ursula Menke, Secretary General, CRTC, re broadcast of video, Doggystyle, by Bell ExpressVu
[303] *WWF doll wrestled off shelves*, Toronto Star, November 3, 1999
[304] *Stratusfaction guaranteed,* Saturday Night, September 1, 2001
[305] *Ring fever*, Post TV, November 13 - 19, 1999

injured by mimicking professional wrestlers. "They come in with strained backs and necks and broken bones."[306] In Canada, a 5-year-old boy caused severe spinal cord injuries to his 22-month-old cousin when he imitated wrestling, and performed a "pile driver" on the little boy.[307] Acknowledgment of copycat behaviour caused by televised wrestling can be found in the public-service announcements broadcast by TSN and the WWF informing fans not to try WWF-style stunts at home.[308]

In response to complaints from a Winnipeg school board about the broadcast of *WWF Raw* in a 3 to 5 pm timeslot on The Sports Network (TSN), the CRTC dealt with the complaint (at the time, TSN was not a member of the CBSC), and issued a decision in December 1999. Bob Davies, principal of Fort Rouge School, raised objections to the show after seeing children at school mimicking the language and gestures of pro wrestlers. He suspended one eight-year-old who confronted a teacher, grabbed his crotch and said, "Suck it".[309]

Issues raised with the CRTC included excessive violence, adult content, simulated sexual activities, vulgar gestures, profane language, and the offensive portrayal of blacks and women. The CRTC decision read, in part:

> *... the Commission strongly encourages TSN to reconsider its scheduling practices, particularly with respect to afternoon time slots when young viewers are likely to be watching. Further, the Commission is also concerned about the portrayal of women on WWF Raw, particularly in light of existing regulations prohibiting abusive comments and displays of women.*[310]

The following example of how the abuse of women depicted by the WWF can affect youth was provided by Paul Robertson, a youth culture specialist with Youth Unlimited in Brampton, Ontario:

> *I was speaking at the Crisis Pregnancy Centres in the Southwestern Ontario area. At the end, I did a questions and answer time. One of the ladies asked me what I was hearing about kinky sex. I told her I hadn't heard anything in particular but if they were, it was probably because kids were seeing things on the Internet.*
>
> *Afterwards, I asked her where the question really came from. She told me she had counselled two twelve-year-old girls in the last three months who came in for pregnancy tests. They told her separate but similar stories about how their boyfriends would put dog collars and leashes on them, lead them upstairs to his bed or her bed, tie their hands and wrists to the bed, and then do whatever they wanted to them before they had sex. When the worker asked the girls where their boyfriends had learned this, they both answered "WWF wrestling".*

A study by researchers at Wake Forest University School of Medicine on the negative social impact of wrestling is provided in the “Research” section.

Since the CRTC decision, wrestling has changed little, yet the show continues to be broadcast in Canada, although in a later time slot. TSN did, however, join the Canadian Broadcast Standards Council, which means that an industry-run organization without any power to censure TSN -- as opposed to the CRTC which does have the power to censure TSN -- now adjudicates complaints regarding their programming.

Subsequent to the CRTC decision, the CBSC received a complaint and issued a decision in January 2001 relating to a TSN broadcast of *WWF Raw Is War* that included the following statements regarding the *WWF* treatment of women, which it termed "demeaning and degrading":

> *... the broadcaster has, on at least three occasions, made references to women which the Panel considers demeaning and degrading and in violation of the provisions of the Sex-Role Portrayal*

[306] Ibid
[307] *Baby's Injury Points to Danger of Kids Imitating TV,* Reuters, June 26, 2002
[308] *Sex, gore put good taste on the ropes*, Toronto Star, April 24, 1999
[309] *TSN pulls wrestling from afternoon slot*, National Post, December 17, 1999
[310] CRTC decision File 00SP10-3, December 14, 1999

Code. On one occasion, one of the wrestlers calls Stephanie, one of the cast of characters, 'a two-dollar walking slut'. On another, one of the commentators describes one of the scantily clad women 'that horny little she-devil, Terry' and on another, Stephanie is admonished to 'stop being a filthy, dirty, disgusting, brutal, skanky, bottom-feeding, trashbag ho.'[311]

The CBSC also found the program in contravention of the CAB violence code:

In this respect, the Panel has no hesitation in concluding that, in its airing of WWF Raw Is War, the broadcaster is promoting or glamorizing the use of dangerous objects or weapons in wrestling, something which is egregious in terms of its reasonable expectation and which, consequently, falls outside of the allowable or sanctioned extent of the sport in violation of the provisions of Article 10.1 of the CAB Violence Code.[312]

A very dangerous and extremely violent real-life spinoff from televised wrestling has been the development of "backyard wrestling". This is a so-called sport in which teenagers "beat each other over the head with steel folding chairs and draw blood with baseball bats wrapped in barbed wire".[313] An estimated 1,000 federations have sprung up around the United States and videos of the events are Webcast, traded and sold online.

This "sport", in turn, inspired video game publisher Eidos Interactive to create the game *Backyard Wrestling: Don't Try This at Home*, with a soundtrack featuring hyper-violent bands like Slayer and Insane Clown Posse.[314]

Figure 4 - Illustration from Backyard Wrestling Inc. web site

9.5.4. Howard Stern Show

Howard Stern's misogynist attacks on women (routine use of words such as "pieces of ass, horny cow, dumb broads, slut"), constant references to explicit sexual activities, the featuring of pornographic performers as regular guests, and his habit of making degrading comments about minorities, were a matter of public record before the program was purchased by CHUM Ltd. for broadcast in Montreal on CHOM FM, and by Western International Communications (WIC) for broadcast in Toronto on Q107 (CILQ-FM) commencing September 2, 1997. These two companies were mainstream broadcast conglomerates with significant holdings.

The response from an incensed public was predictable, as described in the first CBSC decision on Stern:

As a result of that initial episode, complaints began flowing in to the Canadian Broadcast Standards Council ("CBSC") and the Canadian Radio-television and Telecommunications Commission ("CRTC") by e-mail, fax and letter from the very first day, namely, September 2. In due course, all Code-related complaints directed initially to the CRTC were forwarded to the CBSC.

Due to the great quantity of complaints, the chain of events which began with responses from the CRTC and the CBSC to complainants and continued with the remittance of those letters to the broadcaster and the broadcasters' responses, occurred over an extended period of time. Moreover, complaints about the Howard Stern Show as a whole, as well as numerous other individual episodes, during and following the first two weeks, have continued to arrive, all of

[311] Canadian Broadcast Standards Council Decision 99/00-0607, January 31, 2001
[312] Ibid
[313] *Bloody backyard bouts*, Toronto Star, January 6, 2001
[314] *Win a Chance to Get Beaten Up - In a Video Game,* Reuters, May 12, 2003

which has resulted in the return to the CBSC of Ruling Requests on a staggered basis. As of the date of the meetings of the Quebec and Ontario Regional Councils, and continuously thereafter, Ruling Requests were still reaching the CBSC's offices and it is the CBSC's expectation that they will continue to arrive after this decision.

Stern's remarks relating to French-Canadians were, in fact, only an example of his casual attitude toward abusive commentary directed at identifiable groups by virtue of their race, gender or sexual orientation. There is a regular flow of racial, homophobic or gender-related offensive comments, some of which are brief digs, and others of which extend to longer discussions. *In the period reviewed by the Regional Councils, he has targeted Japanese, gays, Poles, Sikhs, blacks and Arabs among others. For example, on September 3, he referred to Sikhs by saying "smack the guy on the back of his turban" and, on the following day, he mocked the Arabs.* (emphasis added)

One of the most continually recurring categories of Stern comments reflects his on-air commentaries regarding women. It is clear to the members of the Regional Councils that Stern portrays adolescent, puerile, crude attitudes toward many sex and gender-related issues.

Those comments which exceed bad taste and violate Sex-Role Portrayal Code provisions fall into the area of words and expressions used, degrading remarks regarding individual callers, and comments reflecting on the intellectual and emotional equality of women generally.

In addition to terms such as "pieces of ass", "horny cow", "dumb broads","dikes" (referring to women with even moderately feminist views), and "sluts", which sprinkle the dialogue on the Stern Show, he frequently deals with female guests on the basis of their physical attributes and sexual practices rather than, or occasionally in addition to, the skills or talents which are the reason for their common recognition. In the case of callers, he regularly avoids the subject with respect to which they have called in order to seek details of their bust size and weight as well as their sexual practices, despite the fact that this information is utterly irrelevant to the subject of interest.[315]

CHUM Ltd. cancelled the show in August 1998, but radio station Q107 in Toronto continued to broadcast it, with the addition of editing equipment, until November 2001. (Q107 was subsequently purchased from WIC by Corus Entertainment Inc., another large broadcast conglomerate and Corus kept the *Stern* show on the air.) The president of WIC Radio told the CRTC in August 1999, "Portions of the Program are edited virtually every day with edits ranging from a few seconds of material to entire segments of the Program".[316] However, it proved impossible to edit this program to conform to the CAB codes and the *Radio Regulations* prohibition against the airing of abusive comments.

In August 2000, MediaWatch wrote to the CBSC once again relating degrading statements made by Stern on Q107. For instance, he referred to one woman as a "money sucking whore, she's a slut". Regarding a proposed appearance on the show of a *Playboy* model, one of the cast members asked, "Could we put a carrot in Howard's lap and she would have to eat it while she's naked. And, would she be willing to get naked and eat food out of a dog dish." Another complaint was filed by an individual when Stern made these comments about a Puerto Rican woman: "She is a filthy, lowlife, low brain power woman. The reason she doesn't understand it is she ate lead paint chips when she was young from the housing project she grew up in. I love all people, but I gotta tell you that woman was a pig. A pig. She's filthy."[317]

[315]Canadian Broadcast Standards Council Decision 97/98-0001+ and 97/98-0015+, October 17/18, 1997
[316]Canadian Broadcast Standards Council Decision 99/00-0717-0739, June 28, 2001
[317]Ibid

In their June 2001 decision on these episodes, the CBSC stated:

> *... the comments have, in the view of the Panel, gone too far. The cumulative effect of the suggestions that the Playmate smell underwear, be rolled up naked in a rug and forced to ride in an elevator, eat a carrot in Stern's lap while she is naked and eat food out of a dog dish while naked is demeaning and degrading in the extreme. Even Robin Quivers, Stern's co-host, asked "What is it about humiliating women that excites you so much?" Stern went on to say, "This is the coolest job in America where you can actually make calls like this and, you know, maybe get away with it." It is the view of this Panel that the comments in question are in breach of Clause 4 of the Sex-Role Portrayal Code and cannot be "gotten away with" on Canadian airwaves.*[318]

The comments about the Puerto Rican woman were described as:

> *... both racist and sexist. These comments are not borderline. They are extreme. They have no place on the airwaves in this country.*[319]

Stern's vile attitude towards women is also illustrated by some of his favourite web sites that he occasionally identifies during the show. Two of these, a bestiality site and another featuring the violent sexual abuse of "teenage" runaway girls, were the subject of a complaint filed with the Toronto Police Service (TPS) and the CRTC in March 1998.[320] Access to these two sites, one of which was identified by the TPS as obscene under the *Criminal Code* (the bestiality site), were provided by Q107 through a Howard Stern section on the station's own web site. Because of this, the complaint filed with the TPS alleged distribution by Q107 of obscene material, an offence under the *Criminal Code*. After consulting an obscenity expert with the Ontario Ministry of the Attorney General, however, a decision was made not to prosecute.[321] The CRTC declined to take any action against Q107 once the station eliminated the links.

So odious are Stern's views about women that, following the massacre of students at Columbine high school in April 1999, Colorado legislators passed a resolution asking the local broadcaster to drop the Stern show after Stern asked on the air if the two gunmen had tried to have sex with any female students during the attack.[322]

The CRTC has stated that if people are not satisfied with a CBSC decision, they can appeal to the Commission to deal with the problem. However, the complaints process is so nebulous and ill defined with regard to ongoing programming like the *Stern Show*, that people don't know when the CBSC process is finished and the CRTC can be approached to take over. There were seven CBSC decisions issued on the *Howard Stern Show* between September 1997 and November 2001 when the show went off the air. The only "penalty" assessed against the station was a requirement that they read the CBSC decisions on the air. The CBSC has no power to sanction member broadcasters, other than to eject them from the Council for continued breach of the codes, but even this was not done to Q107.

The CRTC, which does have the power to sanction, did nothing, in spite of the fact that the *Stern Show* was not only contravening the voluntary CAB codes, but also the *Radio Regulations'* prohibition against the broadcast of abusive comment*:*

> *A licensee shall not broadcast... any abusive comment... that, when taken in context, tends to or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability*

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[318] Ibid
[319] Ibid
[320] *Stern radio shuns Web link to sex*, Toronto Star, March 26, 1998
[321] Telephone conversation between V. Smith and Staff Inspector Paul Gottschalk, Toronto Police Service, July 1998
[322] *Jock shocks*, Toronto Star, April 29, 1999

9.5.5. Jerry Springer Show

The situation with the *Jerry Springer Show* was similar to *Howard Stern*. The violent, deviant and abusive content of *Jerry Springer* was known to Canadian broadcasters before they purchased it, yet they bought it anyway. Complaints to the CBSC on *Jerry Springer* resulted in decisions finding the show in contravention of the CAB violence code. The CBSC also expressed their opinion that the show would continue to be in breach of the code if it continued in that format.

The show was broadcast at different times across the country including 2 pm in Halifax/Dartmouth and 5 pm in Montreal, well outside the 9 pm watershed hour for violent programming intended for adults. The following excerpts from CBSC decisions on the *Jerry Springer Show* summarize the deviance and gratuitous violence that characterized the program.

CBSC Decision 97/98-1277, May 28, 1999 & Decision 98/99-0294 and 446, June 23, 1999:

> *The Jerry Springer Show is syndicated in the Canadian market and plays at different times in different cities across the country. In the markets affected by this decision and in the relevant time frame related to the following complaints, the show aired at 2 p.m. on CIHF-TV in Halifax/Dartmouth and at 5 p.m. on CKMI-TV in Montreal.*
>
> *The five episodes watched by the Atlantic and Quebec Regional Councils are sufficiently structurally similar to permit some generalized observations regarding the show. In the view of the two Councils, the show deals primarily with relationships in which there is a personal issue to be resolved, with some emphasis on the bizarre. Nor is there any lofty purpose to be attributed to the word "relationship" for, generally speaking, relationship, in this context, signifies sexual relationship and the public revelation of such matters as cheating, threesomes, and behaviour of less than broad social acceptance. More specifically, in the episodes in question, this involved sexual issues such as adults sleeping with the partners of their children, unfaithfulness, cheaters cheating on their cheating partners, disturbing secrets, and prostitution; these invoked feelings of jealousy, hatred, bitterness and nastiness, often at an intense level. The titles of the programs themselves reveal the orientation of their content: "I'm Sleeping with My 13-Year-Old's Ex"; "I Hate Your Lover!"; "Update: Outrageous Guests"; "Clash of the Angry Lovers"; and "Bizarre Betrayals".*
>
> *It is not useful to describe in great detail the content of each of the five episodes screened by the Councils. As an example of the Nova Scotia broadcast, the August 3 show, entitled "I'm Sleeping with My 13-Year-Old's Ex", involved the customary physical disputes and, in the promos for the show at the first two commercial breaks, the emphasis was on forthcoming fighting on the show. The show of the next day, "I Hate Your Lover!" opened with extensive fighting before the host made his first statement. The Quebec broadcast of January 29, entitled "Clash of the Angry Lovers", was divided into three segments with different invitees, each segment including one individual who had come onto the show to confess that he or she had been unfaithful to his or her partner. All three segments were characterized by the physical fighting and coarse language referred to above. The second segment also included nudity and some sexual activity between two women, who removed each other's tops while kissing and fondling each other. The nudity was blurred out and all spoken profanities were bleeped.*
>
> *The result of each of the episodes, if not of almost each of the segments within the episodes, in addition to the hurling of verbal insults, profanities and obscenities, was kicking, punching, grappling, wrestling, or other forms of fighting among the guests. The fights are always broken up by Springer's own bouncers, but only* after *the invitees are into the melee. The guests are not, in other words, confined to their seats by the same individuals before they are into the fray.*

CBSC Decision 98/99-1092, November 19, 1999:

> *Insofar as the particular issue which was the subject of the complainant's letter is concerned, "Jessica", the guest, is "disgusted by her boyfriend's fetish". Apparently, "Lance" gets aroused by throwing up on Jessica during sex. Although she is disgusted by the practice, she claims not to want to leave Lance because she loves him. Then Lance comes onto the stage and describes how and why he throws up. The audience is then introduced to "Octavia", Lance's new lover, who apparently shares Lance's fetish. She is greeted on stage by Lance who proceeds to vomit on her. The two lovers are seen covered in green bile. As the three guests talk, the camera periodically focuses on the green bile splattered on the set.*

Section 3(g) of the *Broadcasting Act* states "the programming originated by broadcasting undertakings should be of high standard". It isn't clear how the *Jerry Springer Show* conforms to that section of the legislation, adherence to which is mandatory, not voluntary.

9.5.6. Broadcast of Violent and Degrading Pornography

On March 28, 2001, the CBC television program, *The Fifth Estate*, reported on an investigation they conducted into the broadcast of pornography on Canadian pay-per-view television channels. Emphasis was given to the movies carried by Bell ExpressVu. (Bell ExpressVu is owned by Bell Canada Enterprises, one of the largest conglomerates in Canada. Other BCE holdings include the Globe and Mail, ROBTv, the CTV network, Discovery Channel, TSN).

In previewing the piece for CBC's nightly news program, *The National*, reporter Hana Gartner stated:

> *It is a competitive marketplace, and in the race for the raciest, Bell ExpressVu has broken the rules. It is running the raunchiest hard-core porn on two twenty-four hour channels which it is picking up from a distributor in Boulder, Colorado. Some of their movies are sexually violent, and would not be approved by the provincial censor boards.*[323]

On *The Fifth Estate*, Ms Gartner said:

> *... the harder the porn, the higher the profits, so when Bell ExpressVu came shopping, they bought the raunchiest stuff on the shelf. Two networks called Extasy and True Blue.*

It is the opinion of [Assistant Crown Attorney David] Butt that the materials allegedly distributed by Bell ExpressVu are obscene under the Criminal Code.

> *For $15.95 a day, Bell ExpressVu will deliver your fantasy: anal sex, sadomasochistic sex, group sex, penetration, ejaculation -- nothing is left to your imagination.*
>
> *They signed on with New Frontier just last spring. Now, nearly three-quarter of a million Canadian homes have access to these channels.*[324]

One of the producers of the material in question was Extreme Associates. The owner of this company, Rob Black, told *The Fifth Estate* that he's proud of the fact "his movies are the most shocking" of those produced every year.[325] Indeed, a Time magazine article noted that even among hard-core pornographers, Black is "considered a sleazebag".[326] Extreme Associates' web site celebrates the fact that the company makes the "nastiest, most degrading, degenerate movies", and Black described his

[323]The National, CBC News, March 27, 2001
[324]*The Pious Pornographers*, The Fifth Estate, March 28, 2001
[325]Ibid
[326]*Porn Goes Mainstream,* Time, September 7, 1998

movies during an interview with Hannah Gartner as "horrible".[327] Indeed, they're so horrible that the U.S. Justice Department is prosecuting Extreme Associates in the first major obscenity case in ten years. One of the movies cited in the U.S. case is *Forced Entry* that includes scenes of women being raped and murdered. It also includes suffocation, strangulation, beatings and urination. The U.S. Attorney assigned to the case said, "They made absolutely no attempt to comply with federal law. In fact, it was probably their intent not to. Because what they wanted to do was to make the most disgusting material available on the market. And they succeeded."[328] (Additional information on the U.S. Justice Department prosecution can be found in the "United States, Violent and/or Degrading Pornography" section.)

The Toronto Star carried the following description of material broadcast by Bell ExpressVu:

> *... reporter Hana Gartner introduced clips that showed painful-looking bondage and simulated rape and torture, including hot wax being poured onto the breasts of a seemingly helpless bound woman and clothes pins and other clamps attached to nipples.*
>
> *In one scene, a woman protests while being tied up and lashed to a door, with the doorknob in her mouth; others are hogtied while their bare buttocks and breasts are whipped.*[329]

They made absolutely no attempt to comply with federal law. In fact, it was probably their intent not to. Because what they wanted to do was to make the most disgusting material available on the market. And they succeeded.

A CRTC spokesman stated that it is a condition of license for pay-per-view channels to have pornographic films approved by a provincial film review board prior to broadcast, and Bell ExpressVu assured *The Fifth Estate* that all their movies had been approved by film boards in either Ontario or Quebec. However, Robert Warren, Chair of the Ontario Film Review Board was shown examples of movies broadcast on Bell ExpressVu's two channels, movies that the company said had been cleared by the OFRB. During the viewing that was shown on *The Fifth Estate*, Mr. Warren said, "It's been actually a long time since we've seen something this violent here at the board." Contrary to Bell ExpressVu's claims, Mr. Warren hadn't heard of many of the movies, and some of them he said the OFRB would never approve because of the violent and degrading content. In closing the segment, Ms Gartner said that the images shown on *The Fifth Estate* were only a "tiny sample, carefully chosen and edited to reveal the least possible".[330] Bell ExpressVu cancelled both channels as a result of *The Fifth Estate* exposé.

Assessment of Material as Obscene under the Criminal Code

Both Jean-Pierre Blais, Executive Director of Broadcasting for the CRTC, and Robert Warren, Chair of the OFRB, speculated on *The Fifth* Estate that the films shown by Bell ExpressVu might contravene the obscenity provisions of the *Criminal Code.* A viewer agreed and filed a complaint with the Toronto Police Service alleging a contravention of the *Code*, and including a copy of *The Fifth Estate* broadcast.

The TPS, in turn, sought a legal opinion from Assistant Crown Attorney David Butt, an obscenity expert with the Ontario Ministry of the Attorney General. Following Mr. Butt's assessment of the Bell ExpressVu material, a letter was sent to the complainant from TPS Detective Staff Inspector Roy Pilkington stating the following:

> *It is the opinion of Mr. Butt that the materials allegedly distributed by Bell ExpressVu are obscene under the Criminal Code. However, it is his opinion, in all the circumstances, that at present it would not be in the public interest to prosecute Bell ExpressVu.*

[327] *The Pious Pornographers,* The Fifth Estate, March 28, 2001
[328] *Porn in the U.S.A.,* 60 Minutes, CBSNews.com, November 21, 2003
[329] *Bell satellite TV pulls porn in wake of CBC expose*, Toronto Star, March 29, 2001
[330] *The Pious Pornographers*, The Fifth Estate, March 28, 2001

Mr. Butt bases his opinion in part upon the careful steps apparently taken by Bell ExpressVu to avoid any further broadcast of similar material, as outlined in their letter to you dated May 7, 2001.[331]

The TPS also wrote to David McLennan, President and Chief Operating Officer of Bell ExpressVu:

I have advised [the complainant] that if you have not been forthright in your May 7 letter to her or you continue to be involved in the distribution of obscene material, then the Toronto Police Service and Mr. Butt would certainly be prepared to reconsider a prosecution against Bell ExpressVu.

I hope that the response you received as a result of your Adult Programming has left you with an indication of not only the manner in which the public holds you accountable but also of the measures that the Toronto Police Service are willing to take to uphold community standards.[332]

Response of the CRTC

A complaint was also filed against Bell ExpressVu with the CRTC under the *Broadcasting Act, C.R.T.C. Act* and *Regulations* for its broadcast of programming in contravention of its license, alleging that the company either chose to, or was negligent in permitting sexually violent and degrading material to be broadcast to Canadian viewers. The situation was only possible because of Bell ExpressVu holding a broadcast license issued by the CRTC, the issuance of which is neither unconditional nor absolute. The CRTC possesses both the authority and statutory obligation to ensure licensees are in compliance with the terms of their license and the governing statutes and regulations, and the regulator was asked to review the conduct of Bell ExpressVu and determine, after a public hearing, whether its license should be suspended and/or revoked.

Some of the regulations cited in the complaint as having been contravened:

Pay Television Regulations

3. (2) No licensee shall distribute programming

(a) that contains anything in contravention of the law;

(b) that contains any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability;

Specialty Services Regulations

3. No licensee shall distribute programming that contains

(a) anything in contravention of the law;

(b) any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability;

(c) any obscene or profane language or obscene or profane pictorial representation

[331]Letter dated June 11, 2001 to V. Smith from Detective Staff Inspector Roy Pilkington, Toronto Police Service
[332]Letter dated June 12, 2001 to David McLennan, President & COO, Bell ExpressVu, from Detective Staff Inspector Roy Pilkington, Toronto Police Service

Broadcasting Regulations

5. (1) A licensee shall not broadcast

(a) anything in contravention of the law;

(b) any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability;

(c) any obscene or profane language or pictorial representation;

There was ample authority for the CRTC to hold public hearings to determine whether Bell ExpressVu should have its broadcast license revoked as a result of its deliberate or negligent broadcast of the channels described in *the Fifth Estate* program. There was also a mandated consideration of the public interest in determining whether to hold public hearings following a complaint such as this. The CRTC was urged by the complainant to consider the following factors pertaining to the public interest inherent in the case:

- **The credibility of the CRTC as a regulatory body:** Bell ExpressVu only obtained its ability to broadcast as a result of a CRTC review and decision. Such egregious circumstances thus call into question the credibility of the CRTC process.

- **The self-regulatory nature of the broadcasting industry:** Over some objections, Canada has chosen a self-regulatory mode of enforcement for the broadcast industry which is especially challenged in consideration of the impugned material. Equally, the manner by which such material was broadcast, having been purchased from a foreign producer, merits public scrutiny.

- **The purported involvement of the Ontario Film Review Board:** By invoking the regulatory authority (or failure to employ it) of another important public institution, the licensee's actions have necessitated a public review of the process and deficiencies within the current arrangements.

- **How the material came to be broadcast:** The CRTC should explore this important factual issue to assess future procedural improvements which may be warranted.

- **The multiplicity of channels, providers and licensees:** Canada has seen an explosion of available broadcast material and this case provides an excellent opportunity to review the sufficiency of procedural safeguards in this environment.

- **The nature of the broadcast material:** As Canada redoubles its public efforts to eradicate violence against women, the broadcast of this material by a major industry player licensed by a public institution is a stark and disturbing incident that merits public review lest Canadians conclude that such actions and material are acceptable.[333]

The CRTC did not hold a public hearing into the situation, but did conduct an investigation because of *The Fifth Estate* program. In an August 3, 2001 letter to Bell ExpressVu the CRTC said:

> *While it takes seriously the contravention of the codes, the Commission recognizes the efforts that Bell ExpressVu has made to ensure that such a contravention does not occur again.*
>
> *The Commission commends the comprehensiveness of Bell ExpressVu's revised Internal Policy for Adult Programming.*

[333]Letter dated April 9, 2001 to Ursula Menke, Secretary General, CRTC, from V. Smith

... the Commission directs Bell ExpressVu to report to the Commission on the status and effectiveness of the measures it has put into place to ensure that it complies with all applicable codes and regulations in the future. The Commission expects Bell ExpressVu to report to the Commission within two months of the receipt of this letter and once a year after that for the balance of its licence term.

That was the extent of the sanction imposed against Bell ExpressVu by the federal regulator. Keep in mind that this company had (a) ignored the conditions of their license requiring review of films by a provincial film review board prior to broadcast, (b) contravened the *Pay Television Regulations* and *Television Broadcasting Regulations* prohibition against the broadcast of obscene material and abusive pictorial representations, and (c) broadcast films that, according to an obscenity expert with the Ontario Ministry of the Attorney General, actually contravened the *Criminal Code*. It's difficult to imagine a more egregious situation.

9.5.7. Radio Stations - Counselling to Commit an Offence

Another example of regulatory failure is illustrated by radio stations that have offered people prize money to commit crimes, e.g. appear nude in public, vandalism and shoplifting. That in itself -- counselling someone to commit an offence -- is a crime under the *Criminal Code.* The stunts described below could have caused car accidents, a situation that most people seek to avoid, not encourage.

CJKR-FM, Winnipeg, Manitoba

In December 1999, the Canadian Broadcast Standards Council released a decision concerning a radio station contest promoted by CJKR-FM in Winnipeg, in which a woman rode a bicycle in the nude on a main street in Winnipeg at rush hour for a chance to win $10,000. The 18-year-old contestant was charged with public nudity and committing an indecent act (*Criminal Code* offences), but the charges were later dropped. The CBSC decision said, "It is perfectly obvious to the Council that a nude woman... cycling down the principal avenue of one of the nation's largest cities could reasonably be expected to constitute a distraction for drivers."[334] In other words, this contest could have caused accidents in rush hour traffic.

The CBSC found the station in breach of both the *Code of Ethics* and the *Sex-Role Portrayal Code*. When a further complaint was filed by a member of the public with the CRTC regarding the contest, this is the response received from Jean-Pierre Blais, Acting Executive Director Broadcasting:

It is clear from your comments that you are not satisfied with the outcome of the CBSC's review of this incident.

Thank you for taking the time to share your views with the Commission.[335]

CHRK-FM, Calgary, Alberta

In March 2002, the CBSC released a decision regarding another radio station that held a similar dangerous contest, although in this instance the nude contestant was male. In order to win tickets to a concert, contestants had to dance naked on a major road during morning rush hour traffic. In their decision, the CBSC referenced their previous ruling on CJKR, and said, "the nude dancing man in the CHRK-FM contest posed an equal distraction for drivers in Calgary":

This Panel does not doubt that drivers could be expected to be distracted by a man dancing naked on a major thoroughfare. In such circumstances, the possibility of an accident would not

[334] *"Nude Bicycle Ride" Contest Stunt Found In Breach of Broadcast Standards*, Canadian Broadcast Standards Council news release, December 7, 1999

[335] Letter dated December 20, 1999 to V. Smith from Jean-Pierre Blais, A/Executive Director Broadcasting, CRTC

be inconceivable. It is clear that the broadcaster's orchestration of a contest encouraging a naked dancing man on a public thoroughfare in Calgary constitutes a public inconvenience or disturbance and is in breach of [the Code of Ethics].[336]

CHRK-FM held this contest, although the CBSC had already ruled that a similar contest not only violated CAB codes but actually put the public at risk of physical injury. The situation illustrates both the ineffectiveness of CBSC rulings, and the failure of the CRTC to regulate the airwaves in a manner that would discourage broadcasters from engaging in such anti-social behaviour. Obviously, when radio stations feel comfortable enough to hold contests that both break the law and endanger the public, they have no fear of the federal regulator.

9.5.8. CRTC Licensing of Horror Channel, SCREAM

This final situation illustrates the profound disconnect between the expressed wishes of federal politicians that television violence in Canada be reduced, as described in the Political Highlights section, and actions taken by mainstream broadcasters and the CRTC, that have actually increased television violence.

During the June 2001 Canadian Television Press Tour, Corus Entertainment Inc. promoted the launch of an all-horror digital TV channel called SCREAM that would broadcast what the company described as "good, old-fashioned" slasher films[337] like *Nightmare on Elm Street, Friday the 13th* and *Prom Night*. When Corus played a highlights reel at the media launch, Antonia Zerbisias, television columnist for the Toronto Star said she "... was nearly blown out of my chair by the violence. Even The Star's Rob Salem, who has a higher tolerance for this stuff than I, agreed the tape was excessive."[338]

SCREAM programs movies and series featuring horror, whether delivered by supernatural forces or homicidal and sadistic human beings. In June 2003, the SCREAM web site listed the following slasher films for broadcast during the month: *Prom Night, Prom Night III: The Last Kiss, Prom Night IV: Deliver Us From Evil, Leatherface: Texas Chainsaw Massacre III, Texas Chainsaw Massacre: The Next Generation, Massacre at Central High, The Hills Have Eyes, April Fool's Day, My Bloody Valentine, Friday the 13th, Friday the 13th Part II; Friday the 13th Part III, Friday the 13th Part V: A New Beginning, Friday the 13th Part VI: Jason Lives, Friday the 13th Part VII: The New Blood.* The majority of these films are reviewed in a book called *The Official Splatter Movie Guide,*[339] which offers some indication of the graphic violence featured in them.

...when the Corus folks rolled their highlights reel, I was nearly blown out of my chair by the violence. Even The Star's Rob Salem, who has a higher tolerance for this stuff than I, agreed the tape was excessive.

Corus Entertainment Inc. is a significant presence in the Canadian broadcasting industry, owning such properties as Country Music Television, Food Network Canada, Teletoon, Tree House TV, YTV, the Women's Television Network, as well as 50 radio stations across Canada. Indeed, the Standing Committee on Canadian Heritage shows Corus Entertainment as number one on their list of the ten largest audiovisual media groups in Canada, with revenues of $2.6 billion in 2001/2002.[340] SCREAM is a joint venture with Alliance Atlantis Broadcasting Inc., another large Canadian entertainment and broadcasting conglomerate. This channel was the violent brainchild of mainstream broadcasters who would, one presumes, be very well aware of the Canadian history on television violence, the CRTC hearings held on the issue, government reports and initiatives on TV violence, the voluntary CAB code on violence, etc.

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[336] *"Dance Naked" Radio Station Contest Was Likely to Cause a Public Disturbance, Says Canadian Broadcast Standards Council,* Canadian Broadcast Standards Council news release, March 26, 2002
[337] *TV networks, young and old, show off their wares,* National Post, June 5, 2001
[338] *Just try to contain my excitement*, Toronto Star, June 5, 2001, D7
[339] *The Official Splatter Movie Guide*, by John McCarty, St. Martin's Press, New York, 1989
[340] *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting,* Standing Committee on Canadian Heritage, Communication Canada Publishing, Ottawa, 2003

Responding to controversy over the launching of the channel, Lori Rosenberg, Vice-President and General manager of SCREAM, said the channel would "be promoted as an adult service with an 18 - 49 demographic".[341] However, statements from industry representatives and commentators over the years consistently identify the audience for slasher and horror films as being much younger than that. For instance, a *Washington Post* article noted that slasher and horror films appeal "mainly to teenage boys".[342] A senior vice president with New Line Films, the company responsible for the *Nightmare on Elm Street* series, said that successful horror films "need to grasp an audience aged 10 to 24 in order to break into profits"[343] -- "10 to 24" is a long way from the 18 to 49 demographic identified by Corus.

Figure 5 - Illustration from SCREAM web site

Indeed, in October 2003, SCREAM reached out to the young YTV audience by running a promotional campaign in conjunction with that channel. (YTV is also owned by the parent company, Corus Entertainment Inc.) The Corus web site identifies the YTV audience as people "aged 2 - 17 and their families".[344] The company attempted to attract more subscribers to SCREAM from that age group by running a campaign that said "No digital cable? No satellite? You can see SCREAM on YTV", and during the month of October, Corus ran movies from SCREAM on their YTV youth network.[345]

Political Initiatives Directed at Curtailing Slasher Films

As described in the Political Highlights section, the Ontario Liberal party lobbied aggressively for curbs on slasher films in the early 1990s. When the planned launch of SCREAM was brought to the attention of Ontario politicians, the Liberal Women's Issues critic, Marie Bountrogianni, again raised the issue in the Ontario Legislature. She also sent letters to The Hon. Sheila Copps, Minister of Canadian Heritage, protesting the licensing of the channel, and to the Ontario Minister Responsible for Women's Issues, Dianne Cunningham, bringing the matter to her attention. Federal Liberal M.P., Janko Peric, also wrote to Heritage Minister Copps, but no action was taken by the Minister to stop the channel's launch.

It bears repeating that Keith Spicer, Chairman of the CRTC and Al MacKay, Vice-President of the Canadian Association of Broadcasters, condemned slasher films in their testimony before the federal Standing Committee on Communications and Culture's hearings into television violence, and that Recommendation No. 26 in that Committee's report, *Television Violence: Fraying Our Social Fabric,* called for the Minister of Justice to determine the criminal legislative measures needed to control slasher films. A few years later, the CRTC licensed a channel to broadcast them nationally.

9.6. Role of Advertisers

Advertisers must accept a large measure of responsibility for the programming, both good and bad, that exists on television; without their sponsorship, harmful shows would not survive. In testimony before the Standing Committee on Canadian Heritage in 2002, David Harrison, representing the Institute of Communications and Advertising, described the situation quite well:

> *In television, approximately 14% of total revenue comes from subscription revenues from pay and specialty channels, 24% from public funding, 1% from the cable production funds, 3% from*

[341] *Hue and cry raised over Scream,* PlayBack, July 9, 2001
[342] *Rating Enforcement Changes Hollywood's Picture*, Washington Post, May 31, 2001
[343] *The shock is wearing off*, Globe and Mail, November 30, 1990
[344] Corus Entertainment Inc. web site, October 3, 2003
[345] SCREAM web site, October 3, 2003

private sources, and 6% from all others, but fully 51% comes directly from airtime sales of advertising. That's over half of all the revenues to support broadcasting coming from advertising, and it makes advertising the single largest contributor of funds to the Canadian broadcasting system.

Considering these substantial revenues, the role of advertising is critical to a healthy and robust broadcasting system in Canada. It is advertising that pays for content. That's always been the pact between advertisers and the public since the very earliest days of broadcasting. It is advertising that pays for the programs that entertain, inform, and educate Canadians. Without advertising revenues, the broadcasting system could not survive. And it is the advertising that makes it possible for the system to fulfill the public objectives established by the Broadcasting Act.

In short, advertising brings economic strength to the system.[346]

Corporations spend about $3 billion a year on television advertising in Canada, with the top three TV advertisers in 2002 being Proctor & Gamble Co. ($85 million), GM Corp. ($56 million) and Sony Corp. ($44 million).[347]

9.6.1. Advertisers and Television Violence

Large corporate advertisers in North America are aware of the public and political concerns regarding violent and anti-social programming. A 1999 news release issued by the Association of National Advertisers (U.S.) states, "For the past three decades, television content has [been] at the center of sometimes intense debate from both outside and inside the entertainment and advertising industries".[348] Indeed, the Institute of Canadian Advertising in 1993 recommended that its member agencies increase their knowledge and awareness of violent television shows, and include a "violence assessment" in the criteria they use to evaluate television buys.[349]

In 1996, the Coalition for Responsible Television (CRTV), a national Canadian advocacy organization,[350] launched a six-month campaign to convince some of this country's largest corporate advertisers to boycott a new ultra-violent serial killer series called *Millennium*, created by *X-Files*' producer Chris Carter, and purchased for broadcast in Canada by Global television. The CRTV wrote to corporations asking them not to sponsor the series, and received many positive responses. A CRTV news release announcing the results of the campaign, included these comments:

... CRTV volunteers were heartened by comments such as these from Arnold Park, President and CEO of McCain Foods (Canada): "If the influence of McCain Foods can lead to the removal of both of these programs from the air, you can most certainly count on our support. Your organization has assumed an important responsibility on behalf of our industry, so please consider us a staunch partner in your endeavours." And these comments from R. J. MacNelly of Leon's Furniture Limited: "...I am writing to express our support for your position that the amount and degree of violence on TV is too high... Please accept our thanks for informing us of this situation and count us as one company that fully supports your point of view."

... Air Canada advised CRTV that it "... does not appear in programs which it would consider to be excessively violent or disgusting" and we learned that Nabisco Ltd./Christie Brown & Co. abides by the following policy: "Programs that contain excessive violence or sex; exploit or

[346]Testimony of Mr. David Harrison, President, Harrison, Young, Pesonen and Newell, representing the Institute of Communications and Advertising, before the Standing Committee on Canadian Heritage, Study on the State of the Canadian Broadcasting System, April 18, 2002
[347]*Networks wooing ad dollars,* Toronto Star, June 10, 2003
[348]*Forum on Family Friendly Programming Seeks Better TV Content and More Choices,* Association of National Advertisers, Inc. news release, March 2, 1999
[349]Media Violence Chronology 1989 - 2000, Media Awareness Network web site, September 2003
[350]CRTV member organizations included the Canadian Teachers' Federation and the Centrale de l'enseignement du Quebec

degrade race or religion; or are deemed to be issue oriented in a manner that is inconsistent with our business philosophy or objectives, are programs in which Nabisco Ltd. does not advertise."[351]

Obviously, this issue had been discussed at boardroom tables in Canada, and pro-social advertising policies developed by some companies.

In a speech to the Advertising Council in 1996, Ralph Larsen, Chairman of Johnson & Johnson, described his company's struggle with trying to strike a balance between reaching viewers and running ads in a quality, family-friendly environment. "This is not an easy question," he said. "We need large audiences. But I must tell you, we're having trouble finding wholesome programs on which to run our ads."[352]

As members of American society, we are concerned about the TV imagery, role models, themes and language to which our young people are exposed.

In response to that concern, forty-eight of America's largest companies, all members of the Association of National Advertisers, created the Forum for Family Friendly Programming (FFP) in 1998. Initial Forum objectives included bringing back the "family hour", honouring outstanding family content with a major national awards ceremony, supporting more choices for families by challenging the production community to raise the programming bar, and promoting individual company advocacy plans.[353] Their web site (http://www.ana.net/) states:

As marketers, we are concerned about the dwindling availability of family friendly television programs during prime viewing hours -- the environment in which we want to advertise.

As members of American society, we are concerned about the TV imagery, role models, themes and language to which our young people are exposed.[354]

The Forum defines "family friendly" programming as including movies, series, documentaries or informational programs aired during hours when children and adults within a household could reasonably be expected to be watching television together. To be "family friendly", programming should be relevant and interesting to a broad audience, contain no elements that the average viewer would find offensive, or that the average parent would be embarrassed to see with children in the room, and, ideally, would embody an uplifting message. [355]

While the FFP supports "a wide range of programming options" and "will continue to advertise on shows that appeal to different target audiences", they want to "ensure the existence of a family friendly television environment, particularly in the early evening time period".[356] Some of the 48 companies involved in the FFP:

AT&T Corporation, Bristol-Myers Squibb Company, Coca-Cola Company, Eastman Kodak Company, FedEx Corporation, Ford Motor Company, General Mills, Inc., General Motors Corporation, Gillette Company, GlaxoSmithKline, Hallmark Cards Incorporated, Hershey Foods Corporation, International Business Machines Corporation, J.M. Smucker Co., Johnson & Johnson, Kellogg Company, KFC Corporation, Kraft Foods, Inc., Liberty Mutual, McDonalds Corporation, Merck & Co., Inc., Nestlé USA, Inc., PepsiCo, Inc., Pfizer Inc, Procter & Gamble

[351] *CRTV Announces Results of Millennium Advertiser Boycott,* Coalition for Responsible Television news release, May 14, 1997
[352] *Forum on Family Friendly Programming Seeks Better TV Content and More Choices,* Association of National Advertisers, Inc. news release, March 2, 1999
[353] Ibid
[354] Association of National Advertisers, Inc. web site, September 2003
[355] *Forum on Family Friendly Programming Seeks Better TV Content and More Choices,* Association of National Advertisers, Inc. news release, March 2, 1999
[356] Family Friendly Programming Forum Mission, Association of National Advertisers, Inc. web site, September 2003

Company, Sears, Roebuck and Co., Sprint Communications, State Farm Insurance Companies, Texas Instruments, Unilever United States, Inc., Wal-Mart Stores, Wendy's International, Inc.

Many of these corporate giants also have Canadian divisions -- certainly, most sell their products in this country -- and two of the largest Canadian television advertisers, Proctor & Gamble and General Motors, are involved in the FFP.

9.6.2. Working With Advertisers

High-Level Meeting With Advertisers

Obviously, with violence escalating on television, advertisers are not doing enough to curb it, and some are actively contributing to the increase through their sponsorship of violent shows. Reaching out to the decision makers in these companies to bring them onside in reducing television violence could be extremely beneficial, and a more productive use of time and resources than appealing to broadcasters.

A high-level conference with representatives of Canada's largest advertisers and their professional organizations needs to be arranged. At the conference, experts would present the research, and a facilitated brainstorming session would develop ways in which advertisers could assist in reducing violence on television. Ideally, this conference should be hosted by the federal Ministers of Canadian Heritage, Health or the Attorney General. As this is unlikely to occur, the conference could be hosted very effectively by the Ontario government, as many of Canada's largest corporations have head offices here. Should the government decline to become involved, an organization such as the Canadian Association of Chiefs of Police, or similar high-profile group, would be equally persuasive.

Consumer Boycotts

Orchestrating a consumer boycott of companies that sponsor violent TV shows is often presented as an "easy" option for applying pressure to advertisers. While it can be effective, it is not easy; boycotts are difficult to administer and require a significant time commitment. Herewith, tips for carrying out a boycott.

Means to Publicize Advertiser Names: To be effective, organizers need a means of reaching a significant audience with the names of the companies to be boycotted. In the days before broadcast conglomerates bought up many of the newspapers in Canada, the news media was a means of reaching people. For example, when the CRTV issued a press release announcing their campaign to convince advertisers to boycott *Millennium*, they received significant newspaper, radio and advertiser trade magazine coverage. CRTV members included the Canadian Teachers' Federation, and the Centrale de l'enseignement du Quebec, a large union. At the time, the CRTV could reach well over a million people through their membership. Those numbers inspired news media interest and the news coverage, in turn, impressed upon advertisers that the campaign should be taken seriously. That was back in 1996, however, and since then, broadcast conglomerates have purchased large segments of the print media, so similar newspaper coverage of a boycott directed at their parent companies seems unlikely.

While nothing can replace the power of the conventional press, web sites can be an effective means of reaching millions of people. Establish this in advance of attempting a boycott, so that where the information will be posted, and how many people might be reached through these sites, can be included in any letters to advertisers.

Monitor the Program for Products and Write to Advertisers: Watch the program for several weeks and record the names of products or companies identified in advertisements. Many ads only provide product names like *Pringles* or *Aspirin*, and the name of the parent company must be identified. This information can be found in the *National List of Advertisers (NLA)***,** available in many libraries. The NLA provides names and contact information for many of Canada's national advertisers, and also cross-

references the companies with their products. So, if you saw an ad for *Pampers*, the NLA will identify the company that makes it.

Record the TV shows if possible, as proof that an advertiser appeared on it. Powerful companies can get justifiably upset if they are identified publicly as engaging in anti-social behaviour, so accuracy is critical, both out of fairness and to avoid any legal problems. Organizers should write to advertisers first, asking them not to sponsor the show and setting out the reasons why. Many corporations use media buyers, separate companies that purchase their advertising spots for them, and senior management may not be aware that they are sponsoring a certain show. Give them an opportunity to do the right thing.

Publish the Names of Offending Advertisers: If corporations continue to sponsor a violent show in spite of an appeal to them to cease, it's time to make their names as public as possible, and encourage consumers to boycott their products. Assemble pertinent information -- products, company names and addresses, a description of the show's content, why it's creating social problems -- issue a press release, and then post the information on as many web sites as possible.

See http://www.fradical.com for more information on the CRTV campaign.

9.7. Recommendations

Broadcasters are generally opposed to legislation that would curtail their ability to air whatever they want. However, they have no such problem when the legislation is intended to protect their own financial interests. In November 2003, broadcasters were highly critical of Industry Minister Alan Rock for failing to get new satellite signal theft legislation passed before the end of the Parliamentary session. "I'm troubled by Mr. Rock letting us down", said Jay Switzer, CHUM Ltd. chief executive officer, during a panel discussion at the Canadian Association of Broadcasters annual conference. Mr. Switzer said every key leader in the broadcasting industry supported the proposed legislation that would have increased penalties for selling equipment used for satellite theft and receiving the signals. It's estimated that the broadcasting industry loses as much as $400 million a year because of piracy. The government introduced legislation to protect broadcasters, but hasn't introduced anything to protect the public *from* broadcasters.[357]

Amend the *Criminal Code* to Include Undue Exploitation of Violence

There is no prohibition in the *Criminal Code* to deal with materials that unduly exploit violence without explicit sexual content. As a result, violence in entertainment has exploded, and the type of extreme brutality that once only existed at the margins of popular culture, has now become so mainstream it's broadcast on television. Recommendations to amend the law to address this problem have been made since, at least, 1983, when the Minister of Justice proposed a new *Criminal Code* definition of obscene:

> ... any matter or thing is obscene where 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 or in any other manner.

The Special Committee on Pornography and Prostitution included the following in their 1985 report, *Pornography and Prostitution in Canada*:

> Recommendation 3: The federal government should give immediate consideration to studying carefully the introduction of criminal sanctions against the production or sale or distribution of material containing representations of violence without sex.

[357] *Broadcasters blame Rock for lack of anti-piracy law,* Globe and Mail, November 11, 2003

The report of the Standing Committee on Communications and Culture, *Television Violence: Fraying Our Social Fabric* made the following recommendations:

> Recommendation No. 26 - The Committee recommends that the federal Minister of Justice, in collaboration with his provincial counterparts, study the matter of extremely violent forms of entertainment, such as slasher and snuff films, to determine the criminal legislative measures needed to control them and to design such legislation to conform to the *Canadian Charter of Rights and Freedoms*.
>
> Recommendation No. 27 - As the Minister of Justice ultimately introduces criminal legislation to control extremely violent forms of entertainment, such as slasher and snuff films, and proceeds to amend the *Criminal Code* accordingly, the Committee recommends that the Minister of Finance review and, if necessary, revise Schedule VII of the Customs Tariff to ensure that it complements the necessary amendments to the *Criminal Code*.

The Standing Committee on Justice and Legal Affairs recommended in their *Report on Crime Cards and Board Games* (1994) that the *Criminal Code* definition of obscene be amended or that a stand-alone provision be created to prohibit the "undue exploitation or glorification of horror, cruelty or violence". The Department of Justice released a discussion paper on the issue in 1996, but, to date, the situation remains unchanged. Amending this law is one of the most pressing and important changes required.

Recommendation 1: Federal Minister of Justice should amend the Criminal Code definition of obscenity or introduce a new provision to prohibit the undue exploitation of violence. The Minister of Finance should amend the Customs Tariff as required. The definition suggested by the Minister of Justice in 1983 could be adopted with a slight change:

> ***Any matter or thing is obscene where 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.***

Appeal to Advertisers

It is not in any corporation's interests to contribute to societal violence, and efforts should be made to inform senior executives about the research and enlist their support in reducing violence.

Recommendation 2: Federal Minister of Canadian Heritage, Minister of Health or the Attorney General should convene a meeting of Canada's major advertisers to inform them about the research on media violence, and enlist their support in not sponsoring violent and anti-social television and radio programs.

In the absence of federal action, Ontario could undertake this initiative.

Recommendation 3: Ontario's Office for Victims of Crime should convene a meeting of Canada's major advertisers to inform them about the research on media violence, and enlist their support in not sponsoring violent and anti-social television and radio programs.

Television Violence: Fraying Our Social Fabric

There are a number of excellent recommendations contained in the report of the Standing Committee on Communications and Culture, *Television Violence: Fraying Our Social Fabric*, that haven't been implemented, but should.

Recommendation 4: Federal Minister of Canadian Heritage should review the report of the Standing Committee on Communications and Culture, Television Violence: Fraying Our Social

Fabric and institute recommendations that remain pertinent. Following <u>amended</u> recommendations are based on that report:

> ***(a) Federal government should form a federal-provincial-territorial task force to inquire into all aspects of societal violence - interrelationships, causes, effects and remedies - including, but not limited to, media violence, domestic violence, and racial violence. The task force should facilitate a process of public meetings and conferences devoted to exploring the portrayal of violence in the media and the consequences thereof.***
>
> ***(b) Minister of Canadian Heritage, the Canadian Radio-television and Telecommunications Commission (CRTC) and others, should engage in cross-border discussions on media violence with their American counterparts, in an effort to promote a collaborative and unified response to this problem.***
>
> ***(c) CRTC should be directed to specifically address the issue of controlling cable distribution into Canada of violent U.S. programming with the objective of moderating violent content wherever possible.***

<u>Replace Self-Regulation With Legislation</u>

If self-regulation worked, violence on Canadian television would have decreased since its introduction, but the study by Laval University indicates that violence has, in fact, gone up since the adoption of the Canadian Association of Broadcasters voluntary codes. In a *Paediatric Child Health* article, Laval University researcher, Guy Paquette, described the study:

> *A thousand programs aired between 1993 and 2001 on major non-specialty television networks in Canada were analyzed... The data collected revealed that the amount of violence has increased regularly since 1993 despite the stated willingness on the part of broadcasters to produce programs with less violence. The total number of violent acts, as well as the number of violent acts per hour, is increasing. Private networks deliver three times more violence than public networks. Researchers have also noted that a high proportion of violence occurs in programs airing before 2100 hours (9:00 pm), thereby exposing a large number of children to this violence.*[358]

As well, significant breaches of the *Broadcasting Act* and *Regulations* have been documented, and the voluntary CAB codes are routinely ignored. This situation was anticipated by the Standing Committee on Communications and Culture and reflected in their recommendations in *Television Violence: Fraying Our Social Fabric*, i.e., they recommended that the government should institute a legislated regulatory scheme if self-regulation failed and the CRTC did not act to address the situation. In recognition of this failure of self-regulation, Bloc M.P., Bernard Bigras, wrote a Private Member's Bill *(Bill C-470, An Act to amend the Broadcasting Act, reduction of violence in television broadcasts)* that sought to "give the Voluntary Code on Violence in Television, developed by the Canadian broadcasting industry, force of law".[359]

With the CAB codes enshrined in law, the Canadian Broadcast Standards Council would be disbanded, and responsibility for enforcing the law given to the CRTC under a system funded by broadcasters, not the taxpayer. Prior to any changes in legislation, the CAB codes should be reviewed for relevance in the current broadcast environment, and the CAB definition of "gratuitous" must be revised.

Recommendation 5: Federal Minister of Canadian Heritage should devise a legislated regulatory scheme to govern the broadcast of programs with violent and other harmful content. Adherence to all Canadian Association of Broadcasters' (CAB) codes should be legislated through the Broadcasting Act. Procedures should be established to penalize broadcasters for series that continue in ongoing breach of codes, e.g., financial penalties could be assessed for each day the

[358] *La violence sur les réseaux canadiens de télévision,* Guy Paquette, Ph.D., Paediatric Child Health, May/June 2003
[359] *Violence on Television, Policy Statement by the M.P. For Rosemont,* Bernard Bigras, March 2000

series continues on the air following a decision, and eventual loss of license should fines not be a sufficient deterrent.

Recommendation 6: Prior to enshrining the CAB codes in legislation, the CAB definition of "gratuitous violence" should be amended to accurately reflect the meaning of gratuitous, i.e., violence which is unjustifiable and unwarranted (CAB definition: "material which does not play an integral role in developing the plot, character or theme of the material as a whole").

Recommendation 7: Canadian Broadcast Standards Council (CBSC) should be disbanded and the adjudication of complaints against broadcasters given to the CRTC under a system funded by broadcasters to ensure the public does not bear the financial burden of the complaints process.

9:00 pm Watershed Hour for Broadcast of Sexually Explicit Material

The Howard Stern Show, with its steady stream of pornographic performers and references to deviant, illegal and/or violent sexual activities, was broadcast from 6:00 am until 10:00 am in Montreal and Toronto. *Jerry Springer* and the *WWF* were broadcast in afternoon time slots. This scheduling exposed children and youth to grossly age-inappropriate material.

Recommendation 8: Federal Minister of Canadian Heritage should amend the Broadcasting Act to establish a mandatory 9:00 p.m. watershed hour for broadcast of sexually explicit material, applicable to both television and radio. Legislation must address the problem presented by the difference in time zones. Currently, sexually explicit programs broadcast nationally from Toronto at 10:00 pm, can be received in British Columbia at 7:00 pm.

Enforcement of the *Broadcasting Act* and *Regulations*

Radio stations do not generally broadcast unedited gangsta rap music because of the abusive content that characterizes the genre. However, abusive rap is becoming more and more mainstream with people like 50 Cent and Snoop Dogg performing *P.I.M.P.* at the MTV Video Music Awards in August 2003. It is only a matter of time before Canadian broadcasters start to play this music in an unedited format. There is a legislated prohibition against this in the *Radio Regulations:* "A licensee shall not broadcast any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basic of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability". Broadcasters need to be reminded of this to forestall the airing of abusive rap and hip hop music.

Recommendation 9: In anticipation of Canadian broadcasters playing music containing abusive content, the CRTC should issue a notice to broadcasters reminding them of the legislated prohibition against abusive comment, and advising broadcasters that the CRTC will vigorously enforce the provisions of the Broadcasting Act and Regulations.

Random Review of Programming by the CRTC

The CRTC does not regularly monitor the broadcasting system, and relies on viewer complaints to identify serious problem areas. This is inadequate and leaves harmful programming on the air in the absence of public complaints. Obviously, if people subscribe to a violent specialty channel like SCREAM, or violent pornographic pay-per-view channels, they aren't going to complain about the content to the CRTC.

Recommendation 10: CRTC should establish a system for periodic, random review of Canadian programming by an impartial research firm or academic institution to take the onus off members of the public who currently have responsibility for monitoring the broadcasting industry. Broadcasters should pay for this review system, not the taxpayer.

Amendments to *Broadcasting Act*

The shocking situation revealed by *The Fifth Estate's* investigation into the pornographic pay-per-view channels in Canada exposed a number of regulatory weaknesses, some of which could be corrected by adopting the following.

Recommendation 11: Federal Minister of Canadian Heritage should amend the Broadcasting Act to require provincial film review board clearance for all specialty channel "adult" broadcast content.

Recommendation 12: Federal Minister of Canadian Heritage should amend the Broadcasting Act to oblige the CRTC to:

> ***(a) ensure licensees are in compliance with their broadcast license***
>
> ***(b) conduct an investigation when they have reasonable grounds to believe breach of the conditions of a license has occurred including public hearings in defined circumstances in relation to improper broadcast content***
>
> ***(c) impose minimum penalties, including fines, forfeiture of improperly acquired profit and suspension of broadcast license for breach of license in relation to defined broadcast content***
>
> ***(d) permit public right of appeal of regulatory action or inaction***

Ensuring Adherence to the Pro-social Goals of the *Broadcasting Act*

Section 3(d) of the *Broadcasting Act* mandates broadcasters to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada. Promoting violence and exposing youth to violent and deviant sexual activities cannot be interpreted as meeting those goals. Yet, this broadcaster behaviour has increased year after year.

Recommendation 13: At license renewal hearings, broadcasters should be required by the CRTC to prove that they are meeting their obligations under the* Broadcasting Act *to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada. In advance of the license renewal hearing, the broadcaster should be ordered to fund a random review of their programming by an impartial research firm or academic institution, e.g., Laval University, to assess the level of violent content.

Appointment of Non-Industry CRTC Commissioners

Many Commissioners and, indeed, the current Chairman of the CRTC, Charles Dalfen, have past links to the broadcasting industry, and they may return to broadcasting when their term at the CRTC ends. According to Matthew Fraser, Professor of Communications at Ryerson Polytechnic University, "Few industry players do not have an anecdote about getting lobbied over lunch by a CRTC commissioner looking for a job down the road."[360] Being human, Commissioners may be reluctant to make decisions that might interfere with their future employment prospects in the broadcasting industry. Unfortunately, what's good for broadcasters, is not always good for the public, and more people without ties to the industry need to be appointed as CRTC Commissioners.

Recommendation 14: Federal Minister of Canadian Heritage should order a review of the CRTC makeup to ensure appointment of Commissioners not affiliated with the media industry, and establish a ratio of non-industry to industry Commissioners. The process of review must be transparent and the public should be consulted.

[360] *The man who won't do lunch,* Financial Post, June 10, 2000

10. MOVIES AND HOME VIDEO

10.1. Introduction

Movies have become increasing violent and graphic over the past several years. In 1998, Toronto Star movie critic Peter Howell said, "Recent hit movies ... are redefining notions of bad taste and excess by making the ghastly seem commonplace... Shock and excess are no longer the domain of porno flicks, teen slasher movies and arthouse controversies like *Lolita*. They're now staples of major Hollywood hits."[361]

For example, *Very Bad Things* starring Cameron Diaz and Christian Slater, features numerous killings, bloody beatings and indignities to human bodies -- they play catch with the severed body parts of their victims. In *Desperado*, a film starring Antonio Banderas, after a prolonged and graphic shoot out in a bar, the floor was literally awash in blood. Quentin Tarantino's movie, *Kill Bill: Volume 1*, features "shootings, stabbings, beatings, beheadings, disembowelings, amputations, mutilations, eye-gouging, slicings, choppings, bitings..."[362] Liz Braun, writing in the Toronto Sun, said a remake of the *Texas Chainsaw Massacre* "offers full, living meaning to the word 'gratuitous' as it applies to film violence and is an exercise in being grossed out".[363]

To quote Jim Carry's Riddler in Batman Forever: "Was that over the top? I can never tell." The movie industry has the same problem. If it can't control itself, then someone's going to have to bell that cat. Before it's too late.

The success of these latter two films, released within weeks of each other in October 2003, prompted this comment from a Denver Post columnist: "Once-unspeakable violence has moved from the unbalanced fringe into the middle of our surround-sound home theatre systems". We've gone, he said, from the "post-September 11 death of irony to the postmodern death of revulsion."[364]

Speaking about the March 2003 release of the French film, *Irreversible*, Peter Howell said, "The only thing *Irreversible* really proves is just how tolerant our community standards have become. Twenty or even 10 years ago, a movie like this would have provoked a public outcry and probably a police raid". He went on:

> *I'm not a big fan of censors, because they usually get it wrong. But I do wonder and worry about what other taboos will soon be broken by attention-seeking filmmakers, now that the sluice gates have suddenly been opened in Ontario.*
>
> *Pedophilia? Infanticide? Bestiality? If this keeps up, theatres will have to start hanging vomit bags onto the soft-drink holders, and I can't say I'm looking forward to the brave new world that beckons.*[365]

Several months later, Globe and Mail columnist Johanna Schneller described the "gore porn" prevalent in so many movies. To qualify as gore porn, she said,

[361] *The banality of Evil*, Toronto Star, September 18, 1998
[362] *Blood Bath & Beyond,* The New York Times, October 10, 2003
[363] *A ripping-off yarn,* Toronto Sun, October 17, 2003
[364] *Blood and gore has lost its shock value: With Chainsaw leading at the box office, killing still sells,* The Denver Post, October 27, 2003
[365] *New tolerance level put to test,* Toronto Star, March 14, 2003

a scene must take something that's already disgusting -- let's say, Leatherface, the villain in The Texas Chainsaw Massacre, slicing layers of flesh out of a young man's back -- and then amp it up for maximum nausea-inducement. The young man must be naked, and sitting in four inches of filthy water in a grime-streaked bathtub in a vermin-infested basement, while the genetically deficient relatives of the villain stroll happily around the floor above; he must be surrounded by buzzing flies and the severed parts of other corpses in varying stages of decay; he must be shivering and moaning, but quietly, and blank-eyed, to suggest that this torture has been going on for quite a long time; and the whole thing must be accompanied by repetitive thrash music.[366]

"Clearly, plain old horror and suspense are no longer enough to satisfy the stimulation junkies that we've become," Ms Schneller observed. "No, in order for us to have a good time at the movies, we need bottles full of eyeballs, lingering close-ups of the jagged tear between the shoulder blades -- complete with deafening ripping sounds -- of a young man hung on a hook, and a long, slow look at Lucy Liu uttering her last few sentences with the top of her head sliced off." [367]

10.2. Mainstream Films

To provide an idea of the violent content of mainstream films, comments from movie reviews are provided below.

Kill Bill: Volume 1 (2003)
Starring Uma Thurman, David Carradine, Lucy Liu

When the heads are lopped off in Quentin Tarantino's Kill Bill: Vol. 1 (and I do mean heads, plural), geysers of blood shoot straight up out of the victims' neck stumps like Old Faithful. Gouts of it spatter the faces of onlookers with such force, the sound engineers must have thrown handfuls of pebbles against canvas to create the effect.[368]

Texas Chainsaw Massacre (2003)
Starring Jessica Biel

The new version of The Texas Chainsaw Massacre is a contemptible film: vile, ugly and brutal. There is not a shred of a reason to see it... There is no worthy or defensible purpose in sight here: the filmmakers want to cause disgust and hopelessness in the audience... This movie, strewn with blood, bones, rats, fetishes and severed limbs, photographed in murky darkness, scored with screams, wants to be a test: Can you sit through it?[369]

What I don't understand is the R rating for the movie itself. This film is so gruesome, sick and explicitly violent that if it doesn't deserve an adults-only rating, you have to wonder what does.[370]

..."Massacre" means what it says. When limbs get sawed off here, it's done with realism - victims scream in genuine agony and die with terror on their faces.[371]

The blood and other body parts are plentiful, and some special-effects shots (like a pull-back through a woman's freshly cored skull) are beyond gratuitous.[372]

[366] *Hungry for blood? Gore porn's for you*, Globe and Mail, October 31, 2003
[367] Ibid
[368] Ibid
[369] *Blood for suckers,* Roger Ebert, National Post, October 17, 2003
[370] *Is Pacino in Scarface an Italian in Cuban clothing?*, Roger Ebert, National Post, October 24, 2003
[371] *New 'Chainsaw' delivers big grosses,* New York Daily News, October 17, 2003
[372] *Movie Review in Brief: The Texas Chainsaw Massacre,* Salt Lake Tribune, October 17, 2003

Irreversible (2003)
Starring Monica Bellucci, Vincent Cassel

> *Irreversible is a movie so violent and cruel that most people will find it unwatchable. The camera looks on unflinchingly as a woman is raped and beaten for several long, unrelenting minutes, and as a man has his face pounded in with a fire extinguisher, in an attack that continues until after he is apparently dead. That the movie has a serious purpose is to its credit, but makes it no more bearable. Some of the critics at the screening walked out, but I stayed, sometimes closing my eyes...*[373]

Final Destination 2 (2003)
Starring A.J. Cook

> *Final Destination 2 is not so much a movie as it is a collection of fabulously disgusting death and dismemberment vignettes, and all of them done with a certain witty flair that has to be seen to be believed... Decapitations! Runnings-through! Human melting! Full body annihilation! Gut spillage! And so on.*[374]

The Piano Teacher (2001)
Starring Isabelle Huppert

> *The Piano Teacher is a very difficult movie to critique. On the one hand, it is straight pornography, guaranteed to sicken and outrage the vast majority of moviegoers. On the other hand, The Piano Teacher is the work of an acknowledged film master who is competing for the Palme d'Or with his third film in succession, and whose actors have delivered undeniably powerful performances, despite the film's disgusting subject matter.*
>
> *The Piano Teacher is representative of the type of movies that play at major film festivals, where sicko behaviour can always be defended as artistic expression. Another "difficult" movie screening here, although not in competition, is Trouble Every Day by France's Claire Denis. It's a cannibalistic love story so visceral and vomitous, not to mention badly written and directed, it could send Hannibal Lecter hurtling toward the theatre exists.*[375]

From Hell (2001)
Starring Johnny Depp, Robbie Coltrane

> *Yes, the movie is gory. Hearts and livers are juggled like hamburger patties. The grisly nature of Jack's [Jack the Ripper] dismemberments is made perfectly clear.*[376]

The Forsaken (2001)
Starring Kerr Smith, Phina Aruche

> *A naked woman, smeared with her own blood, showers away her shame in the opening scene of the new contemporary vampire movie The Forsaken. A woman in a convertible flashes her breasts at the movie's reluctant hero. A vampire indulges in an orgy with his naked gang of ghouls. A comatose vampire victim is stripped to her undies to find the bite mark. Women are called bitches. The word "bitch" is even written on a cement pillar.*
>
> *Sex and violence are back at the bijou. The Forsaken, which opens tomorrow, is courting disaster from critics who find it either cheesy or offensive.*

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[373] *A moral payoff - for those who can endure it,* by Roger Ebert, National Post, March 14, 2003
[374] *Gore Galore,* Toronto Sun, January 31, 2003
[375] *Palme readers stumped,* Toronto Star, May 15, 2001
[376] *The four deadly labels for good films,* National Post, September 11, 2001

But the clutch of pretty or handsome young actors starring in the flick -- most of them cast members of various pop culture TV shows from Dawson's Creek to Buffy the Vampire Slayer -- are adamant in defence of their bloody B-movie.

Feisty English actress Phina Oruche (a regular guest on Buffy) discounts the theory that writer-director J.S. Cardone indulged in misogyny in calling women bitches and killing them for their sexual allure.

Simon Rex (of Jack & Jill) says... "It's just what you go to the movies for. It's violent. It's got hot chicks. It's got cars peeling out and guns shooting and it's cinematic and it's edited cool and it's fun to watch."[377]

Baise Moi (2000)
Starring Raffaela Anderson, Karen Bach

With its graphic porno scenes, its brutal rape sequence and the bloodthirsty plot, it is unwatchable. At best, it makes you squirm as the most vile impulses of human nature are shown without any reservations or moral context.

The rape scene in particular is a horror show. Two women, including one of the leads, are kidnapped by a trio of men, beaten up and violated.[378]

(Pre the *Glad Day Books* decision, the Ontario Film Review Board refused to approve this film for release until some of the worst brutality was cut.)

Seven (1995)
Starring Brad Pitt, Morgan Freeman, Gwyneth Paltrow

Doug Atkinson, co-author of a video column for *Sesame Street's* parent magazine and the book *Videos for Kids: The Essential, Indispensable Parent's Guide to Children's Movies on Video*, wrote to the Ontario Film Review Board about the serial killer movie *Seven*. The OFRB had given the movie an Adult Accompaniment 14 rating (children under 14 must be accompanied by an adult), and attached some mild "information pieces" warning of violence, coarse language and drug and alcohol use. The following is excerpted from his letter to the Board:

... what the information pieces failed to tell me was that I would also see: a dead person bound hand and foot with barbed wire, a naked disemboweled corpse on an autopsy table, pictures of a man who had been forced at gunpoint to cut off parts of his own body, pictures of human beings in mortal agony as they were being torn apart, a lurid scene of a man fastened to a bed for a year by the most disgusting means having been tortured by methods worthy of any medieval inquisitor and still clinging horribly to life when found, and the piece de resistance, two separate scenes of mutilated, bound and blood-covered young woman, one horribly violated because she was lucky enough to be a prostitute, and one disfigured simply because she was attractive and happened to be proud of it.

This of course, is to mention only a few of the macabre visuals. The information piece also did not tell me that, in addition to hearing the dreaded coarse language, I would also be a party to the detailed descriptions of each victims horrific agonies, including things like being forced to eat sharp pieces of plastic, having tubes inserted into one's genitals, that I would hear about a man being forced at gunpoint to rape a woman with a razor-sharp strap-on steel blade, and about a man chewing his own tongue off in mortal agony, to mention only a few incidents in this literal litany of suffering.

[377] *Sex & Violence! Cool!* Toronto Sun, April 26, 2001
[378] *Sex and bloodlust,* Toronto Sun, March 23, 2001

Mr. Atkinson went on to express his deep concern at the state of the movie industry:

> *The thought that we are creating, marketing and serving up gruesome banquets of horrific impressions to these most precious beings, our children, is even more revolting than the theme and content of Seven and the swelling host of films like it. We are sending our children into huge cinemas to be bombarded by scenes of torture and murder on 30-foot screens, with giant sound systems to add to the punch, and we are shipping these same impressions right into our homes via video and pay-per-view so that our kids can feast on these images of atrocity again and again and again and again.*
>
> *We're showing our kids snuff films. Torture films.*
>
> *If you did something comparable to a dog, you'd probably get arrested. It's bad enough that a society would allow one of its industries to offer images of gruesome death as high entertainment. To me the sickness in this is so evident that it barely needs pointing out. But as high entertainment for its children?*
>
> *It's obvious that the film industry is way out of control. It's not just the level of violence that is sky-rocketing, it's the nature and the focus of the violence. Fetish violence, turn-on violence, increasingly authentic, increasingly horrific, increasingly frequent images of atrocities are vomited onto us and our young in the guise of cutting-edge social commentary and art, often accompanied by themes of apocalyptic despair.*
>
> *To quote Jim Carry's Riddler in Batman Forever: "Was that over the top? I can never tell." The movie industry has the same problem. If it can't control itself, then someone's going to have to bell that cat. Before it's too late.* [379]

10.3. Slasher Films

> *We have a generation of kids that are being raised on slasher films, a generation of kids whose first view of sex is a rape scene in a movie, and that's because of the videocassette. I'm very concerned about what's going to happen. In about five or 10 more years, this generation of kids that's been raised on rape movies will reach an age where these sorts of attitudes can be translated into behaviour.*
>
> Professor James Alan Fox, Northeastern College of Criminal Justice[380]

The 1960 Alfred Hitchcock film, *Psycho*, is generally credited with introducing the "slasher" concept to film, although the violence in *Psycho* was implied rather than explicit. The extremely graphic and brutal type of slasher film (sometimes known as "splatter") was launched in 1963 with the release of a movie called *Blood Feast,* made by a pornographic movie producer after he noticed that drive-in audiences seemed to be particularly enthralled by rape scenes.[381]

This genre of film features people, primarily teenage girls and young women, being tortured, dismembered, disemboweled and beheaded, with knives, hatchets, axes and/or construction tools -- chainsaws, nail guns, drills, jig saws -- hence the term "splatter" to describe the more extreme films. The violence often takes place while the female victims are naked or wearing revealing lingerie; showers and bathtubs make convenient murder sites because the victims are already naked. While men and boys are also killed, their deaths are not generally sexualized.

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[379] *Torture films and how kids get to see them,* by Doug Atkinson, May 6, 1997, Media Awareness Network web site
[380] *A generation lost... and armed*, Toronto Star, November 24, 1992
[381] *Horrorshows, The A-To-Z of Horror in Film, TV, Radio and Theater*, Gene Wright, Facts on File Publications, New York, 1986

In testifying before the Standing Committee on Communication and Culture's hearings on television violence, Keith Spicer, Chairman of the CRTC, described slasher movies as consisting "mainly of torturing and mutilating women... just wall-to-wall gore and cruelty, totally without justification".[382]

Figure 6 - Rental video jacket

Some academics dismiss the claim that slasher films primarily target women as victims, citing content analysis that they claim disproves it. Contemporary directors have probably responded to the harsh criticism of this genre and retreated somewhat from the blatant misogyny and sexualized torture and murder that distinguished the earlier productions. However, movies such as the *Slumber Party Massacre* series (see illustration)*, Sorority House Massacre, Mad Butcher, Body Shop, Pieces*, *Three on a Meathook, Blood Feast, Possession* and many more produced in the same vein, clearly feature women as victims whose murder is sexualized, so perhaps their analysis didn't go back far enough in time.

At one time in relatively limited theatrical distribution, the genre went mainstream in 1978 with the release by Universal Studios of *Halloween,* which "spawned an ongoing cycle of bloodier imitations".[383] *Fear in the Dark*, a documentary on the evolution of the horror film said, "By the late 1970s, the psychopath movies had virtually taken over the horror genre and almost invariably, their victims were marginally-wayward suburban American teenage girls."[384]

Halloween, Nightmare on Elm Street and *Friday the 13th* are sometimes referred to as "teenie kill" movies -- both the victims and the audience for the movies are teenagers. For instance, Kane Hodder, "Jason" in the *Friday the 13th* series, figures the body count will reach "…101 maimed and murdered teenagers" when the character is finally retired.[385]

When film critic Roger Ebert watched the notorious *I Spit on Your Grave* in 1981, he was "distressed by the shouts and loud laughter of the audience as a woman was repeatedly cut up, raped and beaten". He felt a basic change had taken place regarding women-in-danger movies -- the sympathies of the audience were no longer with the woman. He said, "The new horror films encouraged audience identification not with the victim but with the killer."[386]

While the audience for these films is primarily teenagers, there are, of course, adults who watch this genre of movie. Given the young age of the victims, however, and the graphic and sadistic manner in which many are slaughtered, there is little comfort in the fact that there are adults who find such brutality against the young "entertaining".

Well-known Hollywood director, John Carpenter, originator of the *Halloween* series, has acknowledged that "a lot of people who watch these movies begin to imitate them",[387] while Kevin Williamson, director of the teen hit *Scream* admitted that the movies "make psychos more creative".[388] Tragically, *Scream* has made some psychos more than creative -- news reports link the film to at least nine murders.[389]

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[382]*Television Violence: Fraying Our Social Fabric,* Report of the Standing Committee on Communications and Culture, Supply and Services Canada, Ottawa, 1993
[383]*Horrorshows, The A-To-Z of Horror in Film, TV, Radio and Theater*, Gene Wright, Facts on File Publications, New York, 1986
[384]*Fear in the Dark*, documentary broadcast on TV Ontario, September 24, 1992
[385]*The man behind the mask*, Toronto Star, August 13, 1993
[386]~~*Don't*~~ *Touch That Dial: The Impact of the Media on Children & the Family*, Barbara Hattemer & Robert Showers, Huntington House Publishers, Louisiana,1993
[387]*Fear in the Dark,* documentary broadcast on TV Ontario, September 24, 1992
[388]*A screaming success with the teen crowd*, Globe and Mail, August 14, 1999
[389] *French link murders to cult film,* The Observer, June 9, 2002

When *Scream* generated more than US$100 million following release in 1996, this relatively moribund genre was reinvigorated, and Hollywood began creating a new round of horror films targeted at teenagers. Kevin Williamson went on to write *Scream 2, Halloween H20*, the adaptation for *I Know What You Did Last Summer*, a rewrite of *The Faculty*, and the story for *Scream 3*. The success of those movies convinced Hollywood that horror was still a valuable franchise, "and the town is busy churning out endless B-grade scare fare".[390]

This brutal genre of film that once existed at the margins of popular culture, has become so mainstream that Canadian broadcaster CTV aired the shockingly violent *Scream* as a Halloween attraction, and as mentioned previously, Canadian media giants, Corus Entertainment Inc. and Alliance Atlantis Broadcasting Inc., launched *SCREAM*, an all-horror digital channel that broadcasts slasher films.

10.4. Death Videos and Shockumentaries

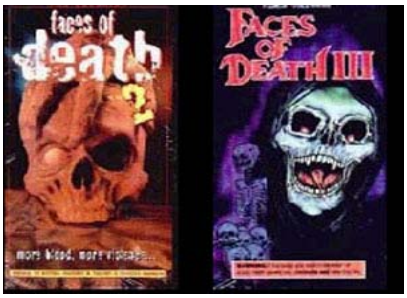

Figure 7 - Video jackets

In the mid-1980's an appalling genre of film appeared in video stores. With titles like *Faces of Death, Death Scenes* and *Inhumanities*, death videos or "shockumentaries" string together scenes of real people and animals being killed, dying in accidents, natural disasters, public executions, etc. The videos are now, of course, available for purchase from Internet sites, and one such site offers the following description of their products:

Faces of Death: *A gruesome shockumentary that looks at death experiences around the world, in uncensored film footage that offers coverage of autopsies, suicides, executions, and animal slaughter.*

Face of Death Volume 3: *The parade of death continues in this collection of film clips capturing moments of death from the Autobahn, victims of political torture, even victims of sniper attacks. Be warned, it's truly horrible.*

Faces of Death 4 Volume 4: *More macabre moments of death caught on film, including a person ripped to pieces and a wedding massacre. This is shocking, actual footage and should not be viewed by those who are easily upset.*

Faces of Death Box Set - The Worst of The Faces of Death: *Not for the faint of heart. Features some of the most bizarre and gruesome deaths caught on video.*

Executions: *Gory footage of actual executions filmed since the beginning of the 20th century, framed in the guise of an examination of the socio-cultural phenomenon.*

Death: Ultimate Horror: *In the style of "Faces of Death," this grisly documentary presents horrifying journalistic footage of suicides, assassinations, bombings, mob hits, decapitations, and more in bloody detail. Not for the faint of heart.*

Shock: *The carnage continues in this sequel to "Death: The Ultimate Horror," with newsreel outtakes of executions, firing squads, explosions and war atrocities presented in bloody color.*

The popularity of these videos inspired television networks to begin broadcast of less graphic, but similarly themed "reality" specials like *When Animals Attack, Close Call: Cheating Death, Deadly Encounters, World's Scariest Police Chases, Sports Disasters.* Many of these TV specials, including ones offering scenes deemed too graphic for television, are released to video and become available at major franchise outlets. These videos must be submitted to the Ontario Film Review Board for

[390] *A screaming success with the teen crowd*, Globe and Mail, August 14, 1999

classification prior to their release in Ontario, and, in the days prior to the *Glad Day* decision, the OFRB had refused to approve some. Post *Glad Day*, there is nothing to stop the most graphic of these videos from being distributed in Ontario.

Bumfights, Cause for Concern

In June 2002, people were shocked to learn about *Bumfights, Cause for Concern*, a one-hour video made in Las Vegas that showed suburban and inner-city teenagers beating each other up, as well as staged scenes of homeless people "defecating on the boulevards of Las Vegas… rolling down the stairs in shopping carts, running headfirst into the walls and windows of fast food outlets, setting alight their hair, knocking down store signs and falling off swings".[391] 300,000 copies of the $19.95 video were sold over the Internet after Howard Stern plugged the video on his radio show. The success of *Bumfights* spawned talk of TV shows, more videos, and made-for-video "rumbles" between homeless people, to be called "bumbles".

Initially, police said no charges could be laid against the producers of the video, with the result that the creators took some homeless people to Spain to film them fighting bulls and skydiving, in anticipation of producing more *Bumfights* videos. Fortunately, three months later, charges of conspiracy, solicitation of a felony crime and illegally paying people to fight were laid by the La Mesa Police Department against the creators of the video.[392]

Hunting for Bambi

In July 2003, outrage was sparked by news reports that a Las Vegas company was offering hunters an opportunity to track and shoot naked women with paintball guns[393] and purchase a video of their hunt. Brass Eagle Inc., an American manufacturer of paint ball gear, issued a press release condemning the "sport" and pointing out the dangers:

Figure 8 - Illustration from Hunting for Bambi web site

- *Purposely shooting at persons who are not wearing a paintball mask... could result in serious eye injury, including blindness*
- *Purposely shooting at persons not wearing clothing ... may result in significant bodily injury*[394]

The hunts were offered through a web site called "Hunting for Bambi" that provided the following descriptions of both the hunt and videos:

> *If you would like to fly out to wonderful fun filled Las Vegas, Nevada for the hunt of a lifetime, now is your chance. You can actually hunt one of our Bambi babes and shoot her with paintballs while we film the whole thing and tape it for your own home video... With over 30 women ready to be chased down and shot like dogs we guarantee a wide variety of Bambi's to choose from...*
>
> *More shocking than anything you've ever seen before. Labeled by CBS News as a cross between Sex and Violence a deadly combination! Women are being hunted down like animals and shot with paintball guns. This raw and completely uncensored video is a cross between Bum Fights and Girls Gone Wild and is sure to be the topic of many Howard Stern Show fans. You will be completely stunned when you see some of the wildest, most outrageous moments ever caught on tape. This is without a doubt one of the sickest and most shocking videos ever*

[391] *Video exploits, sickens -- and sells,* Toronto Star, June 2, 2002
[392] *Video of homeless men fighting draws charges,* Globe and Mail, September 26, 2002
[393] *Bizarre Game Targets Women: Hunting for Bambi Parts 1, 2 and 3,* KLAS TV, July 10, 2003
[394] *Brass Eagle Inc. Responds to "Hunting for Bambi"*, Brass Eagle Inc. news release, July 15, 2003

made. When it comes to hunting women if you can think of it we probably show it. Women are screaming with fear as our Team Bambi hunters track them down and blast them with paintball guns.

You'll also see an actual road kill scene as a semi-truck takes out Bambi on the highway not to mention chicks fighting in the mud and much, much more. If you are an avid outdoorsman or a hard core hunting enthusiast looking for the ultimate adrenaline rush, look no further. From tracking down women with dogs to chasing after them with a real armored tank. We make "Bum Fights" look like kids play. These images will shock you for life![395]

Although some maintain the hunts are a hoax, the Hunting for Bambi web site insists they are real and will be continued as soon as litigation with the City of Las Vegas is complete. [396]

10.5. Recommendations

Legislated Classification System for Home Film Rental and Sale

With some exceptions, films[397] shown in theatres or offered for sale or rent in Ontario must be submitted to the Ontario Film Review Board for classification prior to distribution. It is illegal under the *Theatres Act* to rent or sell a Restricted film to a person under the age of 18. However, the *Act* does not require OFRB classification stickers to appear on films for home use (unless they are adult sex films). In the absence of government labeling, the Canadian Motion Picture Distributors Association introduced a voluntary system called the Canadian Home Video Rating (CHVR) system, and their labels appear on films for home rental and sale. The CHVR is an average of the decisions issued by the six film review boards across Canada. This means that the rating that appears on a home-use film can differ from the OFRB rating, thereby making enforcement of the *Theatres Act* something of a problem.

In their 1992 *Report on the Powers of the Ontario Film Review Board*, the Ontario Law Reform Commission made the following recommendation:

4. A sticker system, such as that now in use in Quebec, should be instituted so that the classification accorded to each videofilm is clearly displayed on the video box and on the video cassette itself. Illegal videos, that have not gone through the Ontario Film Review Board even though they are required to do so by legislation, will then be readily identifiable to both inspectors under the Act, and to consumers.

Marilyn Churley, the Minister responsible for the Ontario Film Review Board at the time, indicated a stickering system was being considered, but it never materialized.[398] Since 2003, the provinces and territories have been working on a harmonized national classification system which would be preferable to a provincial one. Should that not materialize, however, Ontario should institute its' own stickering system to enable enforcement of the age restrictions.

Recommendation 15: The Ontario government should amend the Theatres Act and Regulations to mandate the display of OFRB classifications on films offered for rent or sale in the province.

[395] Hunting for Bambi web site, July 17, 2003
[396] Ibid - October 17, 2003
[397] "Film" as defined by the *Theatres Act*, i.e., "cinematographic film, videotape and any other medium from which may be produced visual images that may be viewed as moving pictures and includes film that is used for advertising purposes". This definition includes theatrical-release movies, video, DVD, music videos, video games, etc.
[398] *To cut or not to cut,* Toronto Star, January 22, 1994

11. VIDEO GAMES

11.1. Introduction

In 2002, the global video game market was estimated at US$28 billion.[399] In Canada, sales of video games, hardware and accessories generated nearly $373 million in the fourth quarter of 2003, up 12% over the same period in the previous year, with the number of games sold reaching the 4 million range, an increase of 35% over the previous year.[400]

For the past several years, many video game manufacturers have chosen to amplify graphic and sadistic violence, while extraordinary technological advances have made the carnage ever more life-like. Some games also feature full-motion video -- footage of real actors -- as opposed to artificial characters.

We can recreate the effect of wind blowing through the hairs on someone's arms; we can simulate every single sweat pore on someone's face; we can even calculate the precise amount of blood that would dribble out of a wound and then show it healing slowly to form a scar exactly like it would in real life

The Entertainment Software Rating Board (ESRB) assigns age-based classifications to video games and also provides content "descriptors" on the video game package. The following descriptors provide insight into the level of violence featured in some games:

Blood and Gore - Depictions of blood or the mutilation of body parts

Intense Violence - Graphic and realistic-looking depictions of physical conflict. May involve extreme and/or realistic blood, gore, weapons and depictions of human injury and death

Sexual Violence - Depictions of rape or other violent sexual acts

Realism is the holy grail of the industry. John Riccitiello, President of Electronic Arts, the largest video game maker in the world, maintains, "People want to get lost in a story. Every single person that plays a video game, when you get lost in that experience, you sweat, you almost cry".[401] Peter Molyneux, a leading video game designer, says, "The level of detail we can create is quite scary. All human physiology can be replicated. We can recreate the effect of wind blowing through the hairs on someone's arms; we can simulate every single sweat pore on someone's face; we can even calculate the precise amount of blood that would dribble out of a wound and then show it healing slowly to form a scar exactly like it would in real life".[402] Bill Gates, Chairman of Microsoft, wants to bring the level of realism to the "point where people forget they are playing a game".[403] In furtherance of that goal, companies offer virtual reality headsets and accessories that impart physical sensation from game play, thereby reinforcing the life-like, interactive experience.

[399] *The Biggest Game in Town,* Fortune, September 2, 2003
[400] *Video game sales blast Canadian records,* Globe and Mail, February 11, 2004
[401] *Sex, Lies & Video Games,* CBSNEWS.com, August 6, 2003
[402] *You ain't played nothing yet,* National Post, January 7, 2000
[403] *Sex, Lies & Video Games,* CBSNEWS.com, August 6, 2003

11.2. Convergence

Video games have converged with other forms of entertainment media -- movies, television, action figures, trading cards, books, and magazines. Increasingly, movie studios are making sure they have the support of game companies before starting projects.[404] Recognizing that a popular game can increase the value of a property like *James Bond* or *Spider Man*, movie studies work hand-in-hand with game companies. The movie/game synergy is becoming so common that scenes are often filmed just for the video game. Stars are asked to record dialogue for games, and may be required to submit to extra filming and special sessions in a motion-capture studio just for their game personas. Crews from Shiny Entertainment spent months on the set of the *Matrix* movie, and some scenes in the film are understandable only to those who play the *Matrix* game. A *Matrix Online* game uses exact movie sets.[405]

Given the potential for reaching a young audience, recording artists are hopping on the bandwagon with game companies. Two rock bands, Limp Bizkit and Korn, announced in October 2003 that they would be co-headlining the "XBOX Live: Back 2 Basics" tour. At each stop on the tour, one fan will get to compete "head-to-head with a Korn member on an XBOX video game".[406] The *Madden NFL 2004* video game features songs by Blink-182, Alien Ant Farm, OutKast and Nappy Roots that "will burn themselves into the brain of each player more than 100 times, creating more impressions for new artists than they can get on radio or MTV".[407] People like violent rapper, 50 Cent, are releasing new songs on video games in advance of the release of their full CD, with the result that by the time the album comes out, demand has already been created among the 16- to 34-year-old age group.[408] 50 Cent is also reportedly working on a *Grand Theft Auto*-style "action" video game that will feature him, Eminem and Dr. Dre.[409]

11.3. Content

A *Contemporary Pediatrics* article on violent video games stated:

> *An analysis of a sample of the 33 Sega and Nintendo games that were most popular in 1995 showed that nearly 80% featured aggressiveness or violence; in 21% of the games, the aggression or violence was directed toward women. In nearly 50% of the games examined, violence or aggression was directed against other characters, and the violence generally was very graphic. Another survey found that violence was a theme in 40 of the 47 top-rated Nintendo video games.*[410]

In 1998, the Globe and Mail ran a full-page article on the trend to sadistic and graphic violence featured in video games. Titled *Video games get very, very ugly*, it warned that "Major U.S. software companies are about to make such infamous "splatter" games as *Duke Nukem* and *Doom* seem like child's play as they prepare to release a new wave of titles this fall that enable players to manipulate photorealistic images of humans into acts of torture, mutilation and even - if you can believe it - prostitution".[411] Some of the games described:

> *Interplay Productions proudly promotes its Wild 9 as the first-ever action game that encourages players to torture enemies. Shiny Entertainment, a subsidiary of Interplay, is completing work on Messiah, a game in which a cherub tries to cleanse the world of corruption. "Ever seen a body with 10,000 volts run through it?" the game's advertising slogan teases. "Want to?"*

[404] *The Biggest Game in Town,* Fortune, September 2, 2003
[405] Ibid
[406] *Small clubs serve Korn, Bizkit,* Toronto Sun, October 30, 2003
[407] *The Biggest Game in Town,* Fortune, September 2, 2003
[408] Ibid
[409] *50 Cent getting in da game,* GameSpot.com, November 11, 2003
[410] *How violent video games may violate children's health,* Contemporary Pediatrics, May 2001
[411] *Video games get very, very ugly,* Globe and Mail, September 5, 1998

Not to be outdone, Virgin Interactive is set to release Thrill Kill, a series of gladiator-style battles between demented characters that bite and tear at each other in a torture-chamber setting.

Other pain-packing titles due out in the next year include Deathtrap Dungeon and Dungeon Keeper II (which, according to Computer Gaming World Magazine, "offers improved graphics, more creatures and better ways to torture").[412]

Figure 9 - Screen shot from Postal 2

What the author found striking, was that the games were being released by large, well-established companies.

The trend to hyper-violence has continued unabated. A survey of the best-selling games done by research service NPDFunworld in February 2002, showed *Grand Theft Auto 3* as the top-selling game, with other violent games, *State of Emergency, Max Payne* and *WWF Raw*, also in the top-ten list.[413] The enormous financial success of the *Grand Theft Auto* franchise has encouraged other game makers to push the bounds of sex and violence even further.

Postal 2, released in Spring 2003, is "so violent, so racist and homophobic, that four countries are already considering banning it because players can gruesomely kill African-Americans and gays."[414] In a PBS *News Hour* interview, Washington State Representative Mary Lou Dickerson displayed a game in which the player pours gasoline on a police officer, sets him on fire and then urinates on him. She said, "A lot of these games are just plain sick. They're sick, they're violent, they're racist..."[415]

The industry blatantly markets and exploits the violence featured in their games. Advertisements say things like, "All the killin', twice the humor, half the intelligence", "Kill your friends guilt free, "Psychiatrists say it's important to feel something when you kill", "We took what was killer and made it mass murder".[416] In *Carmageddon*, "points are scored for artistic gore, based on how blood is smeared on the tires after each crash. A player who completes all levels may have killed as many as 33,000 people".[417] A review of *Tao Feng: Fist of the Lotus,* said the game is "brutal and bloody. It is proud of being brutal and bloody. It boasts on its box that it realistically depicts torn muscles. As if that were not enough to win the ire of legislators (and the hearts of tween boys everywhere), it features jiggling breasts and then some more jiggling breasts..."[418]

In the *Duke Nukem* series, the shooter, Duke, who is controlled by the player, moves through pornography shops, where he finds posters of scantily clad women he can use for target practice. In advanced levels, bonus points are awarded for the murder of prostitutes, women who are usually naked. Duke encounters defenseless, bound women, some of who are tied to columns and plead, "Kill me, kill me". Although *Duke Nukem* is rated for adults, action figures are marketed to toddlers through chains like Toys R Us.[419]

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[412] Ibid
[413] *Take-Two tops video game sales chart in February,* Reuters, February 26, 2002
[414] *'Postal 2': Equal Opportunity Offender,* TechTV, February 19, 2003
[415] *Violent Video Games,* PBS News Hour, July 7, 2003
[416] *Stop Teaching Our Kids to Kill: A Call to Action Against TV, Movie & Video Game Violence*, Lt. Col. Dave Grossman, Gloria DeGaetano, Crown Publishers, New York, 1999
[417] *How violent video games may violate children's health,* Contemporary Pediatrics, May 2001
[418] *Base fun for your inner Beavis,* Toronto Star, May 22, 2003
[419] *Stop Teaching Our Kids to Kill: A Call to Action Against TV, Movie & Video Game Violence*, Lt. Col. Dave Grossman, Gloria DeGaetano, Crown Publishers, New York, 1999

In *Outlaw Golf,* given a Teen rating by the ESRB, players get to choose among strippers, bikers and ex-convicts for a round of golf. Once on the green, if a shot is botched, players can beat up their caddies, bringing their score back to par. If a player is partnered with a female caddie, he can grab her breasts and yank her nipples while saying “tune in, Tokyo”.[420]

In December 2002, the National Institute on Media and Family (U.S.) released their Seventh Annual MediaWise Video Game Report Card (http://www.mediafamily.org/) condemning the "growing tendency to depict graphic violence against women in the industry's most popular games".[421] In *Grand Theft Auto: Vice City*, a player can have sex with a prostitute and then get his money back by beating her bloodily to death with his fists, baseball bat or a golf club, action that can be felt through the PlayStation controller,[422] or she can be shot, complete with spurting blood and painful sound effects.[423] Dr. David Walsh, President of the Institute, stated the obvious when he said, "This is fantastically inappropriate... Rewarding players for having sex with, and killing, a prostitute is a frightening example to set." [424] In giving the industry an overall failing grade, the Institute identified other areas of concern as growing levels of video game addiction, inaccuracy of ESRB ratings, parental lack of awareness regarding content, and the failure of many retailers to restrict children from purchasing Mature-rated games.

While the notoriously violent *Grand Theft Auto* is classified as Mature (suitable for people 17 and over), a 13-year-old Toronto boy reviewed the game for the *Toronto Star’s* youth publication *Brand New Planet*, and noted that “you can run down the sidewalk with a chainsaw ripping people in half”. Another 12-year-old boy quoted in the article said, “I don’t like that you can cut off girls’ heads and watch the blood spurting out from the neck”.[425]

This psychopathic game was lauded by *Toronto Star* columnist, Ben Rayner:

> *For some,* Grand Theft Auto III's *emphasis on realistic carnage directed at civilians and police, fire and rescue officials will no doubt strike an uneasy chord, especially post-Sept. 11, as will its gleeful smashing of nearly every conceivable societal taboo. For the rest of us, this is a crash course in how invigorating it can sometimes feel to be the bad guy. A bleak, subversive and frequently hilarious gaming masterpiece.* [426]

Figure 10 - Screen shot from Manhunt

Again, in January 2003, he had the following to say about *Grand Theft Auto: Vice City*:

> *Carjacking, cop-killing and laying waste to public property were amusing enough before, for sure, but there’s nothing like wheeling destructively around the city in a stolen vehicle while Slayer’s “Raining “Blood” churns apocalyptically away in the background.*[427]

The makers of *Grand Theft Auto* released an even more violent game, *Manhunt*, in November 2003. "It's going to show people stuff they haven't seen in games before, but in slasher flicks," said Greg Kasavin,

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[420] *For Young Fans, the Name of the Video Game is Gore,* Washington Post, August 24, 2002
[421] *A Woman's Role In Popular Video Games? Stripped Down and Killed Off,* National Institute on Media and the Family press release, December 19, 2002
[422] National Organization of Women, USA, Action Alert
[423] *Child’s Play? Grand Theft Auto III Provides Video Gamers With a Virtual World of Extreme Violence,* ABC News.com, July 1, 2002
[424] *A Woman's Role In Popular Video Games? Stripped Down and Killed Off,* National Institute on Media and the Family press release, December 19, 2002
[425] *Hello? It’s a game!*, Brand New Planet, January 16, 2003
[426] *Grand Theft Auto III*, Review by Ben Rayner, Toronto Star, January 22, 2002
[427] *In Rotation,* Toronto Star, January 11, 2003

Executive Editor of GameSpot.com. "When you see someone get brutally taken out, you feel a knot in your stomach."[428] A Chicago Tribune columnist said, "the game is attracting notice as a new low in Playstation-driven depravity." And, he added, "For the video game industry, that's saying something." [429]

Several murders have been attributed to people copying *Grand Theft Auto*:

> *In November 2002 an Ohio girl was beaten to death by a 15-year-old boy with one of the posts from the victim's bed. His favorite way to kill in the game [GTA], according to witnesses, was with a baseball bat. He then stole her car, as you do in the game. Witnesses swear the murderer played the game for hours, turning into a "zombie" when he played.*
>
> *Two weeks later in Michigan, witnesses say three* Grand Theft Auto 3 *devotees played the game for hours, hopped into their car and purposely ran over a man they didn't even know (as you do in the game), went to breakfast, came back and stomped him into a coma (as you do in the game), and then went home and played the game some more.*
>
> *On January 31, 2003, Oakland, California, police arrested a group of young men, some of them teenagers, known as the "Nut Case" gang, who had been doing dozens of car jackings, robberies, and murders. Police say they were using* Grand Theft Auto 3 *to train for these crimes and to get fired up to do them. Said one perpetrator: "We played the game by day and lived the game by night.*[430]

Another game, *Halo*, has been implicated in the "beltway" sniper killings. On December 14, 2002, *Dateline NBC* reported that the beltway sniper investigation found that John Lee Malvo, the 17-year-old arrested for the killings, prepared for his sniping spree by training on an XBOX shooter game called *Halo* switched to "sniper mode". *Dateline's* Stone Phillips said that John Mohammad had Malvo train on this game to break down his inhibition to kill because it switched Malvo from two-dimensional rifle-range targets to virtual human targets.[431]

11.4. Video Game Accessories

A wide variety of accessories can be purchased to make the home video game experience more life-like and immersive. Some games also allow for personal modifications. Eric Harris, one of the teenagers who slaughtered 13 people in Littleton, Colorado, created a customized version of the violent video game *Doom* that featured "two shooters, extra weapons, unlimited ammunition and victims who could not fight back -- features that are eerily similar to aspects of the actual shootings".[432] A few of the products are described below, but there are many others available.

Virtual Reality

A Toronto Star article on virtual reality (VR) games noted that "part of the problem in discussing virtual reality is that the very proponents of the futuristic technology cannot even agree on what the term really means", but that the most accepted notion of VR involves "total immersion -- entering a computer-generated world by wearing goggles, gloves and even full sensor-equipped body suits. You are totally immersed in a virtual world of sight, sound and sometimes even touch..."[433] The technology works this way:

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[428] *'Manhunt', the next step in video game violence,* Chicago Tribune, November 24, 2003
[429] *A long way from 'Pong',* Chicago Tribune, December 8, 2003
[430] *Weapons of Mass Distraction,* news release from Miami attorney, Jack Thompson, February 2003
[431] *Beltway Sniper Trained on Sniper Video Game,* news release from Miami attorney, Jack Thompson, December 14, 2002
[432] *Effects of Violent Video Games on Aggressive Behavior, Aggressive Cognition, Aggressive Affect, Physiological Arousal, and Prosocial Behavior: A Meta-Analytic Review of the Scientific Literature,* Craig A. Anderson and Brad J. Bushman, Psychological Science, September 2001
[433] *Virtual reality,* Toronto Star, February 16, 1995

The goggles project slightly different computer-generated images to each eye, creating a three-dimensional illusion. The left- and right-eye separation creates a real sense of depth. This lets you instinctively tell how close or far away a virtual object is, letting you see everything from a true first-person perspective.

As the HMD (head-mounted display) tracks your head movements, the computer quickly generates the corresponding images on the fly, simulating a full 360-degree world: If you look up, you see up; if you look down, you see down; if you look all around you see -- well -- all around.

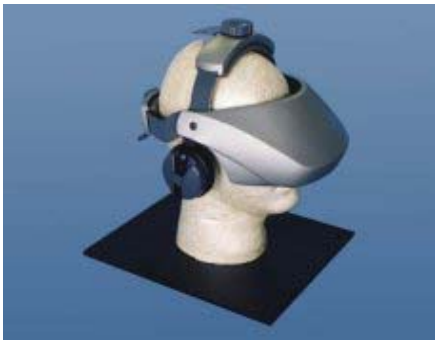

Figure 11 - Head mounted display unit

The VR helmet is also equipped with speakers that -- by using cutting-edge techniques like Q-Sound -- provide surround-sound effects to create a 3-D audio illusion. If something is stomping up behind you to have you for dinner, you'll hear it and whirl around to meet your gruesome gourmet face to face.

In the more sophisticated VR systems, you also slip on a sensor-equipped DataGlove, which allows you to pick up things and even feel things. You could, for example, use the glove to hold a virtual racquet and play tennis, or grip a sword and slay fiends from the depths of the deepest dungeon, or grab your trusty ray-gun and toast some space scum.

The glove (or in cheaper systems, a standard joystick or an off-the-desk mouse called a "space ball") lets you travel to wherever you please through a technique called "point flying". Simply point to where you want to go and -- presto! -- you're soaring (driving, running, wandering aimlessly -- whatever the software dictates). [434]

A variety of head-mounted display units are available for home use. An advertisement for a fairly inexpensive model claims, "you'll find yourself immersed in the action and will no longer simply be playing the game, but virtually 'living' it".[435]

Interactor Vest

Promotional material for the vest describes it as:

- *basically a subwoofer in backpack. The vest vibrates with the sounds in an application. You can feel punches, gun blasts, things like that. It's fun to use when those machine guns or engines are blaring*[436]

- *you can actually feel the slams, whams, and punches of your opponent! Does it get any better than this? We think not! Not only does the Interactor add to the virtual reality of your PC games, you can also feel the action from your favorite TV shows, movies, CD, stereo, game console and more.... guaranteed not to hit below the belt or your money back... Adapters are included for connection to various audio and video sources, including PC and Game Consoles*[437]

[434] Ibid
[435] Olympus Eye-Trek FMD-20P, Hardware Central web site, August 2003
[436] Promotion for Aura Interactor Vest, www.geocities.com, August 2003
[437] Promotion for Aura Interactor Vest, www.vrealities.com, August 2003

Force Feedback

Immersion Corporation is a company that develops haptic technologies to "engage the sense of touch in the digital world for communication, driving, designing, training, or just for fun". They've developed "Immersion TouchSense" technology that "makes computer games of all kinds more compelling by delivering force-feedback through players' game pads, joysticks or steering wheels".[438] Their web site claims that, "when done right, force feedback technology lets you aim better, fly farther, drive faster, and generally play better". What "force feedback" means is that when you kill someone, you get positive physical feedback.

Does the name Pavlov ring a bell?

11.5. Recommendations

Legislated, Age-Based Classification System

Provinces have the power to review and classify films, and a similar legislated system is required for video games. Legislation will not prevent everyone from gaining access to harmful games, but it will help limit their influence on the young. For instance, there is no legislation in Ontario at the moment to prevent an adult from strapping a five-year-old into a violent virtual reality game and leaving him there to have his brain permanently re-wired. Legislation is not a perfect solution, but it must be part of the solution. Laws haven't eliminated teen smoking either, but few would advocate abandoning legislation because it hasn't solved the problem completely.

The Ontario Film Review Board currently has some powers to classify video games under the *Theatres Act*, but there are serious limitations with the current legislation. In April 2004, the Ministry of Consumer and Business Services introduced *Bill 70*, the *Ministry of Consumer and Business Services Statute Law Amendment Act.* This Act authorizes the OFRB to establish as the provincial video game classifications, the ratings assigned by the industry-run ESRB. The government has indicated that the Regulations will prohibit the sale or rental of adult-oriented video games to underage audiences, permit the OFRB to reclassify video games that are the subject of significant public complaint, and give the OFRB the power to prohibit video games that meet established criteria for criminal obscenity.[439]

Given the experience with B.C.'s first piece of video game legislation, complacency at this stage would be a mistake, as the video game industry has an extremely powerful lobby. Until *Bill 70* becomes law and strong Regulations are enacted, public pressure on the Ontario government needs to be maintained, and other provinces should be encouraged to introduce their own legislation.

Recommendation 16: Provincial governments should institute a legislated, age-based classification system for video games and virtual reality systems for home and public use. Legislation must include the power to prohibit products that meet established criteria for criminal obscenity.

[438] Immersion Corporation web site, www.immersion.com, August 2003

[439] Memorandum dated August 3, 2004 from Barry Goodwin, Director, Policy Branch, Ministry of Consumer and Business Services to Linda Spears, A/Director, Victim Policy and Program Development Branch, Ontario Victim Services Secretariat

12. MUSIC

12.1. Introduction

Music lyrics have undergone dramatic changes since the introduction of rock music more than 40 years ago. This is an issue of vital interest and concern for parents and pediatricians.

American Academy of Pediatrics[440]

In testimony before an American Senate subcommittee hearing on the social impact of music violence, Dr. Frank Palumbo, representing the American Academy of Pediatrics, said:

During the past four decades, rock music lyrics have become increasingly explicit -- particularly with reference to drugs, sex, violence and even of greater concern, sexual violence. Pediatricians' concern about the impact of music lyrics and music videos on children and youth compelled the AAP Committee on Communications to issue a policy statement on the subject in December 1989, as well as one on media violence in 1995.[441]

The AAP Policy Statement says the organization is "… greatly concerned that negative behavioral messages are being recorded and repeatedly broadcast."[442] Professors Donald Roberts and Peter Christenson, authors of *It's Not Only Rock and Roll: Popular Music in the Lives of Adolescents,* believe that for adolescents, music is the "heavy equipment" of popular culture, more influential than television, movies and computers.[443]

... hatred and violence against women are widespread and unmistakable in mainstream hip-hop and alternative music.

The 1999 report, *Children, Violence, and the Media, A Report for Parents and Policy Makers*, issued by the United States Senate Committee on the Judiciary, provides insight into the situation:

Few would doubt the overall effect music has on people. In Plato's Republic, Socrates said that "musical training is a more potent instrument than any other, because rhythm and harmony find their way into the inward places of the soul, on which they mightily fasten." Music affects our moods, our attitudes, our emotions, and our behavior; we wake to it, dance to it, and sometimes cry to it. From infancy it is an integral part of our lives.

As virtually any parent with a teenager can attest, music holds an even more special place in the hearts and minds of our young people. Academic studies confirm this wisdom. One survey of 2,760 14-to-16-year-olds in 10 different cities found that they listened to music an average of 40 hours per week. Research has also shown that the average teenager listens to 10,500 hours of rock music during the years between the 7th and 12th grades.

[440] *Impact of Music Lyrics and Music Videos on Children and Youth,* Policy Statement, American Academy of Pediatrics, December 1996
[441] Testimony of the American Academy of Pediatrics before the Senate Subcommittee on Oversight of Government Management, Restructuring, and The District of Columbia, on the Social Impact of Music Violence, presented by Frank Palumbo, M.D., FAAP, November 6, 1997
[442] *Impact of Music Lyrics and Music Videos on Children and Youth,* Policy Statement, American Academy of Pediatrics, December 1996
[443] News release for *It's Not* Only *Rock and Roll: Popular Music in the Lives of Adolescents,* Donald Roberts and Peter Christenson, Hampton Press, New Jersey, 1997

With good reason, then, parents are concerned about the music lyrics their children hear. And parents should be concerned. Despite historic, bipartisan remedial legislation by the state and federal governments, it is stunning even to the casual listener how much modern music glorifies acts of violence. Studies show that modern music lyrics have become increasingly explicit, particularly concerning sex, drugs, and most troubling, violence against women. For example, the rock band Nine Inch Nails released a song titled "Big Man with a Gun," which triumphantly describes a sexual assault at gun point. Such hatred and violence against women are widespread and unmistakable in mainstream hip-hop and alternative music. Consider the singer "Marilyn Manson", whose less vulgar lyrics include: "Who says date rape isn't kind?"… Or consider "Eminem, the hip-hop artists featured frequently on MTV, who recently wrote "Bonnie and Clyde", a song in which he described killing his child's mother and dumping her body in the ocean.

One should hope that the music industry would, at the very least, ostracize such material. Regrettably, however, the industry has chosen to embrace it. How else would the industry explain a 1998 Grammy nomination for Nine Inch Nails? A 1999 Grammy nomination for Marilyn Manson? MTV's "Best New Artist" award to Marilyn Manson last year and Eminem this year? Or the fact that, despite growing concern about such music, Eminem and Nine Inch Nails performed just last week at MTV's Video Music Awards show, televised across the country during prime time?

We must not ignore the fact that these violent, misogynist images may ultimately affect the behavior and attitudes of many young men toward women. Writing about such lyrics in 1996, William J. Bennett, Senator Joseph Lieberman, and C. DeLores Tucker posed the following question: "What would you do if you discoverered that someone was encouraging your sons to kill people indiscriminately, to find fun in beating and raping girls, and to use the word 'motherf---er' at least once in every sentence".[444]

For the most part, extreme violence and misogyny appear primarily in two genres of music, heavy metal and rap/hip hop. Most other popular music contains little, if any, of the kind of lyrics and images causing concern.[445] According to Professor Roberts, both heavy metal and rap music present "highly problematic content in terms of violence, sex, and misogyny". Different studies estimate that such content occurs in anywhere from 25% to 70% of songs and/or videos depending on the definitions of violence used. [446]

When lyrics are illustrated in music videos, their potential negative impact is magnified. Teenagers may not understand some rock lyrics, but can't avoid the images in music videos. In addition, music videos are self-reinforcing: if viewers hear a song after having seen the video version, they "flash back" to the visual imagery in the video. Content analyses indicate that more than half of concept music videos (those involving a theme, not a concert performance) contain violence, often including acts of violence committed against women, and women are frequently portrayed in a condescending manner. [447]

The following sections provide information on violent rap and heavy metal, those two being the most problematic genres.

[444] *Children, Violence, and the Media, A Report for Parents and Policy Makers*, United States Senate Committee on the Judiciary, September 14, 1999
[445] Testimony of Donald F. Roberts, Ph.D., Department of Communication, Stanford University, before the Senate Subcommittee on Oversight of Government Management, Restructuring, and The District of Columbia hearing on the Social Impact of Music Violence, November 6, 1997
[446] Ibid
[447] *Impact of Music Lyrics and Music Videos on Children and Youth,* Policy Statement, American Academy of Pediatrics, December 1996

12.2. Violent/Misogynist Rap/Hip Hop

The violent/misogynist version of rap music ("gangsta rap") began with a performer called Ice-T in 1987, and has continued to grow in influence and popularity to the point that it is now completely mainstream.[448] C. Delores Tucker, Chair of the National Political Congress of Black Women, has been at the forefront of protests against gangsta rap music since its inception because of the degradation of women, promotion of drug use and violence contained in the lyrics. Ms Tucker believes that the performers promote "Negative, stereotypical images calling their mothers, grandmothers, all the women in their community whores, bitches and sluts".[449] In appearing before a U.S. Senate subcommittee hearing on the Social Impact of Music Violence in 1997, she said:

> *Those malicious lyrics grossly malign black women, degrade the unthinking young black artists who create it, pander pornography to our innocent young children, hold black people (especially young black males) universally up to ridicule and contempt, and corrupt its vast audience of listeners, white and black, throughout the world.* [450]

Ms Tucker condemned the corporations that "promote and distribute music that teaches kids that it's cool to kill, use drugs, gang rape girls and denigrate women in the most vulgar and violent ways". In commenting on a rash of murders in Toronto, Dudley Laws of the Black Action Defence Committee cited the negative influence of rap music that glamourizes a criminal lifestyle. "The music culture is awful now," Mr. Laws said. "They have to regulate what young people are looking at."[451]

American studies indicate that rap is "the dominant favorite among adolescent African American males (as many as 75% list it as their favorite), with many white adolescents, especially suburban white boys, listing it as one of their preferred music genres".[452] However, because of rap's concentration on the most negative aspects of the inner-city experience, some believe it may function more to cultivate racial stereotypes than to cultivate cross-cultural understanding.[453] At a conference in Chicago in October 2003, rapper Angela Zone criticized the state of the genre, saying, "Right now it's raising a generation of pimps and ho's and we've got to stop that."[454]

An Associated Press article in July 2003 reported on the promotion of the pimp lifestyle in rap and hip hop music:

> *Ten years ago, it seemed as if every rapper wanted to be a gangsta. Now, everyone wants to be a pimp. 50 Cent and Snoop Dogg strut in full pimp regalia, surrounded by a bevy of beauties, in their new video P.I.M.P... Even old-school soul veteran Ronald Isley personifies the pimp style with his alter-ego, Mr. Biggs, right down to his elaborate cane.*
>
> *... the self-proclaimed king of pimps, Bishop Don Magic Juan, would disagree with the sentiment that pimping is a bad thing. Although he's given up the pimp business for preaching -- he's an ordained minister -- he's still a proud playa who sticks up mightily for his former profession. "It's been portrayed negatively through movies and television," says Juan, who despite his new profession has not forsaken his pimp wardrobe. "Now people are seeing it for what it is."*

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[448] *Gangsta Misogyny: A Content Analysis of the Portrayals of Violence Against Women in Rap Music, 1987-1993,* by Edward G. Armstrong, Murray State University, Journal of Criminal Justice and Popular Culture, 2001
[449] *Gangsta Warfare*, Boston Globe, March 10, 1996
[450] Testimony of Dr. C. Delores Tucker, National Chair, National Political Council of Black Women, Inc., before the Senate Subcommittee on Oversight of Government Management, Restructuring, and The District of Columbia hearing on the Social Impact of Music Violence, November 6, 1997
[451] *Blacks dance to deadly beat in Toronto's clubs,* Globe and Mail, November 2, 2002
[452] Testimony of Donald F. Roberts, Ph.D., Department of Communication, Stanford University, before the Senate Subcommittee on Oversight of Government Management, Restructuring, and The District of Columbia hearing on the Social Impact of Music Violence, November 6, 1997
[453] Ibid
[454] *The worse it gets, the better it sells,* Toronto Star, October 26, 2003

Snoop Dogg, perhaps the biggest pimp purveyor in today's rap game, agrees. "It's cool to look good, it's cool to have girls on your arm, and get money from them, and that's a good feeling, you dig? There ain't nothing wrong with it," he said in a recent interview.

The pimp game has been rapped about for more than 20 years. Oakland native Too Short and Los Angeles pioneer Ice-T celebrated it in the early '80s. Brooklyn's Big Daddy Kane talked about it in the late '80s. In the '90s, the Notorious B.I.G. rapped: "Pimpin' ain't easy but it sure is fun." And one of Jay-Z's most popular songs remains the 2000 anthem Big Pimpin'.

No major rapper embodies pimp style more than Snoop. When he first emerged a decade ago, his style was L.A. gangsta Crip-- baggy jeans, blue flannel shirts and sneakers.

Snoop says pimp culture showed him how to carry himself with style and pride.

"I wanted to look good and feel good about myself," he says. "Those are qualities that you get from a pimp that everybody's not really understanding."[455]

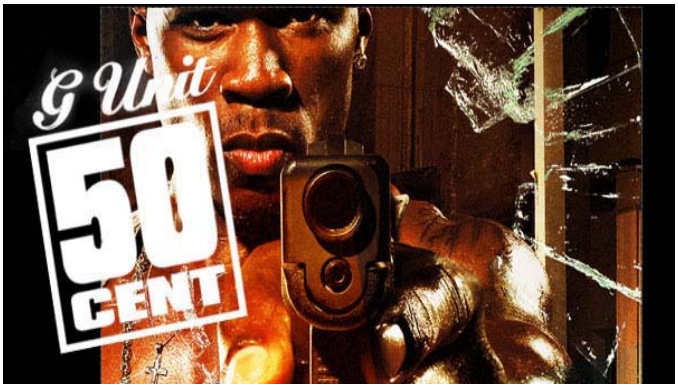

Figure 12 - Promotion for CD

Despite the denigration of women practiced by Snoop Dogg, his XXX-rated music video, *Doggystyle*, was broadcast in Canada by Bell ExpressVu as a New Year's Eve special on December 31, 2001.

Rapper 50 Cent, another pimp proponent, spent his early years as a crack dealer, an occupation that landed him in jail numerous times. Despite his prison record and the fact that he had a weapons charge outstanding, Canadian Immigration officials allowed him across the border in July 2003 to perform at the Molson Amphitheatre in Toronto, along with Jay-Z. A review of the concert noted that "the multi-racial crowd, equally male and female, as young as 10, were mesmerized by him, nodding their heads and reciting his lyrics about pimping, dealing and smoking weed." The reviewer commented that it was "unnerving to hear 15-year-old girls respond loudly in the affirmative when he call[ed] for his bitches".[456]

American commentator Bill O'Reilly started a controversy over the rapper Ludacris appearing in Pepsi Cola commercials because of the content of his lyrics. Writing about the situation, Mr. O'Reilly said:

I believe Ludacris is dangerous. Scores of grammar school teachers in the inner cities of America have written to me detailing horror stores spurred on, they say, by rap music. One fifth-grade teacher told me that it is common in her class for 10-year-old boys to call little girls "bitches." And those little boys can quote the lyrics of Ludacris with amazing accuracy.

Another teacher, who works in a Los Angeles ghetto, has a once-a-week "real talk" half hour in her classroom. She told me that some eighth-grade girls now say they want to become strippers and some boys pimps. When asked why, the kids say it looks like fun in the rap videos.[457]

[455] *Rappers go for new 'costume',* Associated Press, July 29, 2003
[456] *Gangstas mine the mainstream,* Toronto Star, July 3, 2003
[457] *Singing a different tune,* Bill O'Reilly, WorldNetDaily, September 12, 2002

Content Analysis

Professor Edward Armstrong of Murray State University did a content analysis of 490 songs produced by 13 rappers during the period 1987 to 1993, selecting material from those identified as being the "ruling class" of the genre. The results are appalling. Following are excerpts from his analysis describing lyrics on rape, murder, rape/murder and assault. (Text has been edited for brevity and to eliminate obscene lyrics. The entire article is available at http://www.albany.edu/scj/jcjpc/vol8is2/armstrong.html:

Rape

Willie D and Too $hort advocate raping women who do not submit to their sexual advances. Another rape narrative has Too $hort beating his victim's "ass with a billy-club." In "She Swallowed It," N.W.A recommend specific procedures for attacking a fourteen-year-old.

Ice-T (Body Count) proposes sex "with Tipper Gore's two twelve-year-old nieces." This is a clear case of seeking revenge against one of the founders of the Parents' Music Resources Center.

Eazy-E, Snoop Doggy Dogg, and Too $hort casually mention gang rapes. MC Ren tells of "ten niggas" who rape a child and then violate her with a broomstick. In Ice Cube's "Givin' Up The Nappy Dug Out," "fourteen niggas" line up to take turns placing themselves "two on top, one on the bottom" of an underage girl. Too $hort conceives of an array of alternatives in his consideration of the pluses and minuses of statutory rape. In "She's A Bitch" (1987c), he adapts a crude aphorism... He recites similar words in "Hoes".

Murder

M.C Ren shoots a woman who set him up to be robbed. In "To Kill A Hooker," N.W.A drag a streetwalker into a car and kill her because she demanded money in exchange for sex. Women are also murdered for choosing the wrong companion (Eazy-E), becoming nosy (Geto Boys), and for remaining silent. Ice Cube fed a girl to the wolves because the "little ho had no words." Three other personal traits stimulate violent and misogynist lyrics. N.W.A's Eazy-E tied to kill a "fat girl" with an elephant gun. When that didn't work, he "grabbed a harpoon" and left the woman on the avenue "like a beached whale." MC Ren mulls over shooting and burying a "bitch"... Rappers plan murders to pay back women who, in their opinion, did something wrong. Transgressions include telling a lie (Scarface), failing to make bail (Eazy-E), transmitting a venereal disease (Geto Boys, N.W.A), calling the cops (N.W.A), and cheating.

Two Too $hort songs tell of killing women but never offer a hint at what precipitated the acts. Bushwick Bill simply brags that he is the "neighborhood bitch slayer." The Geto Boys recommend putting "a ho in front of a trigger." Without supplying any explanation, N.W.A mention taking the life of a wife and daughter. N.W.A also recollect "bitches" that they have shot and announce their plans to "smother" someone's mother. The Geto Boys kill a person's wife "for kicks" and pump anonymous women "full of lead". Scarface recounts the same senseless killings. Songs combining murder and mutilation exemplify a virulent positioning of women as objects of violence. The Geto Boys attack someone's nieces and cut the girls' heads into "88 pieces." Bushwick Bill recalls this incident in a song where his breakfast menu is "bacon and legs." Ice-T (Body Count) sets his mother on fire, beats her to death with a baseball bat, and cuts up her body. In a Geto Boys' act of murder, the weapon of choice is a machete: "I sliced her up until her guts were like spaghetti."

Rape and Murder

Too Much Trouble kill an elderly rape victim whom they caught crawling for the telephone. First, they hit her on the head with a hammer, and the sound of a hammer hitting someone's head

accompany the lyrics. Too $hort slaps a young girl to convince her to perform oral sex after which the child dies. In "One Less Bitch," N.W.A tie a woman to a bed, rape, and then shoot her. The Geto Boys produced two versions of their signature song, "Mind Of A Lunatic." Both begin by noting the identical initial actions of a peeping tom turned rapist. In one, the perpetrator cuts the victim's throat and watches her "shake like on TV." The second version heightens the macabre as the killer has "sex with the corpse." Another Geto Boys' song depicts a similar rape/murder, only this time they slit the woman "like a pig."

Assault

In "6 'N The Mornin'", Ice-T batters a woman, heretofore a stranger, because she called him a name. "Boyz-N-The-Hood" suggests corporal punishment for women who "talk shit." Dr. Dre presents the identical message in "Nuthin' But A 'G' Thang," the No. 1 rap song of all time. Talking back (Ice-T, Too $hort) and showing disrespect (dissin') (N.W.A) cause men to react violently. Rejecting a proposition provokes a physical attack (Eazy-E). Too $hort hurled this tirade:

> You f--k with us, bitch, something gettin' broken
> Your leg, arm, jaw, nose, pick a part.

In N.W.A's "A Bitch Iz A Bitch," money-hungry or stuck-up women are subsumed under the same solution: "Slam her ass in a ditch." Responses to mental slowness are equally harsh. Bushwick Bill kicks a woman's ass if her "brain don't click." By choosing the wrong friends, "bitches" either "need stitches" (Willie D) or get drop-kicked (Ice-T). Personal characteristics also induce violence. In "Punk Bitch," Too $hort expresses his desire to slap all bald-headed women. Ice-T pushes a woman to the floor because "she looked like Godzilla."

Intimate relationships are also riddled with violence. When one's "lady," as opposed to one's "bitch," talks to another man, she gets physically punished (Geto Boys). Tardy breakfasts are hard to handle. Violence accompanies the command to put some "eggs in the goddamn skillet" (Too Much Trouble). Identification of rappers as putative parents generates physical responses. Ice Cube plans to end a pregnancy by kicking a woman "in the tummy". The Geto Boys handle a false accusation of paternity by trying to break the woman's neck. Too $hort deals with a similar situation by surprising the woman "like a mack" and then dropping "her ass off at Kaiser [hospital]." Women are hit (Ice Cube), slapped (Too $hort), tossed (Eazy-E), thrown into a trunk (Too $hort), smacked (Too Much Trouble; Too $hort) and kicked (Too $hort), all for no apparent reason. For instance, Too Much Trouble mention only that "a bitch is just like glass – easy to break."[458]

Violence Against Police Officers

Police officers are also targeted for violence in this genre of music, and in the United States murders of police officers have been linked to rap music:

- April 1992: Ronald Howard shot Officer Bill Davidson, a Jackson County, Texas state trooper. At the time of the shooting, Howard was listening to a copy of *2Pacalyspe Now* by Tupac Shakur. One song on the recording describes shooting police officers, and Howard claimed that listening to it caused him to shoot Officer Davidson.[459]

[458]*Gangsta Misogyny: A Content Analysis of the Portrayals of Violence Against Women in Rap Music, 1987-1993,* by Edward G. Armstrong, Murray State University, Journal of Criminal Justice and Popular Culture, 2001. Research reproduced with permission of the author.
[459]*Natural Born Copycat Killers and the Law of Shock Torts,* John Charles Kunich, Washington University Law Quarterly, Winter 2000

- July 1992: Two Las Vegas police officers were ambushed and shot by four juveniles who claimed to have been moved to commit the crime by the song *Cop Killer* by Ice-T. Even after their arrest, the juveniles continued to chant the lyrics:

  Die, die, die, pig, die!
  F--k the police!
  Die, die, die, pig, die!

  The conclusion of the song features Ice-T urging his listeners to sing along to the following lyrics:

  F--k the police!
  I'm a mothaf--kin' cop killer!
  Cop killer!
  Cop killer! [460]

- September 1994: Two seventeen-year-olds shot and killed Milwaukee police officer, William Robertson, during a sniper attack on a police van, "because of a Tupac Shakur record that talks about killing the police". One of them, Curtis Lee Walker, told police that Shakur's lyrics on the *N Gatz We Truss* album inspired him to stalk and kill the officer. [461]

In September 2003 in Georgetown, Ontario, tactical police officers clashed with a large group of youths who reportedly were chanting "Kill the cops, kill the police" and "f--k the police". The latter comments were identified by teens from Georgetown District High as being from the N.W.A. album *Straight Outta Compton*. Police used pepper spray, rubber bullets and batons, while firefighters blasted the crowd with water hoses to quell what witnesses described as a rock and beer can throwing mob.[462]

Eminem

> *Then punch a bitch in the nose Until her whole face explodes There's three things I hate: girls, women and bitches...*
>
> Eminem lyrics[463]

Professor Armstrong's content analysis of violent rap music predates the arrival on the scene of Eminem, a performer who has achieved international celebrity status. In October 2000, when Eminem was scheduled to appear at Toronto's SkyDome, provincial M.P.P. Michael Bryant held a press conference denouncing Eminem's misogynist lyrics, urging the provincial government to "crack down on music that advocates violence and hate",[464] and calling for a legislated classification system for music recordings. With regard to the latter, Mr. Bryant said, "Right now in Ontario, a child of any age can purchase whatever CD they want -- no matter how violent or offensive. This has got to stop. We need to start rating music the same way we rate movies. If you're not old enough, you can't buy it without a parent."

He also identified steps that could be taken by Ontario Attorney General Jim Flaherty to deal with the scheduled appearance of Eminem at SkyDome, such as:

- *bringing an injunction to stop the rapper's show on the basis that he would be violating the Criminal Code by going ahead and performing; and*

[460] Ibid
[461] Ibid
[462] *Teens' fairground riot shakes town*, Toronto Star, September 15, 2003
[463] *Confronting Eminem,* Globe and Mail editorial, October 27, 2000
[464] *Bryant Raps Rapper's Violent Message*, Michael Bryant news release, October 25, 2000

- *prosecuting the rapper under the hate crime provisions of the Criminal Code or the indecency or obscenity provisions*[465]

To his credit, Mr. Flaherty took the unprecedented and highly controversial step of trying to have Eminem stopped at the border and prevented from entering Canada, specifically because of the violence against women he promotes in his lyrics.[466] "Some of the lyrics shown to me yesterday advocate domestic violence and I think that's disgusting," Mr. Flaherty told reporters. "I personally don't want anyone coming to Canada who will come here advocating violence against women."[467] Unfortunately, Mr. Flaherty was unsuccessful because women are not protected under the *Criminal Code* hate propaganda law.

Other federal and municipal politicians condemned Eminem's appearance, and Toronto Police Chief Julian Fantino said Eminem's "glorifying violence is totally unacceptable... I don't think anybody should glorify it or make a profit out of it. If that's moralizing, then I'm moralizing. It's obscene."[468] Immigration spokesperson Derik Hodgson apparently found the situation amusing, and quipped to Canadian Press, "If all people who made bad music were kept out of Canada, we could have stopped disco",[469] and the concert went ahead as scheduled.

The performer's misogyny is widely acknowledged in the media, yet he continues to receive the highest honours the music industry can bestow, and sell millions of CDs internationally. A sampling of quotes from media commentators follows:

- *His lyrics are misogynist… Mathers' lyrics are sick-making; they express an odious hatred of women.* (Confronting Eminem, Globe and Mail editorial, October 27, 2000)

- *Eminem, whose unbridled venom toward women, gays, most of his colleagues in music, his wife, and his mother, sets a new standard for violent and hateful lyrics.* (Girls just want to have angst, National Post, July 19, 2000)

- *Eminem may be the most violent, woman-hating, homophobic rapper ever. Why are critics giving him a pass?… But should the nation's tastemakers, the ones supposedly pondering the connection between art and society, align themselves with an artist as blatantly hateful, vengeful and violent as Eminem?… Instead, the rapper simply delivers 75 minutes of nearly nonstop hate.* (Invisible man, Salon.com, June 7, 2000)

- *The teens I talked to weren't the least bit excited about the misogyny or homophobia or incest or rape on the record.* (Time for some irony in hip-hop, Globe and Mail, June 27, 2000)

- *There is no evidence that Eminem's homophobia and misogyny are satirical. If he were rapping about lynching colored folk or slaughtering "towel-head" Muslims, for example, the satire claim would probably not fly – a point lost on pretty much every journalist except Salon's Eric Boehlert.* (Eminem: Rap or Consequences?, PlanetOut News & Politics, June 20, 2000)

- *Ontario's Attorney-General wants Eminem, the Michigan rap star whose profane, misogynist songs have topped the pop charts, barred from entering Canada and performing tonight at the SkyDome.* (Province wants rapper kept out, National Post, October 26, 2000)

- *Eminem's Grammy wins came after weeks of protest from gay organizations and women's groups who were angered Eminem – whose lyrics they say are homophobic and misogynistic – was even nominated for the industry's highest honours*. (Controversial Eminem steals awards show, National Post, February 22, 2001)

[465] Ibid
[466] *Province wants rapper kept out,* National Post, October 26, 2000
[467] *Ban Eminem from Canada: Minister,* Ottawa Citizen, October 26, 2000
[468] *Eminem plays despite outcry from politicians,* National Post, October 27, 2000
[469] *Rapper Eminem performs here despite protests,* Toronto Star, October 27, 2000

- *In the week since Eminem received four Grammy nominations – including album of the year – the rapper's violent, homophobic and misogynistic lyrics have sparked a new firestorm of protest from individuals and groups who cannot believe Grammy voters would recognize anything artful in Eminem's angry raps.* (Storm grows over Eminem's Grammy nominations, National Post, January 12, 2001)

Interestingly, in August 2004, organizers announced the cancellation of Ontario concerts by Jamaican dancehall artist, Beenie Man, scheduled for London and Toronto, "due to ongoing concerns and pressures regarding Beenie Man's controversial lyrical content". Some of Beenie Man's lyrics advocate violence against gays and lesbians, and, because of protests planned by gay rights groups, MTV removed him from the lineup of a concert associated with the MTV Video Music Awards.[470] The same month, Egale Canada issued a press release calling on Judy Sgro, Canada's Immigration Minister to deny entry to another performer, Sizzla, because of similar concerns over his lyrics and citing the recently amended hate propaganda laws.[471]

12.3. Heavy Metal/Death Metal/Shock Rock

> *Riding a blood-and-entrail-streaked reputation as the sickest of the sick on the crowded extreme death-metal trail, Florida's Cannibal Corpse... brings the horrific noise to [Toronto] tonight.*
>
> Toronto Star, August 10, 2000[472]

Heavy metal, death metal, nu metal and shock rock -- the names are varied, but the message is more or less the same: extreme violence, misogyny, deviance, suicide, nihilism, occasionally satanism. This destructive genre of music exists internationally with bands such as these scattered around the globe: Rotting Christ (Greece), Pentagram (Turkey), Rabies Caste (Israel), Massacre (Columbia), Mayhem (Norway), Massacre, Mayhem, Slayer, Cannibal Corpse, Insane Clown Posse, Slipknot, Marilyn Manson (United States).

The Norwegian version of the band, Mayhem, hacked up a sheep on stage during one of their shows, and a fan in the audience was injured when the animal's head flew off and struck him.[473] In October 2003, St. Petersburg, Florida, City Council had to pass an ordinance making it illegal to conduct a suicide for commercial or entertainment purposes after the band, Hell on Earth, announced plans to have a person commit suicide during a show, supposedly to promote right-to-die issues.[474]

The members of shock rock band Marilyn Manson name themselves after serial killers, while the lead singer has taken the name of mass murderer Charles Manson. Both this band and the group Nine Inch Nails recorded in a studio set up in the former residence of Sharon Tate, the same house where the Charles Manson "family" slaughtered several people and painted the walls with their blood.[475]

A National Post article on the nu metal band Slipknot describes the band as "notorious for their blend of nihilism, scatology and ultra-violence". The item relates that "during one stage show, members got into a fight using their own feces", and went on to say:

> *They wear uniform black boiler suits with fascist-style red logos and grotesque masks of their own invention, creating the effect of an army of psychotic mutants.*

[470] *Beenie Man Shows Cancelled,* Toronto Sun, August 27, 2004
[471] *Songs of Hatred Not Welcome,* Egale Canada news release, August 25, 2004
[472] *Club Life*, Toronto Star, August 10, 2000
[473] *Sheep head bashes metal fan in the noggin,* Toronto Star, March 11, 2003
[474] *Judge blocks band's suicide show,* AP, October 2, 2003
[475] *Helter Skelter, The True Story of the Manson Murders,* 25th anniversary edition, Vincent Bugliosi, W.W. Norton & Company, Inc., New York, 1994

Onstage, the ensemble create a blitzkrieg of noise while hurling themselves aggressively about a high-tech set of exploding fireballs and giant flying drums, pausing only to defecate, urinate and masturbate in a weird nihilistic pantomime of bad behaviour.

On one tour, the members of the band amassed 45 broken ribs between them and needed 240 stitches applied to mostly self-inflicted wounds. The mayhem spilled offstage at a show last year, when a female fan suffered head and spinal injuries after Ratboy dived into the crowd from a nine-metre balcony and landed on her.[476]

Not surprisingly, Slipknot's first album was called "Mate. Feed. Kill. Repeat." Some sample songs from two other hyper-violent bands, Cannibal Corpse and Slayer:

Cannibal Corpse: Staring Through the Eyes of the Dead, Stripped, Raped and Strangled, The Pick-Axe Murders, She Was Asking For It, Force Fed Broken Glass, Blood Drenched Execution, Dismembered and Molested, Stabbed in the Throat, Headless, Every Bone Broken

Slayer: Blood Red, Dead Skin Mask, Killing Fields, Sex, Murder, Art, Serenity in Murder

Lyrics for the above can be found by doing an Internet search for "lyrics Cannibal Corpse". The web site for Metal Blade Records Inc., distributor for Cannibal Corpse, boasts that the band has been "BANNED in Australia, New Zealand & Korea BANNED from performing any material off their first three albums in Germany, where the sale of "Butchered at Birth" is outlawed completely!"

We are losing it as a mature, intelligent society. We can't for instance, create an environment for our children that gives them a half-decent chance of succeeding in life. Why? Because they're poisoned by the environment we've created.

This band makes appearances in Canada, and their CDs are available in Canadian franchise record stores (e.g., HMV, Tower Records), although some of the songs appear to contravene the Canadian *Criminal Code* obscenity law because the lyrics combine the undue exploitation of sex with crime, horror, cruelty and violence. An item commenting on the band's popularity in Quebec revealed that, "... their name came up when a Seattle fan of the band raped and killed one woman and left another for dead, which resulted in national news coverage and subsequent record album sales for the band".[477]

In 2001 a lawsuit was filed against the band Slayer by the parents of Elyse Pahler, a 15-year-old girl murdered and raped by three teenaged boys. One of the girl's killers told police "the killing was partly inspired by the heavy metal music of Slayer -- a popular band that specializes in misogynist songs depicting torture and satanic sacrifice".[478] The brutality of the crime was horrifying:

First they choked her with a belt; then they took turns with a hunting knife to slash and stab her more than a dozen times; and as she fell to the ground, praying and crying out for her mother, the three friends stamped their feet on the back of her neck.

Not long afterwards, according to a lawsuit, Joseph Fiorella, 14, Jacob Delashmutt, 16, and Royce Casey, 16, returned to were Elyse had bled to death and had sex with her corpse.[479]

The Pahler's believed that Slayer's "paens to serial killers and necrophilia contributed to their daughter's death" and sued the band and the companies that distributed their music. The lawsuit stated, "The distribution and marketing of this obscene and harmful material to adolescent males constituted aiding

[476] *Nice guy, shame about the band,* National Post, August 27, 2001
[477] *Bienvenue aux Cannibals,* Montreal Mirror, August 17, 2000
[478] *Music to die for?*, Toronto Star, January 23, 2001
[479] *'He asked if I'd be down for sacrificing a virgin. I said, whatever'*, The Guardian, January 24, 2001

and abetting of the criminal acts... None of the vicious crimes committed against Elyse Marie Pahler would have occurred without the intentional marketing strategy of the death-metal band Slayer."[480]

Obviously, not all teens who listen to heavy metal music become killers, but, unfortunately, it is a violent and sadistic genre of music that attracts at-risk youth. As Professor Roberts said in his testimony before the U.S. Senate hearing on music violence, "it is worth noting that this particular genre strongly draws kids who are otherwise troubled or at risk... Because so many troubled youth prefer heavy metal, compared to audiences for other types of popular music, heavy metal fans tend to exhibit a number of worrisome attitudes and behaviors".[481] And, as the Professor said in *It's Not* Only *Rock and Roll*, music can be dangerous for some youth and to ignore its effects on a subset of young people "makes no more sense than to ignore the causes of homicide because only a tiny minority ever commits murder".[482]

In commenting on the inappropriate music to which children and youth are exposed, Toronto Police Chief Julian Fantino summed up the situation quite well when he told a reporter, "We are losing it as a mature, intelligent society. We can't for instance, create an environment for our children that gives them a half-decent chance of succeeding in life. Why? Because they're poisoned by the environment we've created."[483]

12.4. Recommendations

Legislated, Age-Based Classification System

The music industry has gone the way of film, television and video games in producing explicitly violent and sexual material. Some of this material is very damaging to society in general and to youth in particular, and should be restricted to those over age 18, or prohibited from distribution in Canada, under a legislated review and classification system funded by the music industry. In Ontario, music videos are covered under the *Theatres Act* and are required to be reviewed and classified by the OFRB prior to release in this province, although there is no requirement that they carry OFRB classification stickers.

Recommendation 17: Provincial governments should introduce a legislated age-based classification system for music recordings and music videos similar to the system that currently exists for films, and include the power to prohibit products that meet established criteria for criminal obscenity and hate propaganda.

Standards for Use of Publicly-Owned Entertainment Venues

The shock rock group, Marilyn Manson, a band that glorifies serial killers, mass murderers, glamourizes drugs, and uses Nazi symbolism during concert performances, plays at publicly-owned venues like Copps Coliseum in Hamilton, Ontario.

Recommendation 18: Publicly-owned entertainment venues should develop standards for acts that book their premises to exclude entertainers who contravene Human Rights legislation or glorify and promote violence.

[480] Ibid
[481] Testimony of Donald F. Roberts, Ph.D., Department of Communication, Stanford University, before the Senate Subcommittee on Oversight of Government Management, Restructuring, and The District of Columbia hearing on the Social Impact of Music Violence, November 6, 1997
[482] News release for *It's Not* Only *Rock and Roll: Popular Music in the Lives of Adolescents,* Donald Roberts and Peter Christenson, Hampton Press, New Jersey, 1997
[483] *Expletive deleted,* Toronto Star, April 24, 2000

13. PORNOGRAPHY

13.1. Introduction

Pornography has been a concern to both the public and politicians for decades because of the harmful influence of violent and degrading material. The widespread commercial distribution of pornography didn't begin until the 1950s, expanded with the introduction of videocassette recorders and pay-per-view television channels in the 1980s, exploded in the 1990s with the Internet, and has now crossed over into mainstream popular culture.

In the 1992 *Butler* decision, the Supreme Court of Canada divided pornography into three categories:

- explicit sex with violence
- explicit sex without violence but which subjects people to treatment that is degrading or dehumanizing, and
- explicit sex without violence that is neither degrading nor dehumanizing

The first two are considered harmful, while the Supreme Court said the third is "generally tolerated in our society". Unfortunately, the last two categories are becoming increasingly integrated into mainstream culture -- advertising, movies, television, radio, music and music videos, magazines, fashion and even newspapers. And, of course, all three types of pornography are not only readily available on the Internet, but frequently turn up unsolicited on computer screens in the form of spam.

The problem with this is twofold: (1) violent/degrading pornography promotes harmful attitudes towards women and girls; therefore, the more widespread the distribution of this material, the greater the harm, and (2) the mainstreaming of pornography means that children of every age are exposed to sexually-explicit material for which many are developmentally unprepared.

While some violent/degrading pornography is prohibited under the *Criminal Code*, if the exploitation of sex is not a *dominant* characteristic, the products can be distributed in Canada. There is no *Criminal Code* prohibition *at all* on violence, so that even the most extreme violence can be combined with sexual content and distributed, if the sexual content is not "undue". Also, because there is no specific prohibition in the *Criminal Code* to prevent adults from exposing children and youth to sexually explicit material, popular culture is awash in it. The headline on a recent British article -- "Children are being debased" -- sums up the Canadian situation perfectly.[484]

Deviance has been defined so far down that narcissistic, sexualized childhood is part of mainstream culture. You can delete your spam, avoid the tabloids, resolve to watch Nature and Masterpiece Theatre. But you still have to walk into a toy store occasionally. And what you are seeing there, and in the streets and schools, is the overt sexualization of little girls for the delectation of men and boys.

Much has been written in the past few years about the negative impact on children and youth of the sex-obsessed entertainment and fashion industries. An ABC News item said, "That sex sells is nothing new. What is new... is the sexual targeting of an ever-younger audience by corporate America. Teens and, increasingly, pre-teens, are bombarded not just with sexualized marketing, but with what many experts

[484] *'Children are being debased',* The Journal, July 30, 2003

construe to be sexualized products -- items that just a decade ago would have been considered 'for adults only'."[485] The ubiquity of sexual messages in popular culture influences the acceptability of sexualized marketing -- the "frog in boiling water" syndrome -- as well as teenagers' receptivity to, and demand for, these products. Stephen Greyser, a Professor at Harvard Business School, says that young people are subjected to sexual messages even when they are not the explicit targets of such content. [486]

However, in many cases, they *are* the explicit target. Barbara Kay, writing in the National Post, asked the question, "What happened in 20 years to change self-respecting adolescent girls into self-marketing sex kittens?", and she went on to say:

> *I stopped at a toy store to buy a gift, and lo -- since when do toy stores sell bustiers, stilettos and pleather pants? Since children started wearing them, that is when. I read that a Hollywood star's little four-year old girl has a T-shirt bearing the message "Baby porn star." How very ironic and postmodern. Ho Ho. You can't instill sexual self-consciousness too young, apparently.*
>
> *Should we then be surprised to learn that -- and this is a recent Canadian, not Hollywood, story -- unmonitored summer campers, aged 12 to 14, supposedly playing "tent card games," were found engaged in group oral sex?*
>
> *Deviance has been defined so far down that narcissistic, sexualized childhood is part of mainstream culture. You can delete your spam, avoid the tabloids, resolve to watch Nature and Masterpiece Theatre. But you still have to walk into a toy store occasionally. And what you are seeing there, and in the streets and schools, is the overt sexualization of little girls for the delectation of men and boys. Seduction-obsessed mothers today are complicit in this phenomenon by encouraging or at least doing nothing to stop it.*
>
> *We are all wading through bathwater and there are babies drowning under our eyes. It is time to shut off the taps.*[487]

13.2. Pornography's Crossover to Mainstream Popular Culture

Pornography has become ubiquitous -- impossible to ignore, avoid or deflect, as this article from Newsweek illustrates:

> *... 30 years after men first dragged their wives to the seamier side of town to see "Deep Throat," pornography has gone mainstream all over America. From movies to television shows to music videos and magazines, porn stars and porn iconography are everywhere, pointing to a national comfort level that few would have predicted even a decade ago. Just a few current examples: [Jenna] Jameson, perhaps the biggest adult female star of all time, played herself this season on NBC's "Mister Sterling" and has hosted "Wild On …" on the E! channel. Porn star-producer Seymore Butts (real name: Adam Glasser) has a reality show on Showtime, "Family Business." Playboy playmates have appeared on a special episode of "Fear Factor," and the "Friends" gang once got obsessed with an all-porn channel. This fall, Fox will premiere a new series, "Skin," which features Ron Silver as a porn mogul. Val Kilmer will play the porn legend John Holmes in the movie "Wonderland," due this September. In the coming weeks, former underage porn star Traci Lords plans to promote her autobiography, "Underneath it All." Three "Vivid girls" were featured in Vanity Fair's Oscar issue and this September, their images will start appearing on Sims snowboards. The numbers, meanwhile, are huge. In 2001, Americans rented 750 million adult films on video or DVD alone. Total industry revenues now stand at between $5 billion and $10 billion.*[488]

[485] *For Adults Only?* ABC News.com, June 12, 2002
[486] Ibid
[487] *Why do we make good girls dress bad?,* Barbara Kay, National Post, August 11, 2003
[488] *XXX-ceptable,* Newsweek Web Exclusive, July 2, 2003

A Washington Post article said, "The popularization of pornography is everywhere. In the suburbs, the shopping mall, the movie theatre, the radio, the television, our living rooms: Pop Porn."[489] Brian Heidik, winner of *Survivor: Thailand*, starred in porn movies. Sarah Kozer, a finalist on *Joe Millionaire,* acted in bondage videos, and porn performers are a staple on the *Howard Stern Show*, which broadcasts in an early-morning time slot.

Rock and rap music, with its very young audience, has enthusiastically embraced pornography. Rappers Ice-T and Too-$hort recently released porn videos; Snoop Dogg produced the XXX-rated *Doggystyle* in 2002.[490] Eminem featured porn performers Gina Lynn in the video for his single, *Superman,* and Jenna Jameson in his *Without Me* video. Porn worker Dasha was one of Madonna's party pals in the clip for *Music*, Blink 182 had a porn performer pose in a nurse's costume for the cover of their 1999 album, *Enema of the State*, and Kid Rock posed with porn performers for the cover of *Rebel without a Pause*.[491]

Brad Brough, producer of the Canadian-made series "sextv" says, "These images just filter in to billboards or onto magazine covers or whatever it is. It just kind of accumulates. Kids growing up, the next generation down from me, are growing up with these images in their brains. They have VCRs, they have Internet access and they have *Gear* magazine and *Maxim* magazine within arm's reach in Chapters bookstore".[492]

Many in the entertainment industry package violence in an irresponsible and socially damaging manner, and no one should be surprised to find that they do the same with pornography. Some examples:

- Canadian broadcasters scheduled the *Howard Stern Show, Jerry Springer Show* and *WWF* during the day and thereby exposed children to violent and extremely deviant sexual activities, e.g., sado masochism, "gang bang" pornography, bestiality, voyeurism, incest, as well as the misogynist, violent and degrading treatment of women

- Bell ExpressVu broadcast violent and degrading pornography across the country on two channels for almost a year. This company also broadcast the Snoop Dog XXX-rated video *Doggystyle* that was replete with the standard gangsta rap degrading references to women

- music companies promote pimping, prostitution, misogyny, sadism, torture, murder and rape through the promotion of sexually explicit gangsta rap, heavy metal, death metal and shock rock bands. Some of these performers are now creating predictably misogynist XXX-rated videos

- video game companies create sexually explicit and sexually violent games -- and boldly label them as such

- fashion designers create t-shirts with misogynist sayings (slut, bitch, whore), and hooker wear for pre-pubescent girls, clothes that are often sold through mainstream stores

This is not healthy sexuality being promoted on such a massive scale, but violence, misogyny, prostitution and deviance -- and quite often by the most mainstream national and multi-national entertainment conglomerates.

[489] *Pornography Goes From XXX to Zzz,* Washington Post, February 24, 2003
[490] *Boogie nights,* Globe and Mail, May 7, 2003
[491] Ibid
[492] *Porn goes mainstream,* Toronto Sun, December 8, 1999

13.3. What is the Social Cost?

> *Numerous studies illustrate the powerful influence of mass media on adolescents at the very time they are developing their values and beliefs around gender roles, sexual behaviours and attitudes.*
>
> Canadian Paediatric Society[493]

As exposing children and youth to this type of material is a relatively new "social experiment" being conducted, not in a controlled research environment on carefully-chosen university students, but live and on the very young, it could be some years before we know what the social cost is. In studying the problem of youth exposure to Internet pornography, the National Research Council determined that, "The science base for understanding the impact on children of viewing sexually explicit materials is sparse".[494] The Council's report, *Youth, Pornography, and the Internet,* states:

> *For research purposes, a few studies of sexually explicit material have used college-age viewers as a way of understanding the impact this material may have on children. Note, however, that a college student differs considerably in cognitive, physical, and social maturity compared with a primary- or middle-school student.* [495]

The report also notes that ethical and legal considerations limit actual experiments to demonstrate the impact that exposure to sexually explicit material has on young people. However, as the Canadian Paediatric Society points out, "Numerous studies illustrate the powerful influence of mass media on adolescents at the very time they are developing their values and beliefs around gender roles, sexual behaviours and attitudes", and they also say that youth consistently "rank media among their leading sources of information on sex and sexuality"[496], an alarming thought considering the prevalence of violent, misogynist and deviant content.

Dr. Christina Grant of the Hospital for Sick Children's Adolescent Medicine Division says, "Experts agree that in considering the role of media and teens' sexual behaviour, we must reflect on what has been established in the field of violence and the media where there is a clear directional influence on the role of media and violent behaviour/attitudes. Simply put, if adolescents can learn aggressive behaviour from television, could they not also be able to learn sexual behaviour?"[497]

According to Alan Mirabelli, Executive Director of the Vanier Institute of the Family in Ottawa, "Our children do suffer from... 'hurried child syndrome' as they rush, at younger and younger ages, to emulate and imitate adults and their behaviours." Carla Rice, a clinical program specialist with the Body Image Project at Sunnybrook and Women's College Health Sciences Centre in Toronto, says the cultural pressure on girls to look "hot" is tremendous, as pop stars from Madonna to Britney use their bodies to sell records. Clothes designed for girls, including little girls, have never been so revealing. The Washington Post calls it the "whore wars", and notes: "What many find truly astonishing is the tender age at which its' first aimed..."[498] Girls are dressing in such a provocative manner, that even elementary schools in Ontario are introducing dress codes:

> *Popular tween wear -- thong underwear, low-riding jeans, and crop-tops -- have left school administrators with little choice but to spell out appropriate attire for girls as young as six, directives once reserved for high schoolers in a hurry to grow up.*

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[493] *Measuring the media in kids' lives: A guide for health practitioners,* Canadian Paediatric Society
[494] *No Single Solution for Protecting Kids From Internet Pornography,* The National Academies News Release, May 2, 2002
[495] *Youth, Pornography, and the Internet,* Dick Thornburgh and Herbert S. Lin, Editors, Committee to Study Tools and Strategies for Protecting Kids from Pornography and Their Applicability to Other Inappropriate Internet Content, National Research Council, National Academy Press, Washington, D.C., 2003
[496] *Measuring the media in kids' lives: A guide for health practitioners,* Canadian Paediatric Society
[497] *Teens, sex and the media: Is there a connection?,* Paediatric Child Health, May/June 2003
[498] *Mom, I'm ready for school,* Globe and Mail, September 28, 2002

Some grade schools now include a general ban on "short-shorts" and "skimpy tops", while other dress codes are more specific. They include a ban on tank tops, see-through shirts, spaghetti straps, tight shirts, midriff-baring tops, visible underwear and "pants that are cut so low (or pulled down so low) that you can see underwear".

The tween fashion craze has moved well beyond city borders and has crept into small-town Canada.

"It was predominantly the females coming to school with spaghetti-strapped tops and/or a bare midriff, so we put a dress code in place. Especially in elementary school, underwear shouldn't be showing and bare skin shouldn't be showing," says Mike Dunphy, principal of Hillsdale Elementary School in rural Ontario.[499]

When the Centennial Academy in Montreal has a free-dress day (uniforms not required), the girls "come in with their lace thong sticking out of their pants and the pants are cut very low, right down to the pubic bone. It's very, very exhibitionist," says Andrea Peplow, co-ordinator of admissions." Commenting on what this means for young girls, Globe and Mail reporter Deborah Fulsang wrote, "... there is a huge difference between a 20-year-old pop star who travels with a phalanx of bodyguards and a pubescent girl waiting for a bus."[500]

The mainstreaming of pornography is suspected of affecting girls in even more destructive ways. In the United States, child advocates are worried and puzzled by the increasing numbers of middle-class teenage girls turning to prostitution for "thrills, or money, or both".[501] An article in Newsweek noted:

Some activists put the blame at least in part on a culture that glorifies pimping. The new song by superstar rapper 50 Cent—"P.I.M.P."—is about as subtle as the title suggests. Sample lyric: "Bitch choose with me, I'll have you stripping in the street/Put my other hoes down, you get your ass beat." Rapper Jay-Z's hit song "Big Pimpin' " goes like this: "I thug 'em, f—k 'em, love 'em, leave 'em/Cause I don't f—kin' need 'em/Take em out the hood, keep 'em lookin' good/But I don't f—kin' feed 'em."[502]

While there are those who dismiss this as just another development in the history of "teen" rebellion, performers like 50 Cent and Jay-Z are adults not teenagers, the record company executives who market their violent albums are adults, and the "slut, bitch, whore, porn star in training" t-shirts and hooker tot-wear aren't created by teenagers -- they're created and marketed by adults to the very young. The message that misogyny, prostitution, pornography and the sexualization of children are all "good things", is being force fed to children and youth by adults, the very group responsible for protecting them and ensuring their healthy emotional development.

13.4. Recommendations

Research

While it would be unethical to experiment directly on youth to determine the impact of their exposure to sexually explicit material, they are involved in a real-life experiment, and changes in their behaviour and attitudes could be assessed by health professionals.

Recommendation 19: Federal Ministry of Health should initiate a study of the impact on children and youth of exposure to age-inappropriate, violent and deviant sexual activities and material by the entertainment media.

[499] *X-Kilts take on miniskirts in schoolyard,* Ottawa Citizen, April 22, 2003
[500] *Mom, I'm ready for school,* Globe and Mail, September 28, 2002
[501] *'This could be your kid',* Newsweek, August 18, 2003
[502] Ibid

Protection of Minors Legislation - Federal

There is an absence of legislation prohibiting adults from exposing minors to sexually violent and deviant material, e.g., *Jerry Springer, Howard Stern, WWF,* sexually violent music. While establishing a 9:00 pm watershed hour for broadcasting of such material would be useful, enshrining the concept in the *Criminal Code* would be more of a deterrent, and would cover all forms of media. One of the recommendations made by the Fraser Committee (1985), was the introduction of criminal sanctions for those selling or making pornography accessible to people under 18.

Recommendation 20: Federal Minister of Justice should introduce legislation to prohibit the distribution to, or exposure of, minors to sexually explicit goods or services. Sample wording:

> ***No person shall knowingly sell, offer to sell, distribute, offer to distribute or display, to a minor at any premises or in any place, or by any means, sexually explicit goods or services designed to appeal to erotic or sexual appetites or inclinations.***

Protection of Minors Legislation - Provincial

In 2000, Ontario MPP, Robert Wood, introduced a Private Member's Bill, *Bill 95, An Act to protect minors from exposure to sexually explicit goods and services*, which has not been passed, but should be. This Act would also apply to the display of such products in retail and other establishments frequented by minors. Some municipalities regulate the display of sexually explicit materials within their jurisdictions, but this is a piecemeal approach. While federal legislation would be preferable, none has materialized in the 20 years since the Fraser Committee recommendation. In the absence of federal action, the provinces should step in. Such a law might also be used to prohibit the sale of sexually explicit music to minors.

Recommendation 21: Ontario Attorney General should introduce legislation to prohibit the distribution to, or exposure of, minors to sexually explicit goods or services. Sample wording (from Bill 95):

> ***No person shall knowingly sell, offer to sell, distribute, offer to distribute or display, to a minor at any premises or in any place, sexually explicit goods or services designed to appeal to erotic or sexual appetites or inclinations.***

14. INTERNET

14.1. Content

While the Internet is an amazing and valuable resource, it is also a source of great concern arising from the fact that it provides instant access to graphically depicted acts of sadism, torture, bestiality, child abuse, sadomasochism, rape, incest, etc. While some of the sadistic and explicitly violent material is available through mainstream distribution channels in Canada, much of the sexually violent material is prohibited under the *Criminal Code* and could not be easily accessed if not for the Internet.

The Media Awareness Network (MNet) provides this content synopsis:

Virtual violence is readily available on the World Wide Web. Children and young people can download violent lyrics (including lyrics that have been censored from retail versions of songs), and visit Web sites that feature violent images and video clips. Much of the violence is also sexual in nature.

For example, the site Who Do You Want to Kill? allows players to select real-life stars of television shows, and then describe how they would kill them off in the series. The entries frequently include bizarre acts of degradation and sexual violence. Murder is also a staple of the Web site newgrounds.com, which features a number of Flash movies showing celebrities being degraded and killed. When MNet surveyed 5,682 Canadian young people in 2001, the newgrounds site ranked twelfth in popularity among 11- and 12-year-old boys.

Other popular sites such as gorezone.com and rotten.com feature real-life pictures of accident scenes, torture and mutilation. In 2000, rotten.com was investigated by the FBI for posting photographs depicting cannibalism.

Many kids view these sites as the online equivalent of harmless horror movies. But their pervasive combination of violence and sexual imagery is disturbing. Gorezone's front-page disclaimer describes the images on its site as "sexually oriented and of an erotic nature" and then warns viewers that they also contain scenes of death, mutilation and dismemberment. The disclaimer then normalizes this activity by stating, "my interest in scenes of death, horrifying photos and sexual matters, which is both healthy and normal, is generally shared by adults in my community."

Youth, Pornography and the Internet - National Research Council Report

In 1998, the Attorney General of the United States requested that the National Academy of Sciences, acting through its National Research Council, conduct a study of technologies and other approaches to the problem of youth exposure to pornographic material on the Internet in order to develop possible amendments to criminal law and other law enforcement techniques to respond to the problem. The National Research Council's report, *Youth, Pornography, and the Internet*, although American in focus, nevertheless covers many issues of mutual concern to Canadians. The report can be ordered at: http://www.nap.edu/catalog/10261.html.

Anecdotal evidence suggests that gore sites are well known to Canadian school children, although parents and teachers are often unaware of their existence. In MNet's 2001 survey, 70% of high school boys said that they had visited such sites.[503]

A Wired article on pornographic web sites drew attention to sites offering fantasies of men slipping sedatives into women's drinks and then raping them. One offers free memberships to visitors who send their own original pictures of "passed out girls". In the United States, the Humane Society has been swamped with complaints about Internet sites featuring people having sex with dogs, horses, snakes and "almost every other creature imaginable".[504]

"Snuff" Movie Website

Lest anyone believe that all sexually violent sites are created in other countries, in November 2002, an Ontario man was convicted under the *Criminal Code* obscenity law for creating a web site that offered customers simulated "snuff" movies. The clips available typically showed a man surprising a woman showering or sun-bathing. The victim was knifed or shot at close range in the breast or genitals and special effects were used to heighten the simulated blood and gore. Although a professor of film studies testified at his trial that the videos were relatively tame on the spectrum of violent slasher films available, the defendant was convicted and given a $100,000 fine and three years probation.[505]

Canada - A Hub for Internet Pornography?

A June 2003 Globe and Mail item identified Montreal as a major hub of the Internet pornography business, stating that one of the reasons pornographers run their servers out of Canada rather than the United States, is because our "justice system isn't as moralistic as its U.S. counterpart and there is no Section 2257, the American requirement that the industry keep records of its performers".[506] This is disturbing considering that Section 2257 of the *U.S. Code* requires the adult entertainment industry to create and maintain records that allow police to verify the names and birth dates of models and performers depicted in sexually explicit activity. These requirements were developed in response to the avoidance of prosecution by producers and distributors of child pornography through claims of ignorance regarding a person's true age.[507] If porn sites are using Canada to avoid maintaining age records on performers, that situation should be investigated by authorities.

Crossover Into Broadcasting

Broadcasters, like many businesses, maintain web sites. Some are posting material on their web sites that would be prohibited from the public airwaves. In the United States, the Fox network, well known for their outrageous programming decisions, is posting uncut footage from one of their "reality" series -- *Paradise Hotel* -- to their web site and making it available by subscription.[508]

Naked News, a so-called news show that featured women and men stripping as they read the news, started life on the Internet on a subscription basis, but then crossed over into mainstream Canadian broadcasting when Toronto's City TV purchased the show. Interestingly, the City TV version of *Naked News* only featured women stripping. The Canadian Association of Broadcasters' Sex-Role Portrayal Code stipulates that "programming shall refrain from the exploitation of women". Having women strip naked while they read the news would, by most standards, be considered exploitive, but City TV bought the show anyway.

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[503] *Violence in Media Entertainment,* Media Awareness Network web site, April 2003
[504] *Porn Spam: It's Getting Raunchier,* Wired, September 30, 2002
[505] *Man fined for obscenity over 'snuff film' Web site,* Globe and Mail, December 3, 2002
[506] *Porn again,* Globe and Mail editorial, June 2, 2003
[507] *Youth, Pornography, and the Internet,* Dick Thornburgh and Herbert S. Lin, Editors, Committee to Study Tools and Strategies for Protecting Kids from Pornography and Their Applicability to Other Inappropriate Internet Content, National Research Council, National Academy Press, Washington, D.C., 2003
[508] *Dar Heatherington meets Marshall McLuhan,* Globe and Mail, June 18, 2003

14.2. Pornographic Spam

A Wired article on spam describes a situation that afflicts many people in Canada when they download email:

> *Naked women performing oral sex with guns pressed to their heads, naked women with large dogs clutching their backs, naked women in pigtails pretending to be daughters having sex with fathers.*
>
> *These are some of the explicit images that have started slipping into inboxes lately as spamsters try to drive traffic to a growing number of sites featuring rape, bestiality and incest pornography.* [509]

The MNet 2001 research on youth Internet use indicates that 53% of Internet users have received pornographic junk mail, and that 78% did not tell their parents.[510] However, the quantity of spam has skyrocketed since that time. A study done by Canadian pollster, Ipsos-Reid, in December 2002 and January 2003, determined that the amount of spam received each week has more than doubled over the past year.[511] A 2003 survey conducted by Internet security company, Symantec Corp., revealed that four out of every five children surveyed (aged 7 to 18) said they'd received what was deemed to be inappropriate spam e-mail. [512]

Spam now accounts for nearly half of all global e-mail traffic, and is becoming such a burden that it threatens to destabilize the world's computer networks.[513] Steve Linford, founder of the U.K.-based Spamhaus Project, a non-profit group that tracks and identifies the world's biggest spammers, identifies the United States as the "spam capital of the world". About 140 individuals, most of whom are U.S.-based, are responsible for roughly 90% of the world's spam. [514]

Internet Service Providers (ISPs) can institute technological anti-spam measures; although not 100% effective, they do deflect significant quantities of spam. America Online (AOL), for instance, reported blocking more than two billion unsolicited commercial emails in one day. In May 2003, AOL formed an alliance with Microsoft and Yahoo! with the goal of overhauling how email is created and sent, in an effort to counter spam.[515]

In addition to technology, litigation is also being used by ISPs. AOL filed five lawsuits against spammers in April 2003, seeking civil penalties and monetary damages of at least $10 million. The lawsuits charge over a dozen companies and individuals with sending an estimated 1 billion spam messages to AOL members. The company reports having received over 8 million complaints from its members about spam.[516] Microsoft also filed fifteen lawsuits in the United States and United Kingdom against spammers in June 2003 in an attempt to protect its Hotmail customers.

Responding to public and industry pressure, lawmakers in the United States and elsewhere have vowed to pass tough legislation to curb the flood of unsolicited e-mail.[517] More than two dozen American states have passed anti-spam laws, including Virginia, home of AOL, where the legislation establishes mandatory jail time, while four different anti-spam bills have been introduced in the U.S. Congress in 2003.[518] At a European summit on spam held in July 2003, politicians and industry officials joined

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[509] *Porn Spam: It's Getting Raunchier,* Wired, September 30, 2002
[510] *Young Canadians In a Wired World: The Students View,* Media Awareness Network web site, August 2003
[511] *Think you're getting more spam? You're right,* Toronto Star, June 12, 2003
[512] Ibid
[513] *Lawmakers urge world fight against spam,* Toronto Star, July 2, 2003
[514] Ibid
[515] *AOL blocks 2bn spam emails in one day,* CNET News.com, May 1, 2003
[516] *AOL wields legal, technical weapons in spam war,* IDG News Service, April 15, 2003
[517] *Spam, telemarketing prompt backlash*, Globe and Mail, July 2, 2003
[518] *'Toronto will be spam central'*, National Post, July 7, 2003

together in calling for global laws to block the flow of spam, saying that a patchwork of national laws will only incite bulk e-mailers to move to friendlier jurisdictions.[519]

Due to the lack of government action in this country, Senator Donald Oliver introduced an anti-spam Private Member's Bill, *Bill S-23: An Act to prevent unsolicited messages on the Internet*, in September 2003, and M.P. Dan McTeague introduced another Private Member's Bill, *Bill C-460, An Act to amend the Criminal Code (unsolicited electronic mail),* shortly after. Unfortunately, Senator Oliver's bill died when Parliament shut down in November 2003, and Dan McTeagues's bill was shelved.[520] As the United States and other countries institute legislation and Canada does not, Neil Schwartzman, chairman of the Coalition Against Unsolicited Commercial Email Canada, fears that our country could become "spam central".[521]

Fortunately, in May 2004, Industry Minister Lucienne Robillard announced the formation of a 10-member task force composed of industry, legal, government and consumer experts who will spend a year studying the spam problem. Minister Robillard said, "There is no new law that government can enact to address the problem. Having said that, we are not closing the door on new public policy, regulation or even legislation if it becomes clear that this is a necessary step."[522] Among the task force goals:

- Determine how existing laws, such as the *Criminal Code,* the *Competition Act* and private-sector privacy legislation, can be used as enforcement tools to crack down on spammers
- Find gaps in existing laws that may be hindering enforcement
- Work with other countries to development an international framework for fighting spam
- Promote the use of technology that can validate legitimate e-mail communications and filter out spam
- Work to improve consumer awareness of spam
- Help industry fine-tune codes of practice, including how Internet service providers and business manage their computer networks[523]

Consumer Reports published a comprehensive article on spam in August 2003 that includes tips on how to prevent and block spam (http://www.consumerreports.org/).

14.3. Libraries and Internet Pornography

Access to pornographic material on the Internet is creating safety problems for library staff in both Canada and the United States. Librarians have reported disruptive and violent behaviour by groups of people viewing porn sites.

In an incident at the Downsview Public Library in Ontario, police were called after a librarian was chased and cursed at when she asked a group of men to stop viewing pornographic sites. In May 2000, computer terminals in all children's sections of Toronto's 98 public libraries began blocking sexually explicit material, violent content and hate literature, but some librarians feel the move will do little to protect them from abusive teens and adults who refuse to stop visiting the sites.

Library workers say the number of people logging onto pornographic sites is increasing, leading to often volatile incidents. Rob Rolfe, a library worker at the Downsview Public Library and Canadian Union of

[519] *Lawmakers urge world fight against spam,* Toronto Star, July 2, 2003
[520] *Junk E-Mail Keeps Clogging Inboxes,* Globe and Mail, December 27, 2003
[521] *'Toronto will be spam central'*, National Post, July 7, 2003
[522] *Ministry Appoints Anti-Spam Task Force,* Toronto Star, May 2, 2004
[523] Ibid

Public Employees' (CUPE) representative, says the biggest problem is dealing with large numbers of noisy teenagers who surround terminals to view pornographic sites or take part in sex chat rooms. The situation in many libraries has created a stressful environment. "It raises the issue of safety for workers. We have had difficulty convincing management that this is an urgent thing, that it isn't an intellectual question, it is a day to day safety issue," said Mr. Rolfe. One librarian at the Hanover Public Library near Owen Sound quit because of the number of patrons viewing porn sites.[524]

Librarians in Ottawa are also concerned, calling the city's libraries a "porn palace", and filing grievances through CUPE. Lorne Carter, the CUPE officer representing Ottawa's librarians, says staff "are being made sick by what they see" in the name of intellectual freedom. He argues that freedom of information must be balanced against the human rights of the librarians as reflected in Ontario's *Human Rights Code*.[525]

The Ottawa situation has put other library systems on notice. Ron Dyck, director of information technology in Toronto's libraries, said they introduced computer software that will shut off screens automatically, to save librarians from the task of shutting off screens themselves, a major complaint of the Ottawa librarians.

In April 2003, twelve librarians in Minneapolis filed a federal lawsuit against the city's library system, claiming that the barrage of Internet pornography has turned the library into a hostile work environment.[526]

14.4. Policing the Internet

The 1995 report of the Information Highway Advisory Council, *Connection, Community, Content: The Challenge of the Information Highway*, examined proposals for controlling offensive and illegal material on the Internet. The report indicated that the Internet is not the "lawless frontier" so often depicted. Communication that is illegal remains illegal, regardless of the medium through which it is communicated. Federal and provincial laws apply on the Internet, as they do elsewhere, and Canadian systems' operators have been charged with distributing obscenity and child pornography under the *Criminal Code*.

While the recommendations of the Council focused on encouraging enforcement of the current *Criminal Code* provisions,[527] the international nature of the Internet creates difficult policing problems. A person operating a site from Canada can use an Internet service provider in another country to mask his/her identity. Working through jurisdictional red tape and different time zones complicates investigations. If an individual in Canada is running a child pornography site, for instance, but is using an ISP in the United States to mask his identity, Canadian police must first contact the U.S. federal Justice Department. Once cleared, they proceed to the state level, then to a local District Attorney.[528]

The Information Highway Advisory Council urged the federal government, in conjunction with the provinces and territories, owners, operators and users of bulletin boards, Internet and Usenet sites and law enforcement officials, to help develop a code of ethics and practices and to provide community education programs to deal with problem content.[529] A year later, the Canadian Justice Department's *Undue Exploitation of Violence* discussion paper (1996) stated, "The federal government intends to initiate a series of consultations with a view to bringing together online service providers, users, software and hardware developers, educators, parents and community organizations to begin the development of new mechanisms 'technical, administrative and procedural' to protect the vulnerable while safeguarding our fundamental freedoms of expression and association".[530] The government posts the document, *Promoting Safe, Wise and Responsible Internet Use*, at http://cyberwise.gc.ca/english/preface.html.

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[524] *Libraries to block some x-rated sites*, Toronto Star, April 14, 2000
[525] *Librarians Caught In The Net,* Globe and Mail, February 10, 2003
[526] *Library porn surfers living on borrowed time,* Globe and Mail, May 1, 2003
[527] *Undue Exploitation of Violence Consultation Paper,* Department of Justice, Ottawa, 1996
[528] *Net crime challenges law enforcement*, Financial Post, June 19, 2000
[529] *Undue Exploitation of Violence Consultation Paper,* Department of Justice, Ottawa, 1996
[530] Ibid

At a cybercrime forum in May 2000, organized by the Group of Eight industrialized nations, Canadian participants agreed that Canada needs a venue to bring together Internet service providers, computer firms, police and government to discuss the issues, from child pornography and credit card fraud to attacks on the Internet by hackers and the spread of computer viruses.[531]

14.5. Recommendations

Federal Internet Study and Report

Bringing some semblance of control to the Internet is a daunting task, but should not be used as an excuse for political inaction. Legislation will not, of course, solve all problems, but neither should it be discarded as an option because it provides an imperfect solution. AOL, for instance, is using current legislation to pursue spammers and has filed lawsuits under the Virginia *Computer Crimes Act*, the federal *Computer Fraud and Abuse Act*, and the Washington *Commercial Electronic Mail Act*,[532] while politicians and corporations alike clamour for additional international anti-spam legislation. Similarly, the Recording Industry Association of America has filed hundreds of lawsuits against people for illegally downloading songs, and has issued hundreds of copyright subpoenas to compel Internet providers to identify subscribers suspected of illegally distributing music on-line.[533] These companies haven't given up and let lawlessness prevail, and neither should governments.

A current, comprehensive report on the state of the Internet is required, similar to the study commissioned from the National Research Council by the U.S. Attorney General.

Recommendation 22: Federal Minister of Justice should order a new study on the Internet, to examine computer-based technologies and other approaches to the problem of pornographic and violent material available on the Internet and assess the effectiveness of current federal legislation, in order to develop amendments to federal laws and other techniques to respond to the problem. To borrow from the U.S. report criteria, the study should address:

> ***(1) The capabilities of present-day computer-based control technologies for controlling electronic transmission of pornographic and violent images (2) Research needed to develop computer-based control technologies to the point of practical utility for controlling the electronic transmission of pornographic and violent images (3) Any inherent limitations of computer-based control technologies for controlling electronic transmission of pornographic and violent images (4) Operational policies or management techniques needed to ensure the effectiveness of these control technologies for controlling electronic transmission of pornographic and violent images***

Amendments to *Criminal Code*

Most *Criminal Code* laws relating to communication and expression were written prior to the introduction of the Internet.

Recommendation 23: Federal Minister of Justice should amend all Criminal Code laws governing communication and expression, e.g., hate propaganda, child pornography, obscenity, to specifically include transmission via the Internet.

Internet-specific Legislation and Regulation

The CRTC examined, and abandoned, the concept of the Commission regulating the Internet. That was an error in judgment that needs to be corrected. The major forms of communication in Canada are subject to considerable regulation because of the impact they have on society, and the Internet should be

[531] *Cybercrime forum touted for Canada*, Globe and Mail, May 18, 2000
[532] *AOL wields legal, technical weapons in spam war,* IDG News Service, April 15, 2003
[533] *Music group files 80 more suits,* Globe and Mail, October 31, 2003

no exception. A trip to the "Statutes and Regulations" section of the CRTC web site reveals the following (partial list) of laws and regulations governing other forms of communications:

Acts
Canadian Radio-television and Telecommunications Commission Act
Broadcasting Act
Telecommunications Act
Bell Canada Act

Regulations (Broadcasting)
Broadcasting Information Regulations
Broadcasting Licence Fee Regulations
Broadcasting Rules of Procedure
Broadcasting Distribution Regulations
Pay Television Regulations
Radio Regulations
Specialty Services Regulations
Television Broadcasting Regulations

Regulations (Telecommunications)
Canadian Telecommunications Common Carrier Ownership and Control Regulations
Tariff Regulations
Telecommunications Fees Regulations
Telecommunications Rules of Procedure

Recommendation 24: Federal government should enact legislation and regulations specific to the Internet, either granting authority to the CRTC to license and regulate Canadian companies providing Internet services, or creating a new regulatory body.

XXX-Top-Level Domain

A .xxx top-level domain (TLD) could be adopted for those entities providing sexually explicit material designed to appeal to erotic or sexual appetites. If use were mandatory, all providers of adult-oriented content would be required to place such content on a Web page with the .xxx TLD, and penalties would be established for not doing so.[534] This would provide a way of easily recognizing such material and simplify the filtering task by blocking access to sites in the .xxx domain.

Recommendation 25: Federal government should lobby for the international adoption of a xxx top-level domain to identify Internet sites featuring sexually explicit material designed to appeal to erotic or sexual appetites.

Prohibiting Pornographic Spam

It is a *Criminal Code* offence under Section 168(1) to make "use of the mails for the purpose of transmitting or delivering anything that is obscene, indecent, immoral or scurrilous". It should similarly be an offence to use the Internet for that purpose.

Recommendation 26: Federal Minister of Justice should amend the Criminal Code to make it an offence to use the Internet to send unsolicited pornographic material and advertisements for pornographic material ("spam"). This offence would be distinct from the offence of distributing obscenity, and there should be no requirement that pornographic spam meet the legal definition of obscenity in order to be prohibited.

[534] *Youth, Pornography, and the Internet,* Dick Thornburgh and Herbert S. Lin, Editors, Committee to Study Tools and Strategies for Protecting Kids from Pornography and Their Applicability to Other Inappropriate Internet Content, National Research Council, National Academy Press, Washington, D.C., 2003

Recommendation 27: The federal government should introduce legislation mandating Internet Service Providers to block the unsolicited distribution of pornographic material and spam.

15. PUBLIC FUNDING OF TELEVISION AND FILM

15.1. Introduction

Through direct funding and a system of provincial and federal tax credits, taxpayers financially support the production of film and television programs, both Canadian and foreign, some of which are brutally violent. With regard to domestic movies, Globe and Mail columnist, Jeffrey Simpson, put it this way:

> *For the better part of three decades, Canadian governments have spent billions of dollars trying to encourage Canadian popular cultural products that Canadians will consume...*
>
> *There are years when Canadians could hardly be blamed for not wanting to witness their country's most "popular" films, since these were centred on chopped-up bodies buried in back yards, a bus filled with children sliding down a cliff, necrophilia, serial killers and sundry other story lines from the "kinder, gentler" nation.*[535]

In this film, Jason and Freddy mow down 15 kids in about 15 seconds in one scene alone, chopping at them like stalks of wheat. Heads, arms, fingers fly off; one boy gets hacked clean in half. The special effects are always turned on high, so blood doesn't just gush, it positively erupts, shooting into the sky like Old Faithful.

The dollar figures involved are enormous, while public input into how the money is spent is non-existent. It's difficult to get a complete picture of the dollar amounts involved because of the different pots of money available. Indeed, *Our Cultural Sovereignty,* the report of the Standing Committee on Canadian Heritage, includes a nine-page chart setting out the various federal, provincial and territorial funding and tax credit programs available (Appendix 9 Canadian Television Funding Programs).

Tops & Bottoms, *Sex, Power & Sadomasochism*, for instance, a documentary about sadomasochism, received funding from Telefilm Canada, the Canadian Television Fund, TV Ontario, the Canada Council, and tax credits from the federal government.[536] The Telefilm web site provides this description of the film:

> *Tops & Bottoms takes us on an unsettling journey into the subterranean world of sadomasochism -- from a New York City Rent-a-Dungeon, where one can rent a fully equipped cubicle by the hour, to the House of Domination and Fantasy, where a skilled dominatrix applies an electric prod to the genitals of her faithful clients....*

After TV Ontario broadcast *Tops & Bottoms* in the summer of 2000, National Post columnist, Gillian Cosgrove, wrote this in a "memo" to Isabel Basset, Chair and CEO of TV Ontario:

> *The sexually explicit program left absolutely nothing to the imagination as it focused on people... who inflict pain and humiliation on other human beings, and those who allegedly delight in receiving it.*
>
> *... my first objection to this sordid fare is that many young teenagers are watching TV at 10 p.m. during the summer, and they don't need to be exposed to such graphic, disturbing and, yes,*

[535] *Hollywood's case against Canada,* Jeffrey Simpson, Globe and Mail, December 4, 2001
[536] Telefilm Canada web site

sickening material just as they are tentatively discovering the delights and challenges of human love.[537]

In addition to funding Canadian work such as this, foreign production companies come to Canada to take advantage of the low dollar and a generous system of tax credits, and so the public winds up underwriting brutally violent slasher movies like *Jason X,* a *Friday the 13th* sequel shot in Ontario, described in the Toronto Star as a "shredfest" and "high concept butchery".[538] A review of the film *Freddy vs. Jason*, shot in British Columbia, included this description from the Globe and Mail: "In this film, Jason and Freddy mow down 15 kids in about 15 seconds in one scene alone, chopping at them like stalks of wheat. Heads, arms, fingers fly off; one boy gets hacked clean in half. The special effects are always turned on high, so blood doesn't just gush, it positively erupts, shooting into the sky like Old Faithful."[539]

Ed Zwaneveld, recipient of both an Academy Award and a Television Academy of Arts award, stated the obvious in saying, "Our tax money should definitely not be used to destroy the mental health of this enlightened nation. Let's set some quality assurance and control standards, which must be met if our money is to be used."[540]

15.2. Direct Funding

Significant funding is provided by the taxpayer through an annual federal government allocation of $100 million to the Canadian Television Fund (CTF) -- reduced in 2003 from the $125 million allocated in previous years -- a program that has been in place since 1996, and at least $168.5 million to Telefilm Canada (year ended March 31, 2002).[541] The $25 million budget cut to the CTF prompted significant protests from the Canadian entertainment industry and demands that it be reinstated. An article in the Toronto Sun in response to the protests provided this explanation of how the system works:

Most Canadian TV shows are heavily subsidized by a series of funding agencies that make up the difference between what the show costs to make and what the networks pay to air them. In some instances, funding accounts for up to 75% of a show's budget. Where does the fund money come from? You and me -- the taxpayers. There are two main funds: The CTF and Telefilm Canada. As mandated by the CRTC, the CTF pool is filled by cable and satellite providers (who, again, get it from you and me) and then sweetened by Ottawa. Telefilm... is strictly a government fund.[542]

Through Telefilm and the CTF, Canadians contributed to violent movies like *Crash, Cube, Hey, Happy!*, *Tops & Bottoms, Sex, Power & Sadomasochism*, and the Canadian-made television series, *Kink*. *Hey, Happy!,* a Telefilm-funded movie released in 2001, includes "scenes of rape, disembowelment, cannibalism and [an actor] swimming in a pool of his own sperm with naked men".[543] *Kink* is a series airing on the Showcase channel that, according to promotional material, "exposes the uninhibited passions and practices of people who fearlessly explore their sexuality"[544], some of which includes violence. An advertisement for *Kink* that appeared in the Globe and Mail's television guide featured a dominatrix with a whip.

15.3. Federal and Provincial Tax Credits

As with direct funding, the tax credit figures are considerable. For instance, in 1998-99, total production costs of projects certified by the federal government's Canadian Audio-Visual Certification Office

[537] *Just what was that drek?*, Gillian Cosgrove, National Post, July 15, 2000
[538] *Mock shocker winks as it stinks,* Toronto Star, April 26, 2002
[539] *The Moviegoer,* Globe and Mail, August 29, 2003
[540] Letter to the editor, Globe and Mail, May 31, 1999 from Ed H. Zwaneveld
[541] Telefilm Canada, Annual Report, year ending March 31, 2002
[542] *Cash crunch,* Toronto Sun, May 4, 2003
[543] *Crappy days are here again,* Eye, May 31, 2001
[544] Advertisement for *Kink*, Globe Television, April 31 - April 6, 2001

(http://www.pch.gc.ca/cavco) amounted to $1.29 billion, meaning that $118 million in tax credits could have been doled out by the government.[545] Some of these productions also receive provincial tax credits that match or exceed the federal program.[546]

It's difficult for people outside the industry to understand how the system of tax credits work, but this explanation is provided on the Ontario Media Development Corporation web site (http://www.omdc.on.ca/):

> ***The Ontario Tax Credits are Refundable Tax Credits. What does that mean?*** *A tax credit normally offsets taxes owing by a taxpayer for a given taxation year. A refundable tax credit means the Ministry of Finance will issue a cheque to the production company for the amount of the tax credit, less any provincial taxes owing by the production company.*

The public has no way of determining if violent productions have received tax credits, other than to review the closing credits of a film or television program where it might appear. Under Section 241 of the *Income Tax Act*, government ministries are prevented from "allowing any person to have access to taxpayer information. This includes revealing whether a particular production has received a tax credit".[547] Productions are not required to provide a screen credit indicating that they received assistance from the taxpayer due to this confidentiality. The Ontario Film and Television Tax Credit Guidelines (March 2003) includes this paragraph:

> ***Is a Screen Credit required on the Production?*** *A screen credit for an Ontario tax credit is not required, due to the fact that tax information is considered confidential. Furthermore, a tax credit is usually not payable until after a production is completed and may be subject to reassessment. However, such a screen credit is certainly a welcome and appropriate way to acknowledge taxpayer support. Should you wish to provide a credit for an Ontario tax credit, we would suggest the following wording: "with the assistance of the Government of Ontario - The Ontario Film & Television Tax Credit".*[548]

Ineligible Productions

Both the federal and Ontario government have provisions to exclude "ineligible genres" from receiving tax credits. At the federal level, Regulations 1106(1) and 9300 of the *Income tax Act* list the following genres (among others) that are "excluded productions" for tax credit purposes: reality television, pornography and "a production for which public financial support would, in the opinion of the Minister of Canadian Heritage, be contrary to public policy (currently applies only to the Canadian Film or Video Production Tax Credit)".[549]

In December 1999, the Department of Canadian Heritage revealed that, "departmental officials are currently in consultation with the Department of Finance and film and video producers' associations to prepare for the announcement of a new public policy. This policy will further preclude access to tax credits by productions that contain other objectionable subject matter, including undue violence or violence of a sexual nature, hatred or contempt and the depiction of persons in a demeaning manner".[550] Some years later, this policy has not materialized, although the process, according to a government spokesperson, continues.[551]

The Ontario government's system includes standards that make certain productions ineligible for tax credits, including some "sound recordings" and "computer animation" products. For instance the Ontario Sound Recording Tax Credit is not available to recordings capable of inciting hatred against an

[545] *Do taxpayers belong in showbiz?*, Financial Post, July 6, 2000
[546] *Trouble in Hollywood North*, Globe and Mail, May 13, 2000
[547] Letter dated December 16, 1999 to V. Smith from Robert Fry, Senior Policy Advisor, Office of the Minister of Canadian Heritage
[548] Ontario Media Development Corporation web site, July 2003
[549] Canadian Heritage, Canadian Audio-Visual Certification Office (CAVCO) web site, July 15, 2003
[550] Letter dated December 16, 1999 to V. Smith from Robert Fry, Senior Policy Advisor, Office of the Minister of Canadian Heritage
[551] Telephone conversation with Beverley Kirshenblatt, CAVCO, July 14, 15, 2003

identifiable group or that unduly exploit sex and crime, horror, cruelty or violence[552]; the Ontario Production Services Tax Credit regulations preclude a film or television production if it is pornography or "a production for which public financial support would be contrary to public policy".[553] The Ontario Computer Animation and Special Effects Tax Credit precludes productions "for which, in the opinion of the Minister of Tourism, Culture and Recreation, public financial support would be contrary to public policy".[554]

The following two examples help illustrate problems with the current funding situation.

15.3.1. Lions Gate Films - American Psycho

In May 1998, a Canadian company, Lions Gate Films, announced their intention to make a movie based on *American Psycho*, a book identified by a Crown Attorney as being the "bible" of serial rapist and child killer, Paul Bernardo,[555] and that they planned to shoot the film in Toronto. The company initially tried to hire teen idol, Leo DiCaprio, to play the murderer, but he turned it down. In the resulting controversy, much was written about the book, including this description by a Toronto Star columnist:

Page after page of the book unreels a saga of porn butchery. Stomach-churning, pointless, gloating, sexualized torture and vivisections, using nail guns, chainsaws, axes, scissors, lighters, power drills, knives, electricity, coat hangers... each murder accompanied by minute descriptions of hacked body parts spurting blood and other fluids, severed tongues and nipples stuck to walls, drying in dishes or putrefying in the kitchen, skulls caving in, intestines ripped out, all complete with sound effects and gore-soaked sexual acts performed on the still-moaning, dying victims or parts thereof.[556]

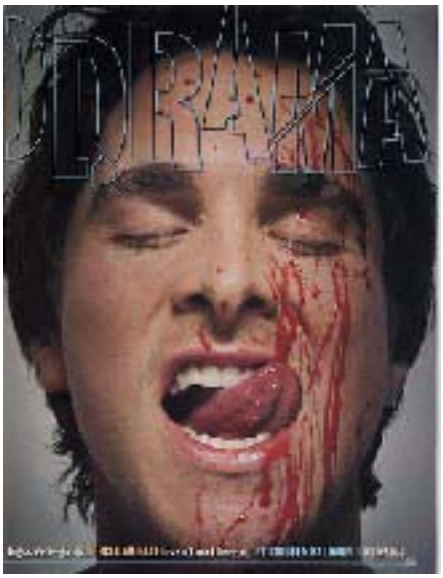

Figure 13 - Illustration for American Psycho, Entertainment Weekly April 14, 2000

The description of the completed film that appears on a Rogers Video rental jacket says the video contains "many gruesome, bloody deaths involving gunfire, stabbings, a chainsaw, and an axe -- animal abuse, dead bodies, peoples' heads in freezer".

Public protests in Toronto against the filming of *American Psycho* were effective, nearly shutting down production. Michael Paseornek, President of Lions Gate Productions, said of the protests, "It was like dominoes. All of a sudden every place our location manager had started to book was calling with whiny little excuses. Our lawyer contacted every person who signed an agreement and said 'We're not letting you out' -- because we would have just had to fold the film." Bank buildings that were to serve as the killer's Wall Street office declined to grant the production access, and the company had to build the offices in five days. Mr. Paseornek estimated the problems cost close to $700,000.[557]

Lions Gate Films applied for federal tax credits,[558] but the public has no way of determining whether the application was successful. However, the company has benefited from the receipt of tens of millions of dollars in funding from Telefilm Canada as described in this letter from Robert Fry, a Senior Policy Advisor in the office of the Minister of Canadian Heritage:

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[552]Ontario Media Development Corporation web site, July 2003
[553]Ontario Production Services Tax Credit Guidelines, Ontario Media Development Corporation, May 2002
[554]Ontario Computer Animation and Special Effects Tax Credit Information/Application Package, Ontario Media Development Corporation, May 2002
[555]*Life imitates 'art' in Bernardo 'bible',* Toronto Sun, September 1, 1995
[556]*DiCaprio rose above cheap porn,* Michele Landsberg, Toronto Star, June 6, 1998
[557]*Psychodrama,* Entertainment Weekly, April 14, 2000
[558]Letter dated August 25, 1999 to V. Smith from Robert Fry, Senior Policy Advisor, Office of the Minister of Canadian Heritage

Over the past 30 years, Telefilm Canada has disbursed $59.3 million to Lions Gate Films, its predecessor, Cinepix Film Properties Inc., and to related companies. Of this amount, Telefilm recouped $17.3 million. It should be emphasized, however, that these amounts are not related in any way to the production of American Psycho. As well, neither the Department of Canadian Heritage, nor its funding agencies, has provided funding to Lions Gate Films for the production in question.[559]

Lions Gate has repaid the Canadian public for this funding by building a reputation for making or distributing films that other companies reject as too violent, films like *American Psycho* and *House of 1000 Corpses*. The latter film was originally made for Universal Pictures, but the studio declined to release it, describing it as an "ubercelebration of depravity".[560] Also rejected by MGM, Lions Gate Films picked up *House of 1000 Corpses* for release in April 2003. In a review, the National Post commented on the "blood that splatters, sprays, drips and oozes across nearly every frame of the picture", and noted that the carnage "is depicted in gruesome detail, with scenes of butchering and vivisection incomprehensibly intercut with grainy, poorly focused shots of things like people dancing or naked women".[561]

15.3.2. Norstar Filmed Entertainment - Invisible Darkness

In December 2000, the Toronto Star revealed that a Canadian company, Norstar Filmed Entertainment, planned to produce a movie called *Invisible Darkness* based on the crimes of child killers Paul Bernardo and Karla Homolka, and that it would be shot in Ontario. News about this project, which was to star Jason Priestley as Paul Bernardo, caused a furor and helped highlight the ways in which the public could unwittingly be involved in this project through direct funding, tax credits and/or the use of public buildings and lands for film shoots.

Responding to media reports about *Invisible Darkness*, Tim Danson, a lawyer representing the families of slain teenagers Leslie Mahaffy and Kristen French, said they were sickened by the idea of a film company making money from their daughters' murders.[562] Howard Hampton, leader of the Ontario NDP, sent a letter to Toronto Mayor Mel Lastman urging him to block the film. "We can't stop this movie from being made, but we can stop it being made in your city with the tacit co-operation and approval of Toronto taxpayers," Mr. Hampton wrote. [563]

A number of politicians condemned the project, both in Ontario and other provinces. The following excerpts are taken from newspaper articles and statements made in the Ontario Legislature:

This proposed movie, unlike some fictitious creations of a writer, would be based upon the tormented lives of real people and, whether the producer intends this to be the case or not, would serve to glorify the crimes of Paul Bernardo and, in doing so, to further the mental torture inflicted upon the families of Kristen French, Leslie Mahaffy and others who were viciously and callously attacked by a now-convicted killer.

On behalf of the people of St Catharines and I know all members of the Ontario Legislature, I call upon Norstar Chairman Peter Simpson to abandon any plans to produce a movie based upon Paul Bernardo's crimes. (Statement by James Bradley, M.P.P. for St. Catharines, Legislative Assembly of Ontario, Hansard, December 12, 2000)

"There will not be any co-operation from this government, because all members of the legislature have indicated our abhorrence with this crime and any profiting of this crime by way of a movie." (Ontario Premier Mike Harris, December 13, 2000, quoted in "Bernardo torture tapes destined for destruction", National Post, December 14, 2000)

[559] Ibid
[560] *Horror Flick Scares Off Universal,* Los Angeles Times, March 6, 2001
[561] *Blood and gore and lots of overkill,* National Post, April 17, 2003
[562] *Priestley tagged to play sex-killer Bernardo in film,* National Post, December 9, 2000
[563] Ibid

... Helen Johns, Ontario's Minister of Citizenship, Culture and Recreation, cautioned Norstar "to think very carefully about making this film at all and of course in the province of Ontario, secondarily."

Last week, Mike Harris, the Premier, told the Ontario legislature... "that no government buildings will be used for any film that has anything to do with Paul Bernardo."

Chris Hodgson, the Ontario Minister who chairs the Management Board Secretariat, sent that message to the Ontario Realty Corp.'s acting chairman. In a Dec. 13 letter to James McKellar, Mr. Hodgson wrote that "given the outrage expressed by the people of Ontario with respect to this issue," the ORC should reject any access requests by Norstar.

Last week, Ms. Johns said the Ontario Film Development Corp. could, once production of the film is completed, deny provincial tax credits if the movie "is not in the public interest" and features "exploitation of sex," as well as pornography and violence against women. (Bernardo movie may not be shot in Ontario, Ottawa Citizen, December 21, 2000)

When Ontario proved hostile to the project, the owner of Norstar Filmed Entertainment indicated he would move the shoot to another province, but he received an equally chilly response:

... Manitoba Justice Minister Gord Mackintosh said the NDP government will urge the city to withhold any permits necessary for filming here.

"This film won't get any help from us," Mackintosh said, adding a potentially exploitive film would go against the NDP government's policy of protecting children and advocating for victims of violence.

"I think it's important that there be an early message back to Mr. Simpson that we don't back his future plans."

Manitoba Minister of Culture and Heritage Diane McGifford said her government would not support a film that denigrated women, and she doesn't believe Manitobans would want to support any film that "aggrandizes" Bernardo and Homolka.

It's rare to get a feature movie made without federal funding in Canada, but it is possible, said Manitoba Motion Picture Industries Assoc. president Richard Horne.

"In theory, he can do anything he likes. There are films that get made without federal funding of any kind. But I do know he's going to be facing an uphill battle," Horne said. (Not wanted: Local Bernardo film shoot resisted, Winnipeg Sun, December 22, 2000)

While provincial politicians took steps necessary to ensure that Norstar would not receive co-operation or funding from their governments, Telefilm Canada adopted a different position. Norstar had applied to Telefilm for funds to produce *Invisible Darkness*, and, while Telefilm turned the company down, a spokeswoman took pains to point out that the decision had nothing to do with public or political opposition. "We just said no to the project because it wasn't up to par in comparison to the other projects that were submitted," said Telefilm's Jeanine Basile. "I can tell you that it has nothing to do with censorship. We look at the quality of the project that is submitted in comparison to others, and it has to stand out."[564] In other words, if the script had been better, taxpayers, including the victims of Bernardo and Homolka, would have funded this movie through Telefilm.

[564] *Telefilm rejects financing Bernardo film,* Globe and Mail, December 20, 2000

15.4. Subsidies for Foreign Productions

Ottawa also hands out tens of millions of dollars every year in tax credits to American producers[565] who come to Canada to take advantage of the low dollar and tax incentives. As a result, we support the production of violent movies like *Urban Legend, Urban Legend 2: Final Cut, Bride of Chucky*, *Jason X: Friday the 13th Part Ten, Freddy vs Jason*, and violent television programs, *Millennium, La Femme Nikita, Robocop - The Series*. Once again, we have no way of determining if these productions receive tax credits, but it's unlikely the companies come to Canada for the weather.

Indeed, in November 2001, Prime Minister Jean Chrétien and several western Premiers met with Hollywood studio moguls to "inform them of subsidies available for Hollywood companies that choose to film in Canada",[566] such subsidies said to be the "biggest of their kind in the world".[567] In the 2003 budget, the federal government increased the tax deduction for eligible labour to 16% from 11%.[568] "More than $1.8 billion, or about one-third of Canada's film and TV revenues, were earned from made-in-Canada Hollywood films" in 2001.[569]

In 1996, Vancouver Councillor Ernie Crist introduced a motion to restrict or prohibit the filming of violent movies within district lands or facilities because he objected "to spending taxpayers' money on anti-violence campaigns and then letting (the movie industry) use our facilities to film very violent movies". Although reluctant to "come across as a censor", he said that "Some of these films depict gross violence".[570] Indeed they do, and the public is unwittingly helping to pay for them.

15.5. Recommendations

Federal Funding - Eligibility Criteria

The process begun in December 1999 by the Department of Canadian Heritage to revise the eligibility criteria for productions receiving public funding has not been completed, and, while the industry has been consulted, the public has not. Considering the significant amounts of money involved, the public has a right to be involved in the process.

Recommendation 28: Federal Departments of Canadian Heritage and/or Finance should invite public input into revising the eligibility criteria for public financing of film and television programs, both direct funding and tax credits, with a view to developing specific standards to preclude productions that (a) glorify or gratuitously promote violence, (b) contravene Human Rights legislation, and (c) exploit or degrade victims of crime. Minimum standard would preclude direct funding and tax credits for slasher films and television programs.

Funding - Public Transparency

Information on direct funding is usually made available through relevant web sites, e.g., Telefilm Canada provides names of productions it has funded. However, there is no similar transparency for tax credits. Under Section 241 of the *Income Tax Act*, government ministries (both federal and provincial) are prevented from allowing any person to have access to taxpayer information, including what productions receive tax credits. As a result, the public has no means of determining whether a violent film like *American Psycho*, for instance, received tax credits.

[565] *Ontario's film policy favours Hollywood*, Toronto Star, January 15, 2000
[566] *Film subsidies earn thumbs down,* Globe and Mail, November 30, 2001
[567] Ibid
[568] *Budget turns its back on TV,* Globe and Mail, February 20, 2003
[569] *Film subsidies earn thumbs down,* Globe and Mail, November 30, 2001
[570] *Vancouver facing ban on violent film shoots,* Toronto Sun, December 6, 1996

Recommendation 29: Federal Minister of Finance should amend legislation governing income tax confidentiality to permit public identification of television, film and other entertainment products receiving tax credits.

Provincial Funding - Eligibility Criteria

Foreign production companies come to Canada to take advantage of the low dollar and a generous system of tax credits, and so the public unwittingly winds up underwriting brutally violent movies. Amending the federal system would eliminate some of the funding for violent productions, but provincial governments contribute financially as well.

Recommendation 30: Provincial Ministries responsible for public financing of film and television productions, both direct funding and tax credits, should review eligibility criteria and develop standards to preclude productions that (a) glorify or gratuitously promote violence, (b) contravene Human Rights legislation, and (c) exploit or degrade victims of crime. Minimum standard would preclude direct funding and tax credits for slasher films and television programs. These standards should be applied when granting access to provincially-owned land and properties for film and television shoots.

Municipal Standards for Granting Film Permits

Municipalities like Toronto, Vancouver and Montreal host production companies and have some control over them through the granting of permits required to film within city limits.

Recommendation 31: Municipal governments should develop standards for film and television productions to be shot within their boundaries. Permits would be denied to productions that (a) glorify or gratuitously promote violence, (b) contravene Human Rights legislation, and (c) exploit or degrade victims of crime. Minimum standard would preclude slasher films.

Recommendation 32: Municipally-owned services such as transit, sports facilities, public buildings, parks, etc., should develop similar standards for use of their premises by production companies.

16. COPYCAT CRIMES

The fact that some people copy dangerous and harmful activities from TV shows and movies has been known to the industry for some time. In the early 1950s, kids began injuring themselves imitating their TV hero, Superman. In response, Kellogg's, the show's sponsor, sent George Reeves, the actor who played Superman, on personal appearance tours on behalf of the National Safety Council. "Reports of children injuring themselves were cropping up in the news: Superman fans jumping off the garage roof in capes fashioned from bath towels or... Superman costumes. Superman buzzed around the country, visiting children's hospitals and giving talks about the dangers of thinking you could fly."[571] Edward Bernds, who directed several dozen *Three Stooges* films, objected to the films' violence and told Moe that he didn't like eye pokes, and he'd feel terrible "if one kid anywhere damaged another kids' eyes". And it was forbidden in the movies he directed.[572]

In an episode of the 1960s television show, *The Untouchables*, young people poured gasoline over vagrants and set them on fire. Within days of the episode's broadcast, incidents of copycat crimes in the United States were reported -- attacks on animals, vagrants, and on a woman who had run out of gas and was returning to her car with a gas can. [573]

A Canadian Teachers' Federation study released in November 2003, *Kids' Take on Media*, revealed that 51% of kids in grades 7 to 10 had witnessed imitation of some violent act or dangerous stunt from a movie or TV show.

A 1974 made-for-television movie, *Born Innocent*, included a scene in which a teenaged girl was raped by four other girls using a "plumber's helper". The movie allegedly inspired a group of juveniles in San Francisco to rape a nine-year-old girl using a bottle; prior to committing the crime, the assailants watched and discussed the rape scene in *Born Innocent*. [574]

In 1979, a film called *The Warriors* generated so many acts of copycat vandalism and violence, including homicide, that Paramount Pictures Corporation cancelled all of its advertising for the film, and distributed a telegram to theatre owners offering to release them from their contractual obligation to show the film. The telegram read: "It has come to our attention through newspaper and television reports that acts of violence and vandalism have occurred in and around theatres exhibiting *The Warriors*... Please be advised that in the event you believe that the exhibition of this motion picture in your theater poses a risk to persons or property, then Paramount will relieve you of your obligation to exhibit the picture..."[575]

France experienced the third teenage murder in two years linked to the *Scream* horror film trilogy in 2002, with this case bringing to nine the number of killings around the world reportedly linked to the movie.[576]

In the United States, several murders have been connected to the video game, *Grand Theft Auto*. In November 2002, a girl was beaten to death by a 15-year-old Ohio boy whose favourite way of winning in *Grand Theft Auto III* was to beat victims to death with a baseball bat. Two weeks later, three Michigan men played *Grand Theft Auto III* for hours, got in their car, ran over a man before stomping and beating him to death. In January 2003, police arrested a gang of young men calling themselves the “Nut Cases”,

[571] *Hollywood Kryptonite, The Bulldog, the Lady, and the Death of Superman,* Sam Cashner and Nancy Schoenberger, St. Martin's Press, New York, 1996
[572] *It was Larry, he was the troublemaker,* Social Studies, Globe and Mail, May 31, 2000
[573] *Becoming what they behold,* Globe and Mail, May 20, 1993
[574] *Natural Born Copycat Killers and the Law of Shock Torts,* John Charles Kunich, Washington University Law Quarterly, Winter 2000
[575] Ibid
[576] *French link murders to cult film*, The Observer, June 9, 2002

who had allegedly committed carjackings, robberies and seven murders. One suspect told police, "We played the game *[Grand Theft Auto III]* by day and lived the game by night."[577]

Copycat crimes such as these reported by the news media undoubtedly represent the tip of the iceberg when it comes to the influence of violent media in criminal acts:

- In two American surveys of young men imprisoned for committing violent crimes such as homicide, rape and assault, 22% - 34% reported having deliberately imitated crime techniques learned from television, usually successfully.[578]

- A study of 208 inmates at Michigan's Marquette Prison revealed that many prisoners took notes while watching television violence, 90% reported having learned new ideas that increased their criminal prowess, and 40% had attempted copycat crimes as a direct result of viewing television.[579]

Forensic psychiatrist, Park Dietz, addressed the Canadian Psychiatric Association's annual meeting in 1992 and told them, "What is merely entertainment for some in the media, is training in crime for others".[580] He also said, "It may not trouble filmmakers that some of their consumers leave the theatre and commit atrocities like those they have just witnessed on screen, but it ought to trouble everyone else."[581] Indeed it should when you consider what is being witnessed on big and small screens around the world.

Violent music, primarily in the gangsta rap and heavy metal/death metal genres, has also been implicated in terrible crimes of violence, including the shooting of three police officers and the rape and murder of a teenaged girl in the United States. More information on those cases is provided in the "Music" section.

Please be advised that in the event you believe that the exhibition of this motion picture in your theater poses a risk to persons or property, then Paramount will relieve you of your obligation to exhibit the picture...

Obviously, unstable or troubled individuals can find messages even in benign forms of entertainment, and a distinction must be drawn between works that depict violence as horrible, tragic, and regrettable *(e.g., Saving Private Ryan)*, and those that glorify, legitimize and glamourize it. Unfortunately, works that fall into the latter category such as *2 Fast 2 Furious* and the video game *Grand Theft Auto,* are also marketed primarily to the demographic -- adolescent and young males -- statistically most at risk for violent behaviour.

Copycat crimes frequently involve people in their adolescent years and in many instances, they have a history of emotional problems, substance abuse, and other factors that may render them particularly vulnerable to influence by violent media.[582] Professor John Kunich says, "When persons of such vulnerability are specifically targeted as the primary consumers of shockingly violent forms of entertainment, the profit motive of the media purveyors is placed in direct conflict with the best interests of the consumers and those with whom the consumers associate."[583]

[577]Testimony of U.S. attorney, Jack Thompson before the Washington State Senate Children and Family Services Committee, April 2, 2003
[578]*Studies in Violence and Television,* M.S. Heller, S. Polsky, New York, NY: American Broadcasting Company, 1976
[579]*Copycat firesetting in adolescents: a contagious and inflammatory behavior,* Hot Issues, Oregon Office of State Fire Marshal, Juvenile Firesetter Intervention Program, Spring/Summer 2002
[580]*Media Contribute to Crime, Says Forensic Expert*, Psychiatric News, December 18, 1992
[581]Ibid
[582]*Natural Born Copycat Killers and the Law of Shock Torts,* John Charles Kunich, Washington University Law Quarterly, Winter 2000
[583]Ibid

16.1. Copycat Crimes: Canada

There have been several crimes in Canada allegedly involving entertainment media -- assault, abduction, rape, torture, mutilation, multiple murder, as well as arson, auto theft, street racing, and bank robberies. News reports have implicated the following products in crimes of violence in this country:

Books - *American Psycho*
Movies - *Silence of the Lambs, Nightmare on Elm Street, Basic Instinct, The Program, The Crow, Warlock, Natural Born Killers, Heat, Dazed and Confused*
Television - *Murder in the Heartland, World Wrestling Federation*
Video games - *Grand Theft Auto*

A few examples:

Vancouver, British Columbia: Brian Allender admitted killing Cheryl Anne Joe in Vancouver in January 1992, and was convicted of first-degree murder. The jury heard that Allender sought out a woman after watching the movie *Silence of the Lambs*, then beat her to death and cut out her sexual organs. (*Appeal set in copycat killing*, Toronto Sun, October 4, 1996)

Cambridge, Ontario: A 13-year-old boy told police that rap music and watching horror movies featuring Freddy Krueger (the killer from *Nightmare on Elm Street*) ripping blouses off women caused him to sexually assault his 10-year-old stepsister. (*Blamed rap for crime, teen put on probation*, Kitchener-Waterloo Record, September 30, 1993)

Flin Flon, Manitoba: Shortly after the broadcast of *Murder in the Heartland* on ABC and CTV affiliates, James Bridson, 18, abducted 13-year-old Meaghan McConnell, shot her mother and brother dead and seriously injured another daughter, 15-year-old Shannon. The shooting spree mirrored the movie that depicted the real-life crimes of Charles Starkweather, a young man who kidnapped his 14-year-old girlfriend, murdered her family and went on a killing rampage across the U.S. Midwest. A Winnipeg psychologist said he couldn't help but see similarities between the Flin Flon incident and the story related in the movie. (*Manitoba murders mimic show on TV*, Kitchener-Waterloo Record, May 8, 1993)

Montreal, Quebec: Police blamed *The Crow*, a movie staring Branden Lee, for a spate of arson in two area towns. In Joliette, a pair of teens dressed like characters in the movie were arrested and charged with arson after six vehicles were torched in a 12-hour period. "We see a link with *The Crow*," St.-Hubert Det. Sgt. Yvon Lacasse said. "Since it came out, there seem to have been fires everywhere." (*Movie blamed in arson spree*, Toronto Sun, November 17, 1994)

Toronto, Ontario: A Crown Attorney in the trial of child killer, Paul Bernardo, sought to have the book *American Psycho* introduced as evidence, stating that Bernardo had read it as his "bible" and the book had been a blueprint for his crimes. The judge refused, saying the book was so "violent, perverted" and "sick" that it would have a significant prejudicial effect on the jury. (*Life imitates 'art' in Bernardo 'bible',* Toronto Sun, September 1, 1995)

LaRonge, Saskatchewan: 14-year-old Sandy Charles murdered 7-year-old Johnathan Thimpson. Along with another 7-year-old boy, Charles lured the victim into some bushes where he was stabbed, bludgeoned and suffocated. He later returned to the scene of the crime and peeled skin from the body to mimic a scene from the movie *Warlock.* The teen was fascinated with the horror movie and its sequel, which he watched ten times before he killed the little boy. Mutilations done to the child mirrored incidents depicted in the movie. (*Case in Saskatoon renews criticisms of TV violence*, Globe and Mail, June 20, 1996)

Kyle, Saskatchewan: 18-year-old Leroy Linn received a life sentence for shooting and killing Diane McLaren and Sandra Veason in May of 1997. During the trial, Crown prosecutor Glen

Herman was able to show that Linn not only boasted about the killings, but called himself a "natural born killer". While testimony suggesting a link to the movie *Natural Born Killers* was ruled inadmissible, Herman believed Linn was mimicking the Woody Harrelson character from the movie. Linn used a line from *Natural Born Killers* when he told an undercover officer "I'm a natural born killer -- what a rush". (*Saskatchewan's 'Natural Born Killer'*, Leader Post, November 7, 1998)

Winnipeg, Manitoba: Police believe a 10-year-old boy caught stealing cars may have been playing out the video game, *Grand Theft Auto*. He started stealing cars when he was 9, sometimes by himself, sometimes with other kids. Police said when he stole cars, he drove with disregard for his or anyone else's safety, but due to his age, no charges could be laid. (*Police "hands are tied" by 10-year-old thief*, Toronto Star, April 20, 2001

Winnipeg, Manitoba: A five-year-old boy severely injured his 22-month-old cousin when he performed a violent wrestling move -- a "pile driver" -- on the baby. "The case study does show that imitation of television causing severe injury can and does occur," said Dr. Norman A. Silver of the Children's Hospital of Winnipeg. The case was presented in Toronto to the Canadian Pediatric Society's annual meeting. (*Baby's Injury Points to Danger of Kids Imitating TV*, Reuters Health, June 26, 2002)

Not surprisingly, when the street racing movie *2 Fast 2 Furious* (a sequel to *The Fast and the Furious*) opened in June 2003, members of a special police task force set up to combat road racing in the greater Toronto area kept a watch on theatres where the picture was playing. York Regional Police Chief Armand LaBarge expressed his concern about the message sent by *2 Fast 2 Furious*, saying, "The movies make this type of activity seem glorified." Police said there were three confirmed deaths as a result of crashes related to street racing in the wake of the original film.[584] Toronto Police Chief Julian Fantino also believes that road racing is being glamourized by recent Hollywood movies, and he says, "Drivers trying to emulate stunts portrayed on film can have catastrophic consequences."[585]

In September 2003, Vancouver police began investigating the possibility of *Grand Theft Auto's* influence in an escalation of attacks on police in that city. Insp. Dave Jones said the video game could be giving young people the wrong ideas, and they suspect the game may be a contributing factor to assaults on officers. "You do become somewhat suspicious that the line between fantasy and reality is being blurred for young males in particular," Insp. Jones said.[586]

[584] *New racing movie alarms police,* Toronto Star, June 7, 2003
[585] *Man, 21, sought in fatal street racing incident,* Toronto Star, June 19, 2003
[586] *Violent video game probed for link to assaults on police,* Vancouver Province, September 12, 2003

17. CIVIL LAWSUITS

17.1. Introduction

In the United States, several multimillion-dollar civil lawsuits have been filed against various entertainment companies for crimes of violence allegedly inspired by their products, in cases going back to, at least, 1970. While the suits have met with limited success in state and lower federal courts, this tactic should not be abandoned, and, indeed, should be adopted for use in Canada. As it has not yet been attempted in this country, this section will focus primarily on the American experience.

As Professor John Kunich explains in his article, *Natural Born Copycat Killers and the Law of Shock Torts*, "... jurisprudence in the area of media liability for media-induced physical harms is far from settled. The United States Supreme Court has not directly addressed the subject, and there is a paucity of precedent in the federal circuit courts as well. The federal district courts and the various levels of state courts have generated a body of divergent case law that leaves the matter ripe for a coherent, consistent analysis."[587]

This type of lawsuit is a major threat. We are developing in this country a process of destroying industries through litigation, a kind of alternate regulatory structure built by trial lawyers. Tobacco was targeted first. Guns are now targeted. If the media and entertainment industry remains as unpopular as it is, it will also be hit by major jury verdicts and judgments.

Bruce Johnson, a defense attorney with Seattle law firm, Davis Wright Tremaine, believes "This type of lawsuit is a major threat. We are developing in this country a process of destroying industries through litigation, a kind of alternate regulatory structure built by trial lawyers. Tobacco was targeted first. Guns are now targeted. If the media and entertainment industry remains as unpopular as it is, it will also be hit by major jury verdicts and judgments."[588]

Canadian lawyer, Clayton Ruby, says, "American tort (civil) law is a very powerful engine for keeping commercial forces in check. It has an impact on everything, even in Canada, where we rely much more heavily on the regulatory model. And even if these cases are settled out of court, the deals will be of great concern to the movie people and to publishers and broadcasters because they're about money, lots of money."[589]

17.2. Insurance Industry Response

Claims against entertainment and media companies have increased over the last few years, and the insurance industry has taken note. Should the trend continue, insurance underwriters may increase rates or impose more stringent criteria for bodily injury and property damage coverage for television programs, books, or video games with violent or potentially violence-inciting content. Chad Milton, senior Vice President of Media/Professional Insurance, the world's largest provider of insurance for media content put it this way, "Since underwriting is the process of assessing the risk, and if the risk proceeds to go up, then that would affect the underwriting. We insure, for instance, a lot of video game producers and the extent

[587] *Natural Born Copycat Killers and the Law of Shock Torts,* John Charles Kunich, Washington University Law Quarterly, Winter 2000
[588] *Do Violent Images Cause Violent Behavior,* Risk & Insurance, November 1999
[589] *Driving up the cost of violence,* Toronto Star, June 6, 1999

that the claim in Paducah [Kentucky] is successful or at least inspirational to other plaintiffs, that would be a concern for us, for that class of business. Likewise, we insure some film producers and we have some similar concerns there."[590]

Referring to the burden of proof plaintiffs bear in both criminal and civil cases involving free speech issues, Clayton Ruby says that Canada's rules of law make it "difficult, but not impossible to prove causation". He notes that, "American rules are much looser than ours, especially in civil courts. And their damage awards are much higher, astronomical compared to ours, which encourages speculative lawsuits and very inventive lawyers."

"Follow the money", Mr. Ruby says, "that will be the determining factor. You can bet the insurers of movies and TV shows are already very aware of what's going on. In fact, I'll bet their rates are going up as we speak."[591]

17.3. First Amendment Issues

Civil suits have met with limited success because most are being dismissed due to the First Amendment freedom of speech guarantee before they even get to a jury. This is somewhat confusing because the First Amendment restricts only the government -- *"Congress shall make no law... abridging the freedom of speech, or of the press"* -- and does not similarly restrict private individuals. "Thus, a private individual cannot be said to unconstitutionally 'abridge' another private individual's 'freedom of speech and press'. Only the government, or its agents, can be charged with violating the First Amendment."[592] Since private individuals, not governments, bring civil suits, it isn't readily apparent why such an initiative would raise the First Amendment as a barrier, but Professor Kunich explains the situation:

> *As a threshold matter, the court noted that judicial recognition of potential tort liability constitutes governmental involvement sufficient to implicate First Amendment concerns, despite the fact that the government is not directly restricting expression. In the court's opinion, the chilling effect of permitting the imposition of civil liability may be "markedly more inhibiting than the fear of prosecution under a criminal statute."*[593]

However, Professor Kunich also maintains:

> *... [these] cases are not doomed to the defeat presumed to be foreordained by some judges. Within the framework of the existing case law there is room for a different result, a result based on a new legal theory that recognizes the shock torts concept. Through multiple legal avenues, there is a path toward resolution of these cases, a resolution that affords proper deference to First Amendment concerns while simultaneously allowing aggrieved plaintiffs a reasonable prospect of redress in appropriate cases.*[594]

Professor Kunich's article is posted at http://law.wustl.edu/WULQ/78-4/1157Kunich.pdf and provides valuable information and insight on this complex topic.

17.4. Out-of-Court Settlements

It bears noting that in 1997, two record companies, Metal Blade and Road Runner, reached an out-of-court settlement with an Oregon woman, Donna Ream, who had been shot by four teenagers. The

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[590] *Do Violent Images Cause Violent Behavior,* Risk & Insurance, November 1999
[591] *Driving up the cost of violence,* Toronto Star, June 6, 1999
[592] *Youth, Pornography, and the Internet,* Dick Thornburgh and Herbert S. Lin, Editors, Committee to Study Tools and Strategies for Protecting Kids from Pornography and Their Applicability to Other Inappropriate Internet Content, National Research Council, National Academy Press, Washington, D.C., 2003
[593] *Natural Born Copycat Killers and the Law of Shock Torts,* John Charles Kunich, Washington University Law Quarterly, Winter 2000
[594] Ibid

assailants had allegedly been influenced by the music of two death metal bands, Cannibal Corpse and Deicide. While insisting that the settlement implied no admission of responsibility, they reportedly agreed to pay Ms Ream $11 million.[595]

In another case, Paladin Press reached an out-of-court settlement in 1999 (one report puts the settlement figure at $5 million)[596] with the families of three people killed by a hit man who used one of Paladin's books, *Hit Man: A Technical Manual for Independent Contractors,* as an instruction manual.[597] Details on this interesting case are available on the Internet by searching "Rice v. Paladin".

It seems likely that these companies are making settlements of this magnitude rather than take their chances in court where juries might award even larger settlements should the highly inflammatory facts be presented to them.

17.5. Target Audience for Hyper-Violent Products

The type of entertainment products that inspire violent crimes are quite often, although not exclusively, those that glorify, legitimize, and glamourize violence. These hyper-violent products are quite deliberately aimed at a particular segment of society, adolescent and young males, a group that is significantly more susceptible to violent impulses than members of society at large. This is not a value judgment, but a statistical reality.

For instance, in 2001, Canadians aged 15 to 24 represented 14% of the total population while accounting for 31% of those charged with violent crimes. People 25 to 34 years of age accounted for 14% of the population and 24% of violent offences. The majority of those charged with violent crimes are male. In the 18 and over age group, men comprise 84% of people charged, while in the 12 to 17 age group, 74% of those charged are boys. For statistical purposes, violent crime incidents include homicide, attempted murder, assault, sexual assault, abduction and robbery.[598]

Gangsta rap and heavy/death metal are the two music genres that cause most concern due to the violent, sadistic, and often misogynist content -- and who are the primary consumers of this music? American studies indicate that rap is "the dominant favorite among adolescent African American males (as many as 75% list it as their favorite), with many white adolescents, especially suburban white boys, list it as one of their preferred music genres".[599]

Heavy metal fans are largely white, male adolescents. As Professor Donald Roberts stated in testimony before a United States Senate hearing on music violence, "... it is worth noting that this particular genre strongly draws kids who are otherwise troubled or at risk... Because so many troubled youth prefer heavy metal, compared to audiences for other types of popular music, heavy metal fans tend to exhibit a number of worrisome attitudes and behaviors".[600] Heavy metal fans tend to be fanatical about the music. They listen more, identify with it and its performers, are more likely to nominate heavy metal performers as role models, and pay more attention to the lyrics than casual listeners. According to Professor Roberts, "All of these characteristics imply that fans may be highly susceptible to being influenced by the music."[601]

As for video games, 3 out of 4 console players are boys or men under age 35 (console games account for 73% of sales).[602] In a study by Stephen Kline, Professor of Communications at Simon Fraser University

[595]Ibid
[596]*Infotorts,* Ronald B. Standler, www.rbs2.com
[597]*Do Violent Images Cause Violent Behavior,* Risk & Insurance, November 1999
[598]*Crime Statistics in Canada, 2001,* Juristat, Canadian Centre for Justice Statistics, Statistics Canada, Vol. 22 No. 6
[599]Testimony of Donald F. Roberts, Ph.D., Department of Communication, Stanford University, before the Senate Subcommittee on Oversight of Government Management, Restructuring, and The District of Columbia hearing on the Social Impact of Music Violence, November 6, 1997
[600]Ibid
[601]Ibid
[602]*Video game industry has a blind spot to females,* San Jose Mercury News, January 2, 2003

in Burnaby, B.C., teenagers he surveyed identified their choice of games as "overwhelmingly" in the action/adventure genre.[603] In a Gallup (U.S.) poll conducted in August 2003, 71% of boys aged 13 to 17 said they had played *Grand Theft Auto*. The Canadian Teachers' Federation national study, *Kids Take on Media*, indicates that one of the favourite games for boys in grades 7 - 10 is *Grand Theft Auto*.[604]

The products are also marketed on an international scale in enormous quantities. *Grand Theft Auto: Vice City* has sold over 8.5 million copies. Violent rap performers sell tens of millions of copies. Ice-T, notorious for the song *Cop Killer,* has sold over 12 million records;[605] Tupac Shakur's sales top 33.5 million;[606] Eminem's one album, *The Eminem Show*, sold 3.3 million;[607] 50 Cent sold over 5 million copies of his debut album, *Get Rich or Die Tryin."*[608]

Therefore, the risk is magnified, both because of the tens of millions of people exposed to the products, and the heightened vulnerability of members of the target market.

As Professor Kunich states quite correctly, "If one chooses, irresponsibly, to design and promote a shockingly violent film, recording, or video game for economic gain to appeal to a group of young people with less maturity and higher propensity for violence than society as a whole, that conscious, exploitative act should carry with it the concomitant cost of an incremental diminution of one's First Amendment protection." [609]

17.6. Reasonable Foreseeability

"Foreseeability" is an essential element in holding entertainment companies legally liable for the violent crimes inspired by their products.[610] Over the past thirty years, the following entertainment companies, individuals, rock bands, publishers and magazines, have been named in civil lawsuits because of violent crimes allegedly inspired by their products:

ABC
Acclaim Entertainment
Activision, Inc.
American Recordings
Apogee Software Ltd.
Atari Corp.
Capcom Entertainment, Inc.
CBS
Columbia Pictures
GT Interactive Software Corp.
Hustler Magazine
Id Software
Interplay Productions, Inc.
Island Pictures
Judas Priest
Lasersoft, Inc.
Meow Media Inc.
Metal Blade Records
Midway Home Entertainment
NBC
New Line Cinema
Nintendo of America
Ozzy Osbourne
Paladin Press
Palm Pictures
Paramount Pictures Corp.
Polygram Filmed Entertainment Distribution Inc.
RKO
Road Runner Records
Sega of America
Soldier of Fortune Magazine
Sony Computer Entertainment America
Oliver Stone
Time Warner Inc. - now AOL Time Warner
Virgin Interactive Media
Walt Disney Productions
Warner Bros.
Williams Entertainment, Inc.

[603] Media Awareness Network web site, July 2003
[604] *Kids' Take on Media,* Canadian Teachers' Federation, 2003
[605] *Class of 2004,* Princeton University lecture series, Upcoming Events, September 2004
[606] *2Pac Reaches Sales Mark,* Rolling Stone, June 1, 2001
[607] *Eminem Still at Number One, Here Comes Nelly,* BET online, June 28, 2002
[608] *50 brings return of gangsta rap,* Minneapolis-St. Paul Star Tribune, July 2003
[609] *Natural Born Copycat Killers and the Law of Shock Torts,* John Charles Kunich, Washington University Law Quarterly, Winter 2000
[610] *Infotorts,* Ronald B. Standler, www.rbs2.com

While major entertainment corporations may have been able to claim ignorance in the past about the violence that might result from the release of hyper-violent products, since many of them have been sued because of it, they would be hard pressed to convince a jury at this point.

For instance, *Natural Born Killers* allegedly inspired more than a dozen murders, while the movie *Scream* has been linked to nine murders. Given the history of these two movies, it is "foreseeable" that similar movies will inspire real-life violence. And, as lawyer Ronald Standler says in his "Infotorts" essay, "Even if real-life violence was not foreseeable at the time the movie was made, the real-life violence subsequently inspired by the movie should motivate the producers to stop distributing the movie to avoid future murders, analogous to a manufacturer recalling a defective product."[611] The shocking reality is, however, that the creator of *Scream* did not take the movie off the market, but produced two sequels, while all segments of the entertainment industry continue to ratchet up the intensity of violence.

17.7. Canadian Lawsuit Forum

Having observed the situation developing in the United States, Canadian activists organized a forum in Toronto in November 1999 to examine the feasibility of similar lawsuits being filed in this country.

Keynote speakers were Miami attorney, Jack Thompson, who represented the families in the Paducah, Kentucky lawsuit filed against several entertainment companies, and Lt. Col. Dave Grossman, one of the world's foremost experts in the field of human aggression and the roots of violence. The forum brought these two experts together with Canadian activists, victims and victim advocates, lawyers, and others with an interest in the issue.

In Canada, however imperfectly, we have already criminalized what some might call 'free expression' -- child pornography, inciting hatred against an identifiable group, or falsely yelling "FIRE!" in a theatre. We do so because we recognize that some forms of expression can cause or contribute to harm, and people who knowingly chose to do so anyway should be accountable for their conduct.

Following presentations by Messrs. Thompson and Grossman, a panel discussion was held to examine the implications for Canada and whether, given the differences in our legal systems, similar civil lawsuits could be brought in this country against entertainment companies. Moderated by Scott Newark, Vice Chair and Special Counsel, Office for Victims of Crime (OVC), the panel consisted of Steven Sofer, a civil litigation lawyer with Toronto law firm, Smith Lyons, Toronto lawyer, Tim Danson, well known for his work on behalf of victims, Jack Thompson, and Col. Grossman.

Following a lively discussion, the consensus from the Canadian lawyers was that "yes" the strategy could be used in this country. The majority opinion was that it is an important legal strategy, and should be attempted, provided the right set of facts and circumstances come together.

It seems unlikely that we will run into the First Amendment barrier that currently stymies Americans because Section 1 of our *Charter* permits limits on the rights guaranteed therein, provided they can be "demonstrably justified in a free and democratic society". Nevertheless, bringing such a suit in Canada will not be easy. As Professor Kunich notes:

> *Proof of causation -- both cause-in-fact and proximate cause -- will often be difficult. A host of influences affect all of us, including the troubled youths typically influenced and/or harmed in shock torts cases. The extent to which plaintiffs can prove that the media defendants and their*

[611] Ibid

products exerted an influence identifiable among all the other environmental and internal stressors will be a daunting evidentiary hurdle. [612]

The OVC's Special Counsel, Scott Newark, has been involved in freedom of expression and other *Charter* issues for many years. "Contrary to what some might suggest", he says, "this is not a 'free speech' debate. Go ahead and 'say' or produce as expressive material, whatever you want, but there are consequences if it contributes to people getting hurt. In Canada, however imperfectly, we have already criminalized what some might call 'free expression' -- child pornography, inciting hatred against an identifiable group, or falsely yelling "FIRE!" in a theatre. We do so because we recognize that some forms of expression can cause or contribute to harm, and people who knowingly chose to do so anyway should be accountable for their conduct.

"The real issue in Canada is not going to be whether civil litigation compromises free speech, it is whether a plaintiff can demonstrate that the actions of the defendant contributed to the ultimate harm suffered, and whether that injury was 'reasonably forseeable'. That is precisely why empirical, unequivocal information about the potential harm caused by these products is so valuable."[613]

Here in Canada, damage awards will not be significant. However, it does not appear, generally, that victims of these crimes or their surviving family members engage in this difficult procedure because of the financial settlement, but more as an attempt to obtain justice, and to prevent similar crimes from happening to others. For Canadians who feel they, or their loved ones, have been harmed by an entertainment product, discussing the situation with a lawyer would be the first step.

[612] *Natural Born Copycat Killers and the Law of Shock Torts,* John Charles Kunich, Washington University Law Quarterly, Winter 2000

[613] Email to V. Smith from Scott Newark, Vice Chair and Special Counsel, Office for Victims of Crime, September 1, 2004

18. ROADBLOCKS TO PROGRESS

18.1. Introduction

> *This inaccurate reporting in the popular press may account for continuing controversy long after the debate should have been over...*
>
> Professors Brad Bushman and Craig Anderson[614]

Two of the biggest impediments to reducing the level of violence in entertainment media are a public largely uninformed about the research, and political reluctance to legislate and regulate the entertainment industry. The news media is influencing both situations.

Much of the public remains unaware of the research on media violence in large part because the news media have failed to inform them properly about this public health issue. Politicians are reluctant to legislate because of the power of the news media to wreck havoc on their careers should they try to address the problem through concrete means such as legislation. As Lt. Col. Dave Grossman says, "The media is like the third rail -- touch it, you die."

Both situations are being exacerbated by the concentration of media ownership in the hands of a few large corporations that own both entertainment companies (TV, radio, movie production) and large segments of the print media (newspapers, magazines). It gives entertainment conglomerates enormous power to shape public opinion and influence policy makers, and makes correcting the problem of violent media much more difficult because the companies creating the problem, are also largely the gatekeepers of the mainstream press.

18.2. Media Violence Research and the News Media

> ***Consistent and strong associations between media exposure and increases in aggression have been found in population-based epidemiologic investigations of violence in American society, cross-cultural studies, experimental and "natural" laboratory research, and longitudinal studies that show that aggressive behavior associated with media exposure persists for decades. The strength of the correlation between media violence and aggressive behavior found on meta-analysis is greater than that of calcium intake and bone mass, lead ingestion and lower IQ, condom nonuse and sexually acquired human immunodeficiency virus infection, or environmental tobacco smoke and lung cancer - associations clinicians accept and on which preventive medicine is based without question.***

There is no ambivalence in that paragraph from the American Academy of Pediatrics Policy Statement, yet if you were to read the musings of some newspaper columnists and assorted pundits, you might find comments like these:

> *... when it comes to criticizing television, the lobbyists, professional letter-writers, family-values advocates and gaggle of conservative prigs often say the nefarious boob tube is most damaging to children. The hot-button issue remains "violence."*

[614] *The Effects of Media Violence on Society,* Craig A. Anderson and Brad J. Bushman, Science, March 29, 2002

It would be folly to dismiss the rich and substantial body of research that links violent media images with violent behaviour as bunk. But, from this couch, most of these studies are outstanding examples of bunk.

I've watched hundreds of violent images over the past 25 years, ditto for most of my family and friends. So far none of us has decided to AK-47 a mall food court or bomb Los Angeles. (Television is good for you, Vinay Menon, Toronto Star, June 15, 2003)

... there's no credible correlation between fictional violence and the real thing. (Shows gloss over school shootings, Antonia Zerbisias, Toronto Star, May 20, 2001

... nobody is quite sure about the effect TV violence has on children. (Toppling TV taboos, Jim Bawden, Starweek Magazine, January 19 - 25, 2002)

Social scientists have long studied TV watching, but mostly in an attempt to determine whether violence on air causes violence in real life. On the whole, it doesn't seem to. (We're mesmerized by the flickering tube, Philip Marchand, Toronto Star, February 2, 2002)

Those statements, bearing little resemblance to the actual research findings, are from four different Toronto Star columnists, two of whom, Antonia Zerbisias and Jim Bawden, have reported on television for many years. According to the parent company's web site, the Toronto Star has the largest circulation of any daily newspaper in Canada. The weekday Star is read by 27% of Toronto adults, giving it the largest reach among the four main dailies available in the greater Toronto area, while the Saturday Star reaches 1.4 million Toronto adults, more than the Globe and Mail, National Post and Toronto Sun combined.[615] (More on the potential audience reach of this conglomerate can be found in the "Media Concentration" section.)

In the United States, the disparity between the research evidence and news media reporting on it became so evident to Professors Brad Bushman and Craig Anderson, that they did an analysis of relevant news coverage. Their study "demonstrated that even as the scientific evidence linking media violence to aggression has accumulated, news reports about the effects of media violence have shifted to weaker statements, implying that there is little evidence for such effects. This inaccurate reporting in the popular press may account for continuing controversy long after the debate should have been over..."[616]

Their report, *Media Violence and the American Public: Scientific Facts Versus Media Misinformation,* states:

Mass media magazines and newspapers have consistently failed to capture the changes in the scientific state of knowledge as research evidence accumulated supporting the causal link between exposure to media violence and aggression. By 1975, the effect was clear, yet major news sources have continued to the present day in suggesting to the U.S. public that there is relatively little reason to be concerned about media violence. Indeed, since the mid 1980s the average news story has actually softened a bit on the media violence problem, despite the fact that the cumulative evidence is even more overwhelming in showing that short- and long-term exposure to media violence causes significant increases in aggression.

They point out that print and TV news reports have a substantial impact on public opinion and public policy. "Thus", they say, "it is important that news reports on scientific findings accurately reflect on-going changes in the state of knowledge in the field".[617] They also speculate about the reasons for this inaccurate reporting, identifying the simplest as the print media's vested financial interest in denying the research:

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[615] Torstar Corporation web site, September 2003

[616] *The Effects of Media Violence on Society,* Craig A. Anderson and Brad J. Bushman, Science, March 29, 2002

[617] *Media Violence and the American Public: Scientific Facts Versus Media Misinformation,* Brad J. Bushman and Craig A. Anderson, Iowa State University, American Psychologist, June/July 2001

> *First, many print news media companies are part of larger conglomerates that directly profit from the sale of violent media such as television and movies. Second, many print news media get a lot of their advertising revenue from companies that produce and sell violent media. For example, almost all newspapers advertise movies.* [618]

A similar analysis of Canadian news coverage on this issue hasn't been done, but it's unlikely that comments like those quoted from four different Toronto Star columnists are isolated to only one newspaper. An informed public is essential to reducing the influence of violent entertainment, and those in the news media who distort the research do a great disservice to society. Because, if violent media is "not a problem" as many in the news media report, there is no reason for parents to be concerned about their children's media diet -- no reason not to buy them *Grand Theft Auto*, no reason not to let them watch wrestling, no reason not to subscribe to SCREAM -- no reason for parents to do anything except spoon feed violence to their children from cradle to grave. And when 10 year olds in Toronto are attending a concert by a hyper-violent rap performer like 50 Cent, and boys in grades 3 to 6 are playing *Grand Theft Auto*, that is exactly what is happening to far too many of them.

18.3. Media Concentration and Cross-Media Ownership

The issues raised by the concentration of media ownership are varied and of such pressing national concern that the Senate's Standing Committee on Transport and Communications convened hearings on the issue. It was also raised during the recent study of the *Broadcasting Act* undertaken by the Standing Committee on Canadian Heritage and is included in their report, *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting.* As this report deals with media violence, the impact on that issue will be the focus of discussion.

As pointed out by Professors Bushman and Anderson, print and TV news reports have a substantial impact on public opinion and public policy, and that is why concentration of media ownership creates such problems for this particular issue. Broadcast conglomerates not only influence television and radio news programs aired by their stations, but some have recently purchased many newspapers including the Globe and Mail (owned by Bell Globemedia), National Post (owned by CanWest Global), and Toronto Sun (owned by Quebecor). While the Toronto Star is not owned by a typical broadcast conglomerate, its' parent company, Torstar Corporation, tried to become a mainstream broadcaster, and applied to the CRTC for licenses to launch three conventional television stations in Toronto, Hamilton and Kitchener-Waterloo (applications denied). Torstar also owns Torstar Media Group Television, a company that operates Shop TV Canada, carried on basic cable, and TMGTV Productions, a full-service video production facility.

So, when the news media report on media violence, they are either reporting on themselves or, in the case of many newspapers in Canada, their parent company. Suppose the tobacco companies owned the news media -- imagine the problems medical authorities and anti-smoking advocates would encounter in trying to inform the public about the health hazards of tobacco. The situation makes reaching the public much more difficult because the companies creating a significant part of the problem, also largely control the mainstream press. It is very difficult to bring about massive social change or to curb the harmful practices of multi-billion dollar corporate giants, without the assistance of the news media in both providing information to the public, and applying pressure to policy makers to introduce necessary legislation.

The report of the Standing Committee on Canadian Heritage provides insight into some of the media mergers in this country:

> *In Canada, a ... thrust towards consolidation and vertical integration has ... taken place. CanWest Global, for example, has consolidated its national network of television stations. It subsequently purchased the newspaper and Internet assets of Hollinger Inc. ... CanWest Global*

[618] Ibid

is also vertically integrated through its acquisition of production house, Fireworks. At the same time, Bell Canada Enterprises bought both CTV Inc. and the Globe and Mail. CTV and the Globe and Mail were added to BCE's Internet service Sympatico in a newly created media holding, Bell Globemedia, which also owns, along with partner Cogeco, the French-language broadcaster TQS. On a smaller scale, Corus Entertainment, which is affiliated with the Shaw cable group, has acquired control of animation producer Nelvana. And in French Canada, Quebecor has acquired the Quebec-based TV giant Videotron, which in turn controls the TVA television network, two production houses -- TVA International and JPL Productions -- plus a dozen specialty channels... As a result of these mergers and acquisitions, there is now a small cluster of powerfully vertically integrated media giants in Canada.[619]

The following provides an idea of the audience reached by five of Canada's largest media conglomerates, with an emphasis on those owning newspapers. Corus Entertainment Inc. does not own newspapers, but it does own 50 radio stations across the country, thereby involving it in the news business, and self identifies as Canada's "largest radio operation in terms of... audience tuning". The information on properties is reproduced from the companies' web sites, but has been edited for relevancy, and does not reflect a complete listing of their holdings. Revenue figures are from the report of the Standing Committee on Canadian Heritage, and exclude revenue from telecommunications.

Corus Entertainment Inc. - Revenue $2.6 billion[620] (http://www.corusent.com/)

... Corus' vision is to be globally recognized as Canada's most influential entertainment company. The company:

- is Canada's largest radio operation in terms of revenue and audience tuning.
- is one of the most-watched group of specialty television services in Canada.
- is seen by 3 out of every 4 Canadian cable television viewers in English households.
- has close to 30 million subscriber households.
- owns one of the world's largest producers of animated children's programming and sells its programming in over 200 countries.
- produces some of the most-used entertainment Web sites in North America.
- is the leading Canadian publisher of children's books

The assets that make up this entertainment powerhouse include:

- 50 radio stations in major Canadian markets covering a variety of formats on AM and FM bands, including: news/talk, country, contemporary hits, classic rock, new rock, pop and oldies
- YTV, Treehouse TV, Country Music Television, W Network, The Documentary Channel, SCREAM, Discovery Kids, Movie Central, Nelvana Limited, Kids Can Press, Max Trax, Digital ADventure, CHEX-TV (Peterborough and Durham), CKWS-TV Kingston
- 15 additional licences for Category 2 digital television services
- A Video-On-Demand Licence

Each day, Corus is changing the face of entertainment in Canada and around the globe. The company provides millions of Canadians with hours of entertainment through the best of television, radio, music, books, and the Internet.[621]

[619] *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting,* Standing Committee on Canadian Heritage, Communication Canada Publishing, Ottawa, 2003
[620] Ibid
[621] Corus Entertainment Inc. web site, September 29, 2003

CanWest Global - Revenue $2.1 billion[622] (http://www.canwestglobal.com/)

CanWest Global Communications Corp. is Canada's leading international, media company. The Company's diversified media holdings include: Global Television, a coast-to-coast Canadian broadcasting network which reaches over 94% of English-speaking Canada, and CH, a second network located in Montreal, Hamilton and Victoria; CanWest Entertainment, a leading film and tv production and distribution operation; a growing Interactive media business; a stable of seven specialty channels...; and a significant international television and radio broadcasting presence in New Zealand, Australia, the Republic of Ireland and Northern Ireland. CanWest is Canada's largest newspaper publisher with ownership of the National Post, 10 major metro dailies and 27 smaller daily, weekly and community papers in smaller communities throughout British Columbia.

CanWest owns 11 English-language major metropolitan daily newspapers in Canada. The dailies include: National Post, Montreal Gazette, Ottawa Citizen, Windsor Star, Regina Leader-Post, Saskatoon StarPhoenix, Calgary Herald, Edmonton Journal, Vancouver Sun, Vancouver Province, Victoria Times-Colonist

Recognizing the importance of building an integrated media company that develops, as well as delivers, content, CanWest moved into the production of film and television programming with CanWest Entertainment. The CanWest Entertainment group of companies are Toronto-based Fireworks Entertainment, which finances, develops and produces film and tv projects; Los Angeles-based Fireworks Pictures which distributes feature films; Fireworks Television, also in L.A., which develops new programming; and television program distributor Fireworks International, headquartered in London, England. CanWest's content store was further embellished in November 2000 when the Company entered the publishing business and acquired Canadian newspaper and Internet assets from Hollinger International. This $3.2 billion purchase cemented CanWest's position as the Canadian leader in content and advertising. CanWest will also enter the Canadian radio market on March 1, 2003 with a jazz radio station in Winnipeg.

CanWest's interactive division operates the canada.com network, offering news, sports, business and entertainment news from across Canada and the world. All of CanWest's television, newspaper and specialty web sites ... operate under the canada.com banner. [623]

Quebecor - Revenues $1.9 billion[624] (http://www.quebecor.com/)

Quebecor is a major diversified corporation... The media segment, organized under Quebecor Media, a media company with approximately 14,000 employees, concentrated in Quebec and the rest of Canada but with operations elsewhere in North America and around the world.

The Quebecor Media family of companies includes:

- Sun Media, the second-largest newspaper group in Canada, with 8 metropolitan dailies, 8 community dailies and 175 local weeklies and specialty publications;
- Vidéotron, the largest cable TV provider in Quebec with 1.4 million subscribers, and one of the largest Internet service providers in Canada;
- TVA, the top general-interest network in Quebec;
- The largest magazine publisher in Québec, a celebrity news weekly, entertainment weeklies;

[622] *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting,* Standing Committee on Canadian Heritage, Communication Canada Publishing, Ottawa, 2003
[623] CanWest Global Communications Corp. web site, September 29, 2003
[624] *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting,* Standing Committee on Canadian Heritage, Communication Canada Publishing, Ottawa, 2003

- Netgraphe, the operator of the CANOE network of Internet properties, Canada's best sites for information, leisure and e-commerce;
- Nurun, a leading Web agency with offices and alliances around the world;
- Seven associated publishing houses
- Archambault, the largest music store chain in eastern Canada with 11 megastores and Select, a major distributor of music and videos;
- Magazines, a celebrity news weekly and arts and entertainment weeklies;
- SuperClub Vidéotron, the leader in video rentals and sales in Quebec, with nearly 170 locations[625]

Bell Globemedia Inc. - Revenues $1.2 billion[626] (http://www.bellglobemedia.ca/)

Bell Globemedia is a dynamic multi-media company, comprised of Canada's premier media groups: CTV Inc., Canada's number-one private broadcaster and The Globe and Mail, the leading daily national newspaper.

Bell Globemedia's diverse collection of media brands create an environment where different Canadian voices support each other, without compromising each other's strength. For example, TSN and Report on Business Television leverage their authoritative and expert content to CTV for its local newscasts, to The Globe and Mail for enhanced perspective, and on to companion Web sites TSN.ca and robtv.com.

With stations, news bureaus and offices in all of Canada's major cities, Bell Globemedia employees are connected to local communities, ensuring that what interests Canadians – locally, nationally and internationally – makes it to the screen, into print and onto the Internet.

Bell Globemedia owns 21 CTV affiliates and a satellite-to-cable service, ASN. It holds affiliation agreements with four independently owned CTV stations, and its network operations reach 99 per cent of English-speaking Canadians. Bell Globemedia has a leading presence in specialty channels, owning interests in 17 Canadian networks.

Owned CTV affiliates (21): CJCH Halifax, NS, CKNY North Bay, ON, CJCB Sydney/Cape Breton, NS, CHBX Sault Ste. Marie, ON, CKCW Moncton, NB, CKY Winnipeg, MB, CKLT Saint John, NB, CFQC Saskatoon, SK, CFCF Montreal, QC, CKCK Regina, SK, CJOH Ottawa, ON, CIPA Prince Albert, SK, CFTO Toronto, ON, CICC Yorkton, SK, CKCO Kitchener/London, ON, CFCN Lethbridge, AB, CICI Sudbury, ON, CFCN Calgary, AB, CITO Timmins, ON, CFRN Edmonton, AB, CIVT Vancouver, BC

Specialty Channels (17) with ownership interest: CTV Newsnet (100%), Discovery Channel (54.86%), Outdoor Life Network (33.33%), Report on Business Television (100%), Le Réseau des sports (68.58%), talktv (100%), The Comedy Network (100%), The Sports Network Inc. (68.58%), ARTV (16%), Viewer's Choice Canada (17.11%),

Digital Specialty Channels Launched in Fall 2001 (6): Animal Planet (37.03%), CTV Travel (100%), Discovery Civilization (45.95%), ESPN Classic Canada (68.58%), NHL Network (14.69%)

Other assets in conventional broadcasting: TQS (40%)

Print: The Globe and Mail, Report on Business Magazine, Globe Television[627]

[625]Quebecor web site, September 29, 2003
[626]*Our Cultural Sovereignty: The Second Century of Canadian Broadcasting,* Standing Committee on Canadian Heritage, Communication Canada Publishing, Ottawa, 2003
[627]Bell Globemedia web site, September 29, 2003

BCE Inc., the parent company of Bell Globemedia, also owns the direct-to-home satellite provider, Bell ExpressVu.

Torstar Corporation - Revenues $.8 billion[628] (http://www.torstar.com/)

> The vision of Torstar's Newspaper group is to be the premier source of local and regional news, information and entertainment in southern Ontario. No other media company can offer the reach and penetration of Canada's most lucrative market that Torstar can. Torstar's combination of daily, community and specialty newspapers gives it the unique ability to reach and influence a large group of consumers...
>
> Torstar is the dominant newspaper publisher in southern Ontario. Torstar's newspaper businesses are in the second fastest growing urban market in North America. They include four leading daily newspapers, more than 70 award-winning community newspapers, 50% ownership of the largest Chinese daily in Canada, 50% ownership of Toronto's transit paper, and a host of specialty publications. Torstar continues to develop new relationships with consumers through its on-line properties, Torstar Media Group Television and Transit Television Network.
>
> The Toronto Star, The Hamilton Spectator, The Record and the Guelph Mercury have a combined regional circulation of approximately 650,000 papers a day. Metroland has a weekly circulation of 3.8 million copies. Sing Tao's past week readership is approximately 280,000 in Canada. Metro, the Toronto transit paper has a weekday circulation of 182,000.
>
> **Toronto Star**: Through its wholly-owned subsidiary, Toronto Star Newspapers Limited, Torstar publishes the Toronto Star, which has the largest circulation of any daily newspaper in Canada... The weekday Star is read by 27% of Toronto adults, giving it the largest reach among the four main dailies available in the GTA. The Saturday Star reaches 1.4 million Toronto adults, more than the Globe, Post and Sun combined.
>
> **Metroland's Community Newspapers**: ... Ontario's largest and most successful community newspaper publisher, provides local news and advertising media in Canada's heartland. It currently publishes 69 weekly newspapers with a total of 115 editions that are concentrated in southern Ontario and centred around Toronto... As at June 30, 2003, the combined distribution of the weekly newspapers published by Metroland was approximately 3.8 million copies per week..
>
> **Torstar Media Group Television:** ... operates Shop TV Canada, a successful 24-hour direct response channel with cable penetration of 1.4 million households in the Greater Toronto Area. It also operates TMGTV Productions, a full-service video production facility featuring a 3D virtual set studio and post-production services. Shop TV Canada can be found on basic cable in the Rogers and Aurora coverage areas... [629]

The United States has similar problems of cross-media ownership. CNN, for instance, one of the world's preeminent news sources, is owned by AOL Time Warner, a multi-national media conglomerate whose audiovisual revenues alone (movies, radio and television) have reached US$19.7 billion.[630] Commenting on the situation of cross-media ownership, Ted Turner, CNN's founder, said larger media companies "could abuse market power by slanting news coverage in ways that serve their political and financial interests".[631] Obviously, if a company produces violent products, it is not in that company's political or

[628] *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting,* Standing Committee on Canadian Heritage, Communication Canada Publishing, Ottawa, 2003
[629] Torstar Corporation web site, September 29, 2003
[630] *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting,* Standing Committee on Canadian Heritage, Communication Canada Publishing, Ottawa, 2003
[631] *Bigger media may not be better,* Globe and Mail, June 3, 2003

financial interests to tell the public about any harm caused by those products. The following provides highlights of AOL's massive holdings.

AOL Time Warner (http://www.aoltimewarner.com/)

> AOL Time Warner is the world's leading media and entertainment company, whose businesses include interactive services, cable systems, filmed entertainment, television networks, music and publishing.
>
> **Media & Communications Group:** American Online, AOL Time Warner Book Group, AOL Time Warner Interactive Video, Time Inc., Time Warner Cable
>
> **Entertainment & Networks:** Home Box Office, New Line Cinema, Turner Broadcasting System, Cable News Network (CNN), Warner Bros. Entertainment, Warner Music Group.
>
> **Time Inc:** ... is the largest magazine publisher in the world. Its more than 130 magazines reach total audiences of more than 300 million. One in two U.S. adults reads a Time Inc. magazine each month. Properties: Time, Time Canada, Entertainment Weekly, Fortune...
>
> **Warner Bros. Entertainment**, a fully integrated, broad-based entertainment company, is a global leader in the creation, production, distribution, licensing and marketing of all forms of entertainment and their related businesses. Warner Bros. Entertainment, an AOL Time Warner Company, stands at the forefront of every aspect of the entertainment industry, from feature films to television, home video/DVD, animation, comic books, interactive entertainment, product and brand licensing, international cinemas and broadcasting.
>
> **Warner Bros. Television Production** (2003-04 season), is the industry's number one supplier of primetime programming, providing 27 series, including 13 returning, to the six broadcast networks. Among WBTV's signature series are "Friends," "The West Wing," "Gilmore Girls," "Smallville" and "ER," the most-Emmy-nominated drama on television.
>
> **WB Television Network**, launched by Warner Bros. on January 11, 1995, currently has national coverage reaching 92% of U.S. households.[632]

There are, of course, many conscientious editors, reporters and columnists who continue to cover the negative activities of the entertainment industry, and considering the obstacles they face, are to be commended for doing so. But anyone who works on media violence issues can attest to the difficulty involved in dealing with the press on this volatile issue. People -- both ordinary citizens and policy makers -- need to be prepared for the backlash that inevitably results from attempts to curtail violent entertainment products, and to devise alternative strategies for reaching the public that bypass the mainstream media.

URLS for additional information on media conglomerates in Canada and the United States:

CRTC: Broadcasting Industries at a Glance - Ownership Charts
http://www.crtc.gc.ca/eng/ind_broad.htm - charts

The Center for Public Integrity: U.S. Media Ownership Database
http://www.openairwaves.org/telecom/analysis/default.aspx

[632] AOL Time Warner web site, September 30, 2003

18.4. Political Reluctance to Regulate

> *Someone has to say, "Enough" -- because this is disaster, we are destroying ourselves. Successive societies have destroyed themselves by the failure of their leadership to say, "I know in many respects that's what you'd like to see, but you know what? It's bad for us; we're damaging ourselves. We are untying the fabric of our society.*
>
> David Puttnam, former president of Columbia Pictures, quoted in Television Violence: Fraying our Social Fabric

Free speech is a critical cornerstone of democracy and the news media are, quite rightly, staunch defenders of freedom of expression. Unfortunately, this inspires many editorial writers, columnists and professional pundits, to attack people who seek to regulate or curb violent entertainment. And, as can be seen from the massive news holdings of the above conglomerates, tackling them is not without peril, particularly for politicians.

Regardless, politicians must regulate industries that have the potential to cause significant harm to the public as the entertainment industry clearly does, especially considering the size of the companies involved. For example, total revenues for the top ten audiovisual media groups in Canada were $12.5 billion for 2001/2002. Revenues for the top three American media conglomerates for 2001 were: Time Warner US$19.7 billion, Viacom US$19 billion and Walt Disney US$18.3 billion.[633]

They have combined revenues exceeding the GNP of small countries. Indeed, the Motion Picture Association of America maintains that trade in cultural products and services is America's second-largest export industry.[634] The public cannot hope to control or limit the products of companies that operate on that scale, nor should we be expected to. Legislation is not a perfect solution, but it is part of a solution, and an integral part that can no longer be ignored because of fear of media backlash.

There are several recommendations for legislation included in this report, but two absolutely key measures that must be taken are amending the *Criminal Code* to prohibit the undue exploitation of violence, and introducing a legislated age-based classification system for video games. Both of those are essential if we are to stem the tide of brutality that threatens society.

[633] *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting,* Standing Committee on Canadian Heritage, Communication Canada Publishing, Ottawa, 2003
[634] *Culture's King Kong v. the good Copps, bad cops,* Globe and Mail, October 18, 2003

19. RECOMMENDATIONS

The following recommendations are in addition to those appearing in various sections throughout the report. A combined summary of recommendations is also provided.

19.1. General Recommendations

Education - National Government Campaign

An informed public is essential to reducing both the prevalence and harmful influence of violent media. Because information on the research can be misrepresented in the news media, the government must counteract this misinformation with fact, so that parents become more aware of the hyper-violent media diet to which their children are exposed and can make informed buying and viewing decisions.

Recommendation 33: Federal Minister of Health should initiate a national public education campaign to inform people about the extensive research showing harmful effects of media violence, particularly on children and youth. Information could be made available through, for instance, cable or telephone bills, and government web sites. Broadcasters should be required to air public service announcements about the research.

Education - Medical Organizations

The Canadian Paediatric Society in their MediaPulse publication, *Measuring the media in kids' lives: A guide for health practitioners*, states that "Most clinicians agree that the influence of media is a public health issue". The CPS developed a guidebook to "familiarize physicians with the research data, to demonstrate the links between media exposure and specific health issues, to provide tools for assessing media use and to offer practical tips for physicians and parents alike". Everyone visits the doctor's office, making it an effective means of distributing information.

Recommendation 34: Professional medical organizations should prepare pamphlets on media violence to inform people about the extensive research showing harmful effects, particularly on children and youth, and stressing the need to protect children. Their membership should be asked to distribute the material through their offices.

Education - Ontario's Healthy Babies, Healthy Children Program

The Ontario government administers a program called Healthy Babies, Healthy Children that provides, among other services, information to new mothers on healthy child development.

Recommendation 35: Ontario's Ministry of Health should develop pamphlets on media violence to inform parents about the extensive research showing harmful effects, particularly on children and youth, and stressing the need to protect their children. This material should be distributed to new mothers through the Healthy Babies, Healthy Children program.

Education - Professional Teachers' Organizations and School Boards

Professional teachers' organizations and school boards have significant access to parents, and could play an important role in distributing information. Many teachers have been concerned about, and/or involved in this issue for years. The Canadian Teachers' Federation, for instance, was one of the founding organizations of the Coalition for Responsible Television, and recently released the results of their national study on children's media use (*Kids' Take on Media).* The Federation of Women Teachers' Associations of Ontario was also involved prior to that organization's demise.

Recommendation 36: Professional teachers' organizations should prepare pamphlets on media violence to inform people about the extensive research showing harmful effects, particularly on children and youth, and stressing the need to protect children. School boards should be asked to distribute the information to parents within their district.

Amend *Criminal Code* Hate Propaganda Law

The *Criminal Code* hate propaganda law as it currently exists, excludes the female half of the population from the protection of this critical law. The *Code* prohibits the incitement of hatred against "identifiable groups", those being any "section of the public distinguished by colour, race, religion, ethnic origin or sexual orientation". In September 2003, the House of Commons passed *Bill C-250*, an amendment that added "sexual orientation" to the identified groups. The government did not, however, add "gender" to this amendment, so women remain unprotected. Hate propaganda is acknowledged as a contributing factor in creating violence against the target group, and to leave girls and women unprotected, compromises their safety.

Adding “sex” or “gender” to the groups protected by the hate propaganda law has been recommended for at least twenty years by groups as diverse as the National Action Committee on the Status of Women (1983), Canadian Advisory Council on the Status of Women (1985), Special Committee on Pornography and Prostitution (Fraser Commission 1985), Law Reform Commission of Canada (1986), Raymond Hnatyshyn, Minister of Justice (Bill C-54 1987), Senior Legal Counsel, B’nai Brith League for Human Rights (1994), and James Flaherty, Attorney General of Ontario (2000).

Recommendation 37: Federal Minister of Justice should amend the Criminal Code hate propaganda laws to conform to Section 15 of the Charter of Rights and Freedoms, thereby granting protection to girls and women.

Correctional Service Research on Influence of Violent Media

Canadian research examining the contribution of violent media to crimes of violence is required, similar to that conducted at American correctional institutions.

Recommendation 38: Correctional Service of Canada and provincial ministries responsible for corrections should conduct research among inmates to assess the influence of violent entertainment products in the commission of crimes of violence.

Tax on Violent Entertainment Products

A 1% tax on violent entertainment products was proposed in *Working Toward a Seamless Community and Justice Response to Domestic Violence,* a report submitted to the Ontario Attorney General by the Joint Committee on Domestic Violence in 1999. Other potentially harmful products such as liquor and cigarettes are subject to special taxes, and the government taxes completely benign products like shoes at 7%.

Recommendation 39: Federal Minister of Finance should enact a tax on violent entertainment products, with the proceeds used to counteract and reduce the harmful effects.

Standards for Justice Officials' Involvement With Television and Film

Some justice officials co-operate with the lurid and exploitive Canadian-made television programs, *Exhibit A: Secrets of Forensic Science* and *72 Hours: True Crime.* The latter series, broadcast on CBC, is described as follows on their web site:

> *Through a cinematic blend of dramatic re-enactments and potent documentary footage, each episode features interviews with the actual detectives and forensic scientists who worked on*

Canada's most notorious and virtually unsolvable cases... 72 Hours: True Crime is... structured like a good crime novel with compelling story-telling and riveting characters. [It] chronicles Canada's most infamous crimes in an innovative, "nouveau noir" fashion... features split-screen action, dynamic forensic science sequences and a unique fast-paced editing style.[635]

One such re-enactment was that of a body burned down to a skeleton, the face frozen in a rictus of terror. The program returned several times to this grim scene and the camera zoomed in for close ups. A similar American series, *F2: Forensic Factor*, appeared on the Canadian Discovery channel. A Globe Television reviewer described one problem with this type of re-enactment:

What turns this episode about murder weapons into a joke is the repetition of stock footage and a dramatic re-enactment. Watching a man attacked with sledgehammers, then seeing his body disseminated and dumped does not improve after the eighth time. I mean, this show could become a drinking game, bottoms up every time you see the bad guy ditching a severed leg![636]

An American film company was provided access to the federally-owned St. Vincent-de-Paul penitentiary in Laval, Quebec to shoot the movie, *Gothika*. Bruce Kirkland, writing in the Toronto Sun, described the movie as "degrading", and "a vile piece of work":

Serial rape is part of the plot, and because the film dares to turn the rape, torture and mutilation of imprisoned teenaged girls into part of the 'entertainment', the disgust factor grows like a malignant tumour.[637]

In the United States, the FBI permitted the filming of the serial killer movie, *Silence of the Lambs*, at Quantico, while some FBI agents acted as extras in the movie. This was done despite the fact that FBI research indicates criminals peruse popular culture for ideas and insight into the police process. Convicted Ontario child killer and serial rapist, Paul Bernardo, picked up an idea from *Silence of the Lambs* that would have permitted him to keep his victims alive longer, had he not been captured. The involvement of justice officials in entertainment products that are harmful to society or that are created to exploit real-life crime for its entertainment value, is contrary to their public-protection mandate.

Recommendation 40: Canadian justice officials should develop standards for their co-operation with film and television productions that are consistent with their responsibility to protect the public and not exploit or degrade victims of crime or revictimize their surviving family members.

Litigation - Civil Lawsuits

Civil lawsuits can be effective in deterring irresponsible corporate behaviour. Several multi-million dollar lawsuits have been launched in the United States against entertainment companies, and some have been successful. The consensus reached by Canadian legal experts at a Toronto forum held to examine the feasibility of such lawsuits being filed in this country, was that they could, and should, be filed.

Recommendation 41: Survivors of violent crime caused by entertainment products, or their family members, should file civil lawsuits against the entertainment companies responsible for producing and/or distributing the products.

Ontario Office for Victims of Crime - Task Force on Media Violence

In order that the recommendations contained in this report do not languish on the shelf along with the many other recommendations produced on this subject over the past thirty years, a Task Force on Media Violence should be formed to advocate for implementation of the recommendations. Ontario contains roughly one-third of Canada's population; as such, what we do in this province can influence the rest of

[635]CBC web site, November 2003
[636]*Globe Television, November 8 - 14, 2003*
[637]*Gothika director goes for sick instead of smart,* Toronto Sun, November 21, 2003

the country. If Ontario shows leadership in trying to reduce media violence, as British Columbia did at one time, perhaps other provinces will follow.

Involvement in creating the Task Force should be sought from the following communities: victims and their advocates, mental health and child development experts, education, law enforcement, and media violence advocacy organizations.

Recommendation 42: Ontario's Office for Victims of Crime should form a Task Force on Media Violence to work towards implementation of the recommendations contained in this report.

19.2. Summary of Recommendations

1. **Recommendation:** Federal Minister of Justice should amend the *Criminal Code* definition of obscenity or introduce a new provision to prohibit the undue exploitation of violence. The Minister of Finance should amend the *Customs Tariff* as required. The definition suggested by the Minister of Justice in 1983 could be adopted with a slight change:

   > Any matter or thing is obscene where 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.

2. **Recommendation:** Federal Minister of Canadian Heritage, Minister of Health or the Attorney General should convene a meeting of Canada's major advertisers to inform them about the research on media violence, and enlist their support in not sponsoring violent and anti-social television and radio programs.

3. **Recommendation:** Ontario's Office for Victims of Crime should convene a meeting of Canada's major advertisers to inform them about the research on media violence, and enlist their support in not sponsoring violent and anti-social television and radio programs.

4. **Recommendation:** Federal Minister of Canadian Heritage should review the report of the Standing Committee on Communications and Culture, *Television Violence: Fraying Our Social Fabric* and institute recommendations that remain pertinent. Following amended recommendations are based on that report:

   > (a) Federal government should form a federal-provincial-territorial task force to inquire into all aspects of societal violence - interrelationships, causes, effects and remedies - including, but not limited to, media violence, domestic violence, and racial violence. The task force should facilitate a process of public meetings and conferences devoted to exploring the portrayal of violence in the media and the consequences thereof.
   >
   > (b) Minister of Canadian Heritage, the Canadian Radio-television and Telecommunications Commission (CRTC) and others, should engage in cross-border discussions on media violence with their American counterparts, in an effort to promote a collaborative and unified response to this problem.
   >
   > (c) CRTC should be directed to specifically address the issue of controlling cable distribution into Canada of violent U.S. programming with the objective of moderating violent content wherever possible.

5. **Recommendation:** Federal Minister of Canadian Heritage should devise a legislated regulatory scheme to govern the broadcast of programs with violent and other harmful content. Adherence to all Canadian Association of Broadcasters' (CAB) codes should be legislated through the *Broadcasting Act*. Procedures should be established to penalize broadcasters for series that continue in ongoing breach of codes, e.g., financial penalties could be assessed for each day the series continues on the air following a decision, and eventual loss of license should fines not be a sufficient deterrent.

6. **Recommendation:** Prior to enshrining the CAB codes in legislation, the CAB definition of "gratuitous violence" should be amended to accurately reflect the meaning of gratuitous, i.e., violence which is unjustifiable and unwarranted (CAB definition: "material which does not play an integral role in developing the plot, character or theme of the material as a whole").

7. **Recommendation:** Canadian Broadcast Standards Council (CBSC) should be disbanded and the adjudication of complaints against broadcasters given to the CRTC under a system funded by broadcasters to ensure the public does not bear the financial burden of the complaints process.

8. **Recommendation:** Federal Minister of Canadian Heritage should amend the *Broadcasting Act* to establish a mandatory 9:00 p.m. watershed hour for broadcast of sexually explicit material, applicable to both television and radio. Legislation must address the problem presented by the difference in time zones. Currently, sexually explicit programs broadcast nationally from Toronto at 10:00 pm, can be received in British Columbia at 7:00 pm.

9. **Recommendation:** In anticipation of Canadian broadcasters playing music containing abusive content, the CRTC should issue a notice to broadcasters reminding them of the legislated prohibition against abusive comment, and advising broadcasters that the CRTC will vigorously enforce the provisions of the *Broadcasting Act* and *Regulations*.

10. **Recommendation:** CRTC should establish a system for periodic, random review of Canadian programming by an impartial research firm or academic institution to take the onus off members of the public who currently have responsibility for monitoring the broadcasting industry. Broadcasters should pay for this review system, not the taxpayer.

11. **Recommendation:** Federal Minister of Canadian Heritage should amend the *Broadcasting Act* to require provincial film review board clearance for all specialty channel "adult" broadcast content.

12. **Recommendation:** Federal Minister of Canadian Heritage should amend the *Broadcasting Act* to oblige the CRTC to:

    (a) ensure licensees are in compliance with their broadcast license

    (b) conduct an investigation when they have reasonable grounds to believe breach of the conditions of a license has occurred including public hearings in defined circumstances in relation to improper broadcast content

    (c) impose minimum penalties, including fines, forfeiture of improperly acquired profit and suspension of broadcast license for breach of license in relation to defined broadcast content

    (d) permit public right of appeal of regulatory action or inaction

13. **Recommendation:** At license renewal hearings, broadcasters should be required by the CRTC to prove that they are meeting their obligations under the *Broadcasting Act* to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada. In advance of the license renewal hearing, the broadcaster should be ordered to fund a random review of their programming by an impartial research firm or academic institution, e.g., Laval University, to assess the level of violent content.

14. **Recommendation:** Federal Minister of Canadian Heritage should order a review of the CRTC makeup to ensure appointment of Commissioners not affiliated with the media industry, and establish a ratio of non-industry to industry Commissioners. The process of review must be transparent and the public should be consulted.

15. **Recommendation:** The Ontario government should amend the *Theatres Act* and *Regulations* to mandate the display of OFRB classifications on films offered for rent or sale in the province.

16. **Recommendation:** Provincial governments should institute a legislated, age-based classification system for video games and virtual reality systems for home and public use. Legislation must include the power to prohibit products that meet established criteria for criminal obscenity.

17. **Recommendation:** Provincial governments should introduce a legislated age-based classification system for music recordings and music videos similar to the system that currently exists for films, and include the power to prohibit products that meet established criteria for criminal obscenity and hate propaganda.

18. **Recommendation:** Publicly-owned entertainment venues should develop standards for acts that book their premises to exclude entertainers who contravene Human Rights legislation or glorify and promote violence.

19. **Recommendation:** Federal Ministry of Health should initiate a study of the impact on children and youth of exposure to age-inappropriate, violent and deviant sexual activities and material by the entertainment media.

20. **Recommendation:** Federal Minister of Justice should introduce legislation to prohibit the distribution to, or exposure of, minors to sexually explicit goods or services. Sample wording:

    No person shall knowingly sell, offer to sell, distribute, offer to distribute or display, to a minor at any premises or in any place, or by any means, sexually explicit goods or services designed to appeal to erotic or sexual appetites or inclinations.

21. **Recommendation:** Ontario Attorney General should introduce legislation to prohibit the distribution to, or exposure of, minors to sexually explicit goods or services. Sample wording (from Bill 95):

    No person shall knowingly sell, offer to sell, distribute, offer to distribute or display, to a minor at any premises or in any place, sexually explicit goods or services designed to appeal to erotic or sexual appetites or inclinations.

22. **Recommendation:** Federal Minister of Justice should order a new study on the Internet, to examine computer-based technologies and other approaches to the problem of pornographic and violent material available on the Internet and assess the effectiveness of current federal legislation, in order to develop amendments to federal laws and other techniques to respond to the problem. To borrow from the U.S. report criteria, the study should address:

    (1) The capabilities of present-day computer-based control technologies for controlling electronic transmission of pornographic and violent images (2) Research needed to develop computer-based control technologies to the point of practical utility for controlling the electronic transmission of pornographic and violent images (3) Any inherent limitations of computer-based control technologies for controlling electronic transmission of pornographic and violent images (4) Operational policies or management techniques needed to ensure the effectiveness of these control technologies for controlling electronic transmission of pornographic and violent images

23. **Recommendation:** Federal Minister of Justice should amend all *Criminal Code* laws governing communication and expression, e.g., hate propaganda, child pornography, obscenity, to specifically include transmission via the Internet.

24. **Recommendation:** Federal government should enact legislation and regulations specific to the Internet, either granting authority to the CRTC to license and regulate Canadian companies providing Internet services, or creating a new regulatory body.

25. **Recommendation:** Federal government should lobby for the international adoption of a xxx top-level domain to identify Internet sites featuring sexually explicit material designed to appeal to erotic or sexual appetites.

26. **Recommendation:** Federal Minister of Justice should amend the *Criminal Code* to make it an offence to use the Internet to send unsolicited pornographic material and advertisements for pornographic material ("spam"). This offence would be distinct from the offence of distributing

obscenity, and there should be no requirement that pornographic spam meet the legal definition of obscenity in order to be prohibited.

27. **Recommendation:** The federal government should introduce legislation mandating Internet Service Providers to block the unsolicited distribution of pornographic material and spam.

28. **Recommendation:** Federal Departments of Canadian Heritage and/or Finance should invite public input into revising the eligibility criteria for public financing of film and television programs, both direct funding and tax credits, with a view to developing specific standards to preclude productions that (a) glorify or gratuitously promote violence, (b) contravene Human Rights legislation, and (c) exploit or degrade victims of crime. Minimum standard would preclude direct funding and tax credits for slasher films and television programs.

29. **Recommendation:** Federal Minister of Finance should amend legislation governing income tax confidentiality to permit public identification of television, film and other entertainment products receiving tax credits.

30. **Recommendation:** Provincial Ministries responsible for public financing of film and television productions, both direct funding and tax credits, should review eligibility criteria and develop standards to preclude productions that (a) glorify or gratuitously promote violence, (b) contravene Human Rights legislation, and (c) exploit or degrade victims of crime. Minimum standard would preclude direct funding and tax credits for slasher films and television programs. These standards should be applied when granting access to provincially-owned land and properties for film and television shoots.

31. **Recommendation:** Municipal governments should develop standards for film and television productions to be shot within their boundaries. Permits would be denied to productions that (a) glorify or gratuitously promote violence, (b) contravene Human Rights legislation, and (c) exploit or degrade victims of crime. Minimum standard would preclude slasher films.

32. **Recommendation:** Municipally-owned services such as transit, sports facilities, public buildings, parks, etc., should develop similar standards for use of their premises by production companies.

33. **Recommendation:** Federal Minister of Health should initiate a national public education campaign to inform people about the extensive research showing harmful effects of media violence, particularly on children and youth. Information could be made available through, for instance, cable or telephone bills, and government web sites. Broadcasters should be required to air public service announcements about the research.

34. **Recommendation:** Professional medical organizations should prepare pamphlets on media violence to inform people about the extensive research showing harmful effects, particularly on children and youth, and stressing the need to protect children. Their members should be asked to distribute the material through their offices.

35. **Recommendation:** Ontario's Ministry of Health should develop pamphlets on media violence to inform parents about the extensive research showing harmful effects, particularly on children and youth, and stressing the need to protect their children. This material should be distributed to new mothers through the Healthy Babies, Healthy Children program.

36. **Recommendation:** Professional teachers' organizations should prepare pamphlets on media violence to inform people about the extensive research showing harmful effects, particularly on children and youth, and stressing the need to protect children. School boards should be asked to distribute the information to parents within their district.

37. **Recommendation:** Federal Minister of Justice should amend the *Criminal Code* hate propaganda laws to conform to Section 15 of the *Charter of Rights and Freedoms*, thereby granting protection to girls and women.

38. **Recommendation:** Correctional Service of Canada and provincial ministries responsible for corrections should conduct research among inmates to assess the influence of violent entertainment products in the commission of crimes of violence.

39. **Recommendation:** Federal Minister of Finance should enact a tax on violent entertainment products, with the proceeds used to counteract and reduce the harmful effects.

40. **Recommendation:** Canadian justice officials should develop standards for their co-operation with film and television productions that are consistent with their responsibility to protect the public and not exploit or degrade victims of crime or revictimize their surviving family members.

41. **Recommendation:** Survivors of violent crime caused by entertainment products, or their family members, should file civil lawsuits against the entertainment companies responsible for producing and/or distributing the products.

42. **Recommendation:** Ontario's Office for Victims of Crime should form a Task Force on Media Violence to work towards implementation of the recommendations contained in this report.

20. RESOURCES

LINKS ARE PROVIDED FOR INFORMATION PURPOSES ONLY AND DO NOT CONSTITUTE AN ENDORSEMENT

20.1. Advocacy Organizations: Canada and the United States

Action Coalition for Media Education
http://www.acmecoalition.org

Canadian Teachers' Federation
http://www.ctf-fce.ca

Citizens for Responsible Media
http://www.medialegislation.org/

Common Sense Media
http://www.commonsensemedia.org/about/mission.php

Free Radical
http://www.fradical.com/

Lion & Lamb Project
http://www.lionlamb.org

Media Education Foundation
http://www.media.org

MediaWatch
http://www.mediawatch.ca/

National Institute on Media and the Family
http://www.mediafamily.org

U.S. Media Ownership Database
Center for Public Integrity
http://www.openairwaves.org/telecom/analysis/default.aspx

20.2. Entertainment Industry: Canada

Cable Television Standards Council
http://www.ctsc.ca/

Canadian Association of Broadcasters (CAB)
http://www.cab-acr.ca/

Canadian Broadcast Standards Council (CBSC)
http://www.cbsc.ca/
Voluntary Codes

http://www.cbsc.ca/english/codes/codes.htm
CBSC Members
http://www.cbsc.ca/english/links.htm
CBSC Decisions
http://www.cbsc.ca/english/decision/decision.htm
CBSC Links to Related Sites of Interest
http://www.cbsc.ca/english/legal.htm

Canadian Recording Industry Association (CRIA)
http://www.cria.ca/

Media Awareness Network
http://www.media-awareness.ca/

V-Chip Canada
http://www.vchipcanada.ca/english/

20.3. Entertainment and Advertising Industry: United States

Classification and Rating Administration
http://www.filmratings.com/

Entertainment Software Rating Board (ESRB)
http://www.esrb.org/

Family Friendly Programming Forum
http://www.ana.net/family/default.htm

Motion Picture Association of America (MPAA)
http://www.mpaa.org/

Recording Industry Association of America (RIAA)
http://www.riaa.org/

TV Parental Guidelines
http://www.tvguidelines.org/

20.4. Government: Federal

Bill C-470: An Act to Amend the Broadcasting Act (reduction of violence in television broadcasts)
Bernard Bigras, M.P., First Reading April 5, 2000
http://www.parl.gc.ca/36/2/parlbus/chambus/house/bills/private/C-470/C-470_1/C-470_cover-E.html

Bill C-460: An Act to Amend the Criminal Code (unsolicited electronic mail)
Dan McTeague, M.P., First Reading October 22, 2003
http://www.parl.gc.ca/37/2/parlbus/chambus/house/bills/private/C-460/C-460_1/C-460_cover-E.html

Bill S-23: An Act to Prevent Unsolicited Messages on the Internet
Senator Donald Oliver, First Reading September 17, 2003
http://www.parl.gc.ca/37/2/parlbus/chambus/senate/bills/public/S-23/S-23_1/S-23_cover-E.htm

Canada Customs and Revenue Agency
Commissioner of the CCRA
http://www.ccra-adrc.gc.ca/contact/ccraofficials-e.html
Canada Customs and Revenue Agency *Memorandum D9-1-1*
Jurisprudence and Revenue Canada's Interpretative Policy for the Administration of Tariff Item No. 9899.00.00 On Goods Deemed to be Obscene Under Subsection 163(8) of Criminal Code
http://www.ccra-adrc.gc.ca/E/pub/cm/d9-1-1/README.html

Department of Canadian Heritage
http://www.pch.gc.ca/
Canadian Audio-Visual Certification Office (CAVCO)
http://www.pch.gc.ca/cavco/

Canadian Human Rights Act
http://www.chrc-ccdp.ca/menu.asp?l=e

Canadian Radio-television and Telecommunications Commission (CRTC)
http://www.crtc.gc.ca/
Canadian Radio-television and Telecommunications Commission Act
http://www.crtc.gc.ca/eng/LEGAL/CRTC.HTM
Broadcasting Act, 1991
http://www.crtc.gc.ca/eng/LEGAL/BROAD.htm
Radio Regulations, 1986
http://www.crtc.gc.ca/eng/legal/radioreg.htm
Television Broadcasting Regulations, 1987
http://www.crtc.gc.ca/eng/legal/tvregs.htm
Pay Television Regulations, 1990
http://www.crtc.gc.ca/eng/legal/payregs.htm
Specialty Services Regulations, 1990
http://www.crtc.gc.ca/eng/legal/specialt.htm
Broadcasting Industries at a Glance
http://www.crtc.gc.ca/eng/ind_broad.htm - charts

Department of Justice
Canadian Constitution, Charter of Rights and Freedoms, Criminal Code
http://laws.justice.gc.ca/en/index.html
Undue Exploitation of Violence Consultation Paper
Department of Justice, Canada, March 1996
http://canada.justice.gc.ca/en/cons/uev/undue.html

Pornography and Prostitution in Canada: Report of the Special Committee on Pornography and Prostitution
Supply and Services Canada, Ottawa, 1985

Promoting Safe, Wise and Responsible Internet Use
Government of Canada
http://cyberwise.gc.ca/english/preface.html

Supreme Court of Canada - Decisions
http://www.lexum.umontreal.ca/csc-scc/en/

Television Violence: Fraying Our Social Fabric
Excerpts from the Report of the House of Commons Standing Committee on Communications and Culture, June 1993
http://www.media-awareness.ca/english/resources/research_documents/reports/violence/tv_violence_fabric.cfm

20.5. Government: Provincial

Bill 95: An Act to Protect Minors from Exposure to Sexually Explicit Goods and Services
Robert Wood, M.P.P., First Reading June 15, 2000
http://www.ontla.on.ca/Documents/StatusofLegOUT/b095_e.htm

Bill 19-2001 - Video Games Act
http://www.legis.gov.bc.ca/2001/3rd_read/gov19-3.htm

British Columbia Film Classification Office
http://www.bcfilmclass.com

Film Review and Classification Boards - Other Provinces
http://www.ofrb.gov.on.ca/english/page18.htm

Ontario Film Review Board
http://www.ofrb.gov.on.ca/
Theatres Act and *Regulations* - Ontario
http://www.ofrb.gov.on.ca/english/theatresact.htm

Ontario Human Rights Commission
http://www.ohrc.on.ca/english/index.shtml
Ontario Human Rights Code
http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90h19_e.htm

Ontario Media Development Corporation
http://www.omdc.on.ca/

20.6. Government: United States

Federal Communications Commission
http://www.fcc.gov/
Industry Guidelines On the Commission's Case Law Interpreting 18 § U.S.C. 1464 and Enforcement Policies Regarding Broadcast Indecency
http://ftp.fcc.gov/Bureaus/Enforcement/News_Releases/2001/nren0109.html

Federal Trade Commission
http://www.ftc.gov/
Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries
September, 2000
http://www.ftc.gov/opa/2000/09/youthviol.htm
Marketing Violent Entertainment to Children: A Six Month Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries
April 2001
http://www.ftc.gov/reports/violence/violence010423.pdf
Marketing Violent Entertainment to Children: A One-Year Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries
December 2001
http://www.ftc.gov/os/2001/12/violencereport1.pdf
Marketing Violent Entertainment to Children: A Twenty-One Month Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries
June 2002
http://www.ftc.gov/reports/violence/mvecrpt0206.pdf
Results of Nationwide Undercover Survey Released

October 14, 2003
http://www.ftc.gov/opa/2003/10/shopper.htm
Pocket Guide [to] Entertainment Ratings: Movies, Video Games, Music
http://www.ftc.gov/bcp/conline/pubs/misc/rateguide.pdf

United States Code
http://www4.law.cornell.edu/uscode/

20.7. Medical and Mental Health Organizations: Canada and the United States

Search "media violence" on these sites

American Academy of Child and Adolescent Psychiatry
http://www.aacap.org

American Academy of Pediatrics
http://www.aap.org

American Medical Association
http://www.ama-assn.org

American Psychiatric Association
http://www.psych.org

Canadian Paediatric Society
http://www.cps.ca

20.8. Research, Articles, Publications, Studies

American Academy of Pediatrics
Policy Statement on Media Violence, November 2001
http://aappolicy.aappublications.org/cgi/reprint/pediatrics;108/5/1222.pdf
Understanding TV's Effects on the Developing Brain
http://www.aap.org/advocacy/chm98nws.htm
Understanding the Impact of Media on Children and Teens
http://www.aap.org/family/mediaimpact.htm
Three-year Study Documents Nature of Television Violence
http://www.aap.org/advocacy/shifrin898.htm

American Psychiatric Association
Psychiatric Effects of Media Violence
http://www.psych.org/public_info/media_violence.cfm
Testimony before the Senate Committee on Commerce, Science, and Transportation (U.S.), regarding Marketing Violence To Children, September 13, 2000
http://www.psych.org/pub_pol_adv/testimonymediaviolence91800.cfm

Professor Craig Anderson, Ph.D.
Professor of Psychology and Chair, Department of Psychology
Iowa State University of Science & Technology
Testimony before the Senate Commerce Committee (U.S.) hearing on "The Impact of Interactive Violence on Children", March 21, 2000
http://www.psychology.iastate.edu/faculty/caa/abstracts/2000-2004/00Senate.html

Links to other articles by Professor Anderson on violent media
http://www.psychology.iastate.edu/faculty/caa/recpub.html

Professor Brad Bushman, Ph.D.
Professor, Department of Psychology
University of Michigan
Link to articles on violent media
http://www-personal.umich.edu/~bbushman/

Canadian Paediatric Society
Impact of Media Use on Children and Youth
http://www.cps.ca/english/statements/PP/pp03-01.htm
Media Pulse: Measuring the Media in Kids' Lives - A Guide for Health Practitioners
http://www.media-awareness.ca/english/special_initiatives/media_pulse/resources_publications.cfm

Children, Violence, and the Media: A Report for Parents and Policy Makers
Senate Committee on the Judiciary (U.S.), 1999
http://judiciary.senate.gov/oldsite/mediavio.htm

Effects of Media Violence on *Society*
Craig Anderson and Brad Bushman
Science Magazine, March 2002
http://www.psychology.iastate.edu/faculty/caa/abstracts/2000-2004/02AB2.pdf

Effects of Violent Video Games on Aggressive Behavior, Aggressive Cognition, Aggressive Affect, Physiological Arousal, and Prosocial Behavior: A Meta-Analytic Review of the Scientific Literature
Craig A. Anderson and Brad J. Bushman
Psychological Science, September 2001
http://www.psychology.iastate.edu/faculty/caa/abstracts/2000-2004/01AB.pdf

Exposure to Violent Media: The Effects of Songs with Violent Lyrics on Aggressive Thoughts and Feelings
Craig Anderson, Nicholas Carnagey, Janie Eubanks
Journal of Personality and Social Psychology, May 2003
http://www.psychology.iastate.edu/faculty/caa/abstracts/2000-2004/03ACE.pdf

Gangsta Misogyny: A Content Analysis Of The Portrayals Of Violence Against Women In Rap Music, 1987-1993
Edward G. Armstrong
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21. SAMPLING OF STUDIES, COMMITTEE HEARINGS, INITIATIVES, AND STATEMENTS ON MEDIA VIOLENCE

1952: U.S. House of Representatives conducts the first House committee hearings on TV violence and its impact on children.

1954: U.S. Senate conducts the first Senate committee hearings on the role of television in juvenile crime.

1969: National Commission on the Causes and Prevention of Violence (U.S.) cites TV violence as a contributor to violence in society.

1972: U.S. Surgeon General's office issues a report citing a link between TV/movie violence and aggressive behavior

1975: National Parent/Teacher Association (U.S.) adopts a resolution demanding that networks and local TV stations reduce the amount of violence in programs and commercials

1976: House of Delegates of the American Medical Association adopts a resolution "to actively oppose TV programs containing violence, as well as products and/or services sponsoring such programs," in "recognition of the fact that TV violence is a risk factor threatening the health and welfare of young Americans, indeed our future society."

1977: *Report of the Ontario Royal Commission on Violence in the Communications Industry* concludes that the great weight of research into the effects of violent media indicates potential harm to society. Its prevalence in the North American intellectual community is compared to potentially dangerous food and drug additives and air or water pollutants such as lead, mercury, and asbestos.

1982: National Institute of Mental Health (U.S.) issues an extensive report stating that there is a clear consensus on the strong link between TV violence and aggressive behavior. The American Medical Association reaffirms "... its vigorous opposition to television violence and its support for efforts designed to increase the awareness of physicians and patients that television violence is a risk factor threatening the health of young people."

1983: Canadian Minister of Justice introduces *Bill C-19* to amend the *Criminal Code* obscenity provision to criminalize the undue exploitation of violence without a sexual context

1984: U.S. Attorney General's *Task Force on Family Violence* states that evidence is overwhelming that TV violence contributes to real life violence.

1985: Special Committee on Pornography and Prostitution (Canada) recommends that the federal government study the introduction of criminal sanctions against the production, sale or distribution of material containing representations of violence without sex.

1992: Quebec teenager, Virginie Larivière, responding to the murder of her little sister, gathers 1.3 million signatures on a petition demanding action on television violence and presents it to the House of Commons. Standing Committee on Communications and Culture is mandated to study television violence.

1993

- Hincks Institute (Toronto), in conjunction with the CRTC, holds a national conference on television violence bringing together federal politicians, broadcasters, educators, activists, and mental health experts.

- Canadian Standing Committee on Communications and Culture releases its report *Television Violence: Fraying Our Social Fabric* saying, "The Committee believes that the problems of television violence, and the larger issue of societal violence, could lead to the fraying of the fabric of our modern civilization unless a comprehensive strategy is developed to arrest such insidious progress," and, "What is needed is for government, the federal regulator and broadcasters to act."

- Ontario Liberal Women's Issues Critic Dianne Poole introduces a Private Member's Resolution condemning slasher films and demanding government action to curb their distribution. The Resolution is endorsed by all three parties.

- Ontario Conservative M.P.P. Elizabeth Witmer introduces a Private Member's Bill to legislate the classification of video games. The bill is never passed.

- American Psychological Association's *Commission on Violence and Youth* states: "There is absolutely no doubt that higher levels of viewing violence on television are correlated with increased acceptance of aggressive attitudes and increased aggressive behavior. Three major national studies... reviewed hundreds of studies to arrive at the irrefutable conclusion that viewing violence increases violence."

1994: Canadian House of Commons Standing Committee on Justice and Legal Affairs tables its *Report on Crime Cards and Board Games,* recommending that the obscenity provisions of the *Criminal Code* be expanded to prohibit the importation, distribution or sale of goods or materials whose dominant characteristic is the undue exploitation or glorification of horror, cruelty or violence.

1996

- Canadian Minister of Justice releases "Undue Exploitation of Violence", a consultation paper aimed at gathering views on gratuitous and excessive portrayals of violence, to help the Minister discern, among other things, whether additional legislative or non-legislative measures are needed to deal with such portrayals.

- National Association for the Education of Young Children (U.S.), an organization of over 100,000 early childhood educators, issues a position statement saying, "Research is clear that the media, particularly television and films, contribute to the problem of violence in America. Research demonstrates that children who are frequent viewers of violence on television are less likely to show empathy toward the pain and suffering of others and more likely to behave aggressively."

- British Columbia Education Minister Moe Sihota announces his intention to embarrass companies that advertise on violent TV shows by identifying them publicly.

- Coalition for Responsible Television (Canada) launches a campaign to convince national advertisers to boycott the violent TV series, *Millennium*.

1997: U.S. Senate Subcommittee holds hearings on the social impact of music violence

1997: American Academy of Pediatrics offers this statement of behalf of the children and adolescents of America. "The level of violence to which they are exposed through the media has reached such horrific proportions, health professionals, parents, legislators and educators agree that something has to be done. The problem of violence on television may not appear as compelling or as urgent as

immunizations, the risk of AIDS for adolescents or the need for health insurance for all children. However, in terms of overall childhood morbidity and mortality, it breeds so many problems in our society that child health experts are very concerned. Although no one holds television responsible as the sole instigator of violence, the influence of television is a factor."

1998: Forty-eight of America's largest advertisers create the Forum for Family Friendly Programming to support the creation of more pro-social TV programming, citing concern about the "TV imagery, role models, themes and language to which our young people are exposed".

1999

- American President Bill Clinton asks the Federal Trade Commission to hold an inquiry into whether the entertainment industry has knowingly been marketing violent entertainment products to children.

- Laval University's Centre d'etude sur les medias releases a study indicating violence on Canadian television has grown at an alarming rate. The study says violent acts on television increased 50% between 1995 and 1998.

- Canadian Paediatric Society issues a position paper, *Children and the Media*, stating, "The influence of the media on the psychosocial development of children is profound." The objective of the statement is to address the beneficial and harmful effects of the media on children's mental and physical health, and to identify how physicians can counsel families and promote the healthy use of the media in their communities.

- U.S. Senate Committee on the Judiciary issues *Children, Violence, and the Media: A Report for Parents and Policy Makers,* identifying media violence as a "principal cause" of youth violence.

2000

- U.S. Senate Commerce Committee holds hearings on the impact of interactive violence on children

- Bloc M.P., Bernard Bigras introduces a Private Member's Bill in the House of Commons to enshrine in legislation the Canadian Association of Broadcasters' code on violence through amendments to the *Broadcasting Act*, because self-regulation has not been effective.

- *Joint Statement on the Impact of Entertainment Violence on Children* is issued by the American Academy of Pediatrics, American Psychological Association, American Academy of Child & Adolescent Psychiatry, American Academy of Family Physicians, American Psychiatric Association, and the American Medical Association at a Congressional Public Health Summit on entertainment violence. It states that "… the conclusion of the public health community, based on over 30 years of research, is that viewing entertainment violence can lead to increases in aggressive attitudes, values and behavior, particularly in children. Its effects are measurable and long-lasting."

- British Columbia film office classifies the ultra-violent video game *Soldier of Fortune* as an adult movie, thereby restricting distribution to those over eighteen. B.C. Attorney General Andrew Petter announces the province's intention to institute a classification system for video games. Mr. Petter asks Canadian justice ministers to institute a national strategy to counter child and youth-targeted violence in the media. The Federal Provincial Territorial Working Group on Children and Violence in Video Games and New Media is formed as a result. Declaring media violence a threat to children, B.C. Premier Ujjal Dosanjh, Attorney General Andrew Petter and Education Minister Penny Priddy launch a provincial strategy to promote safe communities, safe schools and safe media.

- U.S. Federal Trade Commission releases their report stating that movie studios, record companies and video game producers have aggressively marketed violent entertainment products to children, even as they label the material inappropriate for young audiences.

- Ontario M.P.P., Michael Bryant holds a press conference denouncing the violent lyrics of Eminem and asking for a legislated classification system for recordings. Ontario Attorney General Jim Flaherty attempts to have Eminem barred from entering Canada on the grounds that his lyrics promote violence against women, but fails because women are not covered under Canada's hate propaganda law.

2001

- Senators Joe Lieberman, Herb Kohl and Hilary Clinton introduce the *Media Marketing Accountability Act of 2001*, an act intended to "stop the entertainment industry from deceptively marketing adult-rated material to children... It would treat the marketing of adult-rated movies, music recordings, and video games to children like any other deceptive act that harms consumers, and give the FTC [Federal Trade Commission] the same authority it has under the current false and deceptive advertising laws to bring actions against companies that engage in deceptive practices."

- United States Senate holds hearings into the effectiveness of the entertainment rating system as a follow up to studies indicating parents find the current system inadequate. Senator Joe Lieberman warns the industry "that the best way to invite censorship is to disengage from this discussion and tune out the larger concerns of millions of American parents about media influence on our kids and our country."

- The American Academy of Pediatrics issues a Policy Statement on media violence that states: "The American Academy of Pediatrics recognizes exposure to violence in media, including television, movies, music, and video games, as a significant risk to the health of children and adolescents. Extensive research evidence indicates that media violence can contribute to aggressive behavior, desensitization to violence, nightmares, and fear of being harmed."

- *Bill 19-2001, Video Games Act,* a legislated classification system for video games passed by the NDP government of British Columbia in 2001, is scrapped by the new Liberal government.

2002: Senator Joseph Lieberman and Representative Billy Tauzin, Chairman of the House Energy and Commerce Committee, ask the recording industry to expand the current advisory system beyond the "Parental Advisory, Explicit Content" label. They want a warning system that explains the nature of the explicit content.

2003: Canadian Paediatric Society announces their *Media Pulse* initiative designed to "raise awareness about the potential impact of media use and messages on the health and well-being of children and youth"