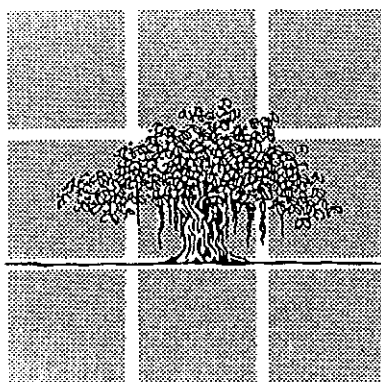


# NORTHERN TERRITORY LIBRARY



X-RATED VIDEOS IN THE  
NORTHERN TERRITORY:  
An overview of the 1990s

Research Paper No.16  
February 1997

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NORTHERN TERRITORY:  
An overview of the 1990s

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## 2. INTRODUCTION

Since 1983 it has been legal to buy or hire X-rated videos within the Northern Territory (NT) and the Australian Capital Territory (ACT). In 1995 22 per cent of video classification was X-rated, representing a large and profitable business. Debate through bodies such as the Eros Foundation, the Australian Broadcasting Authority and Senate Select Committees, such as the one set up in 1991 to examine "community standards relevant to the supply of services utilising electronic technologies", has continued into the many issues surrounding X-rated videos.<sup>1</sup> These include censorship, access to pornography through pay-TV, legislation, classification, depiction of women, violence in videos, political power of the sex industry, and online pornography.

*The Bulletin* reported in January 1997 that:

One of the hottest political issues in the ACT is simmering again with the increasing speculation that the federal government will ban X-rated videos in the autumn sittings. Despite opposition from the Northern Territory and the ACT - the distribution capital

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<sup>1</sup> O'Neill, John. "Sex and Violence and the New Censors", *The Independent Monthly*, May 1995. p.63.

for the \$34 million-a-year industry - federal Attorney General Daryl Williams is understood to be reluctantly going ahead with the Coalition's election promise.

But industry supporters warn the commonwealth may have to use controversial Kevin Andrews-style legislation to get the ban through parliament, with little chance of Senate support.<sup>2</sup> (see reading 1 for full article)

This paper will discuss the above issues with specific reference to the history of X-rated videos in the NT and the recent calls for the banning of all X-rated material in Australia.

### 3. WHAT IS X-RATED?

The Office of Film & Literature Classification (OFLC) is a Commonwealth agency in the Attorney-General's Department and is responsible for classifying films and videos, computer games and publications, in accordance with Commonwealth, State and Territory legislation regarding classification matters.<sup>3</sup>

The OFLC has cinema and video rating guides for videos which include G, PG, M, MA, R, X and RC. The X-rated classification is defined as follows:

No depiction of sexual violence, coercion or non-consent of any kind is permitted in this classification. Material which can be accommodated in this classification includes explicit depictions of sexual acts between consenting adults and mild non-violent fetishes.<sup>4</sup>

The OFLC refuses classifications to any film or video that has any of the following:

- a. depictions of child sexual abuse, bestiality, sexual acts accompanied by offensive fetishes, or exploitative incest fantasies;

<sup>2</sup> Kyriakopoulos, Vikki. "X-rating to Ex-rating", *The Bulletin*. Vol.166, No.6055. January 21, 1997. p.14.

<sup>3</sup> "Office of Film & Literature Classification", <http://www.oflc.gov.au:80/index.html>. p.1.

<sup>4</sup> "Cinema & Video Ratings Guide" OFLC Classifications, <http://www.oflc.gov.au:80/calssinfo.html#filmx>. p.3.

- b. unduly detailed and/or relished acts of extreme violence or cruelty; explicit or unjustifiable depictions of sexual violence against non-consenting persons;
- c. detailed instruction or encouragement in:
  - i. matters of crime or violence
  - ii. the abuse of proscribed drugs.<sup>5</sup>

#### 4. X-RATED VIDEOS IN THE NORTHERN TERRITORY: AN OVERVIEW OF THE 1990S

In 1990 the Territory was warned that it may become “an outlet for illegal pornographic operations following a crackdown on illicit videos in New South Wales and Victoria and the introduction of a 20 per cent tax on pornographic films in Canberra”.<sup>6</sup> In 1991 an operation distributing unclassified X-rated films in the Territory was discovered.

The twelve month Film and Video Classification Public Awareness Campaign was launched in the NT in July 1991.<sup>7</sup>

In 1991 the independent Member for Grotorex, Denis Collins, tried to introduce a *Pornographic Video Prohibition Bill* banning all commercial activity of X-rated videos in the Territory. The Bill was defeated with promises of new legislation being introduced in February 1992.<sup>8</sup> X-rated material was defined as “continuing non-violent erotica”.<sup>9</sup> (see reading 2)

The *NT News* reported in June 1992 that John Lark, the owner of the large X-rated video distribution company Lu Haze, was moving his operation to the Territory. The rise in tax in the ACT, the refusal of the ACT Revenue Office to issue a business licence and the introduction of legislation in February allowing for X-rated films to be distributed but not

<sup>5</sup> “What Kind of Movie is Refused a Classification”, <http://www.oflc.gov.au:80/refused.html>. p.1.

<sup>6</sup> “NT Police Seize Porno Videos”, *NT News*. 5. 6.91.

<sup>7</sup> Manzie, Daryl. (Attorney-General) *Media Release*. 23.7.91. Ref: B-0416-91.

<sup>8</sup> Manicaros, Ashley. “MP Vows to Expose Porn Contractors”, *NT News*. 5.6.92.

<sup>9</sup> “NT Govt to Crack Down on X-rated video industry”, *Australian Financial Review*. 9.6.92.

filmed in the Territory, made the Territory very appealing to the estimated \$25 million a year industry player.<sup>10</sup> The new company was expected to be called Mature Media.<sup>11</sup>

Denis Collins announced that he would try again to introduce legislation banning X-rated material, but would be unable to do so before February 1993. Collins claimed that pornographic videos “encouraged paedophiles, violence against women and children and the breakup of marriages”. The Attorney-General, Daryl Manzie, responded by saying that making these operations illegal would cause it to go underground and into criminal hands which may lead to more explicit movies encouraging more violent acts such as “snuff” (filmed murder) movies. Manzie claimed “by keeping it legal we can control the access”.<sup>12</sup> Manzie recommended that video manufacturing be outlawed in the Territory to halt the movement of production and duplication of X-rated videos from the ACT to the Territory. The industry responded by claiming that it would be an impossible situation if they were unable to duplicate videos. Ekstase Videos Managing Director, Gerry Hercus, stated that “outside the ACT, the Northern Territory is the only place where manufacturing can take place and the industry can survive...We are being driven to bankruptcy in the ACT because the retail price is well below what it is costing to make these films.” Hercus suggested that legislation could be introduced to differentiate between production and duplication to allow manufacturing to continue.<sup>13</sup> Hercus said that he operated 120 machines duplicating X-rated videos 24 hours a day.<sup>14</sup>

Pressure was also felt from a number of Darwin churches in June to stop X-rated video distributors moving to the Territory. Church leaders suggested a 40 per cent wholesale tax, like that of the ACT, would deter the industry from relocating to the NT.<sup>15</sup>

On August 20, 1992 Daryl Manzie (Attorney-General) presented the *Classification of Publications and Films Amendment Bill (Serial 169)* which included:

<sup>10</sup> Manicaros, Ashley. “Porn Video Group to Probe NT Sites”, *NT News*. 3.6.92.

<sup>11</sup> Manicaros, Ashley. “City Would Not Notice X-industry: Video boss”, *NT News*. 4.6.92.

<sup>12</sup> Manicaros, Ashley. “MP Vows to Expose Porn Contractors”, *NT News*. 5.6.92.

<sup>13</sup> Manicaros, Ashley. “Manzie Says No to Porn”, *Sunday Territorian*. 7.6.92.

<sup>14</sup> “NT Govt to Crack Down on X-rated Video Industry”, *Australian Financial Review*. 9.6.92.

<sup>15</sup> Manicaros, Ashley. “NT Churches to Fight Porn Movie”, *NT News*. 8.6.92.

- banning the possessing of child pornography;
- limiting copies of videos to 100 per title over a twelve month period;
- prohibiting the actual filming and producing of a pornographic film; and
- limiting the size of the businesses that copy X-rated tapes to individuals not corporate bodies.<sup>16</sup>

Media reports at the time claimed the possibility of a High Court challenge against the amendments to the *Classification of Films and Publications Act* proposed by the Attorney-General.<sup>17</sup> The amendments were steered through all stages in the Legislative Assembly on November 25th and Manzie claimed they were a clear message to producers of pornography that their industry was not to establish itself in the NT.<sup>18</sup> (see reading 3)

During 1993 lobby groups, including Project Family, claimed that Darwin had become a major distribution centre for the X-rated video industry, but had no evidence of illegal distribution and called for legislation to be changed to make any distribution illegal.<sup>19</sup> Hercus rebutted by saying his operations in the NT were legal and that his business, Fortbacon, had about 200 000 people on the company's books and employed 15 people in Darwin.<sup>20</sup>

At the end of December the High Court quashed the 40 per cent tax imposed by the ACT as unconstitutional, allowing for the industry to re-establish itself in Canberra. In February, 1994 Playhouse Videos General Manager, Michael MacGregor, who was forced to have duplicates made in the ACT and freighted to Darwin for distribution to over 280 000 clients, offered financial support and advertising space to parties or individuals who would support changing the legislation. MacGregor said that his company which had originally moved from Canberra to Darwin in 1990, would consider moving its operations back to the ACT.<sup>21</sup> The Opposition

<sup>16</sup> "Porn Movie Ban Closer", *NT News*. 21.8.92.

<sup>17</sup> Manzie, Daryl (Attorney-General). "Pack Up and Get Out, Attorney-General Advises Porn Producers", *Media Release*. Ref: M-0689-92. 26.8.92.

<sup>18</sup> Manzie, Daryl (Attorney-General). "NT Government Closes the Door on Porn Producers", *Media Release*. Ref: M-0952-92. 26.11.92.

<sup>19</sup> Wilson, Michael. "NT Govt Urged to Crack Down on Porn", *NT News*. 14.12.93.

<sup>20</sup> Wilson, Michael. "NT Porn Video Boss Hits Back", *NT News*. 16.12.93.

<sup>21</sup> Grimwade, Debbie. "Porn Boss Offers to Back Parties", *NT News*. 11.2.94.

Leader, Brian Ede, responded by saying that the X-rated video industry should be allowed to duplicate films in the NT as it would "give the Government tax revenue".<sup>22</sup>

Legislation was not changed and the Axis Group, headed by Hercus, moved back to the ACT with 60 Territory jobs lost.<sup>23</sup>

On November 21, 1996 Denis Burke (Attorney-General) tabled the paper *Intergovernment Agreement For Classification Guidelines For Films*, with the following statement:

...the purpose of this statement is to table a revised classification guidelines for films. Under the national classification censorship scheme, the Northern Territory adopts the classification decisions made under (the) Commonwealth Classification (Publications, Films and Computer Games) Act 1995.

...The intergovernmental agreement provides that the guidelines, and any amendments to the guidelines, are to be tabled in the Legislative Assembly. Guidelines covering the classification of films were tabled in the Assembly during the May 1996 sittings. At the July 1996 meeting of the Standing Committee of Attorney-General, the censorship ministers agreed to an amended version of the guidelines. It is these amended guidelines that I am tabling today.

In brief, the amended guidelines differ from the previous guidelines in so far as there is a tighter use of plainer language and there has been a tightening of the provisions dealing with violence. In essence, some of the violent material that was previously on the classification borderline will now have to be moved into a higher, more restricted category.

I will also take this opportunity to emphasise 2 points of the censorship scheme as it exists in the Northern Territory. Firstly, we retain the X classification: This remains part of our scheme, notwithstanding pressures from other parts of the country for this classification to be abandoned. Secondly, an examination of the guidelines for X, 18

<sup>22</sup> Grimwade, Debbie. "Ede Supports Call for New Video Law", *NT News*. 15.2.94.

<sup>23</sup> Editorial. "Values and NT Laws", *NT News*. 28.1.97

plus and RC (refused classification) illustrates the kinds of videos that are lawful and unlawful in the Northern Territory. Thus a video becomes unlawful if it lacks artistic merit, offends generally accepted standards or appears to purposefully debase or abuse the enjoyment of viewers.<sup>24</sup> [sic] (see reading 4 for X and RC classifications)

In January, 1997 the Lyons Forum, a 48 member conservative faction of the federal Coalition, proposed that all X-rated videos be banned in Australia. Since the only places where X-rated videos are available is in the ACT and the NT this suggestion would lead to moves to override Territory law.<sup>25</sup>

The editorial appearing in the *NT News* on January 28, 1997 (see reading 5 ) connects the push to ban X-rated videos in Australia with the same group as those who are behind the moves to overturn the *Rights to the Terminally Ill Act*, the Lyons Forum. Clearly this topic has become one for the estimated 6000 NT customers to consider in future elections, both within the Territory and the Federal arenas.<sup>26</sup>

In response to the editorial, Father Murphy from St Joseph's Parish in Katherine brought attention to an article appearing in *The Australian* linking pornography to sexual abuse.<sup>27</sup> In this article Robert Manne wrote a column in *The Australian* on censorship and the link between depicted violence, pornography and crime.<sup>28</sup> (see reading 6) It should be noted that X-rated videos do not contain violence, only sexually explicit non-violent erotica.

## 5. CURRENT ISSUES IN AUSTRALIA REGARDING X-RATED VIDEOS

For an overview of issues involving X-rated videos in Australia pre-1994, see "Sultans of Sleaze" by Peter Fray. (reading 7) For a discussion regarding the sex industry and Australian politics see "The Porn Industry's Quest for the Really Swinging Voter" by David Barnett . (reading 8)

<sup>24</sup> Burke, Denis (Attorney-General). "Intergovernment Agreement For Classification Guidelines For Films", *Tabled Paper. Northern Territory Legislative Assembly. Seventh Assembly, First Session*. Parliamentary Record 28. 21.11.96.

<sup>25</sup> "X-film Ban Bid 'Crazy'", *NT News*. 28.1.97.

<sup>26</sup> Editorial. "Values and NT Laws", *NT News*. 28.1.97

<sup>27</sup> Murphy, Father B. "Porn Linked to Criminals", *NT News*. 3.2.97.

<sup>28</sup> Manne, Robert. "Evidence Demands a Tenacious Stand on Censorship", *The Australian*. 13.1.97. p.11.

**(a) The Lyons Forum**

The Lyons Forum was named after Prime Minister Joseph and Dame Enid Lyons whose principles of "family unity, love and loyalty...pervaded the whole of their private and public life".<sup>29</sup>

Quoting King George V, Dame Enid in her maiden speech to the Parliament on the 29th September 1943 said

*"The Foundation of a Nation's greatness is in the homes of its people."*

The Lyons Forum is a group of Members and Senators of the Federal Liberal and National Parties that has adopted this statement as its motto and hopes that its sentiments will again be promoted by all involved in national life.<sup>30</sup>

The Lyons Forum 1995 publication, *Empowering Australian Families*, represented two years of consultation with Australian people about the role of the family in society. During 1994 the Lyons Forum's *National Inquiry into Families and the Economy* was conducted as part of the International Year of the Family.<sup>31</sup>

In regard to mass media, *Empowering Australian Families* claimed that the introduction of more "risque" material gave young people the impression that sex was an enjoyable recreation.<sup>32</sup> Further into the document a "Constructive Role for Media" is discussed. It reads:

Violence and sex are too readily broadcast and the rate of crime in the community may be attributed in part to this fact. The media does not seem to portray family life as something to be aspired to, and for this reason, it was suggested that censorship be more stringent...These 'constructive roles' would exclude the gratuitous displays of

<sup>29</sup> The Lyons Forum. *Empowering Australian Families*. Canberra: The Lyons Forum, 1995. p.v.

<sup>30</sup> The Lyons Forum. *Empowering Australian Families*. Canberra: The Lyons Forum, 1995. p.v.

<sup>31</sup> The Lyons Forum. *Empowering Australian Families*. Canberra: The Lyons Forum, 1995. p.1.

<sup>32</sup> The Lyons Forum. *Empowering Australian Families*. Canberra: The Lyons Forum, 1995. p.3-4.

violence and sex that are at the moment so common in television, film, and computer games.<sup>33</sup>

(see reading 9 for a summary of recommendations)

### **(b) Censorship**

The Australian Law Reform Commission became concerned with classification and censorship in 1990 after being asked by the Attorney-General, Michael Duffy, to report on how Federal, State and Territory legislation could be made more efficient. The report was delivered in 1991 and in October the Office of Film and Literature Classification held an inaugural public forum on censorship and classification issues.<sup>34</sup>

New classifications, mentioned earlier in this paper, were introduced on January 1, 1996 along with the new *Classification Act*. For a discussion based within the film industry on the new legislation and the special status of film festivals the article that appeared in *Cinema Papers* in February 1996. (reading 10 )

### **(c) The Internet**

There has been much debate since pornography and sexually explicit videos started appearing for purchase on the Internet. Online pornography is readily available to those in search of it, as are pornographic magazines readily available in newsagents. Within a few minutes an online search can bring up numerous sites that give access to X-rated videos. This form of electronic distribution will continue regardless of Australian legislation.

The Blue Ribbon Campaign promotes “online freedom of speech, press and association” and actively campaigns against censorship on the Internet:

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<sup>33</sup> The Lyons Forum. *Empowering Australian Families*. Canberra: The Lyons Forum, 1995. p.31.

<sup>34</sup> Mason, Stephen. “Current issues in Classification and Censorship”, *Reform*. No.66, December 1993. p.35.

We insist that any material that's legal in bookstores, newspapers, or public libraries must be legal online.<sup>35</sup>

Legislation has been introduced in a number of Australian States which involves electronic communications such as the Internet, online service providers, bulletin boards, computer games and local area networks.

If X-rated videos are made illegal to purchase or hire in Australia, online and international agencies will gain Australia's clientele.

For further discussion of "Law in Cyberspace" see article appearing in the *Australian Law Journal*. (reading 11).

## 6. CONCLUSION

A former board member of the Office of Film and Literature Classification, David Haines, points out that unclassified material is rarely unearthed in the ACT or the Northern Territory. He believes:

In the other States, there's an attitude of we'll take anything that's going.<sup>36</sup>

The many issues discussed in this paper will continue to be debated by a variety of interested parties. If X-rated videos are made illegal, the industry will not cease, it will just go underground. The NT Government should be aware of the on-going attempts from a number of government and non-government groups to ban X-rated videos in Australia in relation to the social and economic impacts on the NT.

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<sup>35</sup> *The Blue Ribbon Campaign for Online Free Speech*. <http://www.eff.org/blueribbon.html>. p.2.

<sup>36</sup> Epaminondas, George. "Shades of Blue", *Australian*. 18.4.96. p.11.

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