NATIONAL CAMPAIGN FOR THE REFORM
OF THE OBSCENE PUBLICATIONS ACTS

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VIDEO RECORDINGS BILL
A CRITIQUE

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A CRITIQUE OF THE VIDEO RECORDINGS BILL
BY THE NATIONAL CAMPAIGN FOR THE REFORM OF THE OBSCENE PUBLICATIONS ACTS
WITH RECOMMENDATIONS

NOVEMBER 1983

Our observations on the proposals for the Video Recordings Bill, which we presented to the Secretary of State for the Home Department, Mr. Leon Brittan, Q.C., M.P., on 1st September 1983, were prefaced by a statement about the N.C.R.O.P.A.'s overriding commitment to the removal of censorship for consenting adults in the United Kingdom (except for censorship in the interests of national security) and its firm opposition to any legislative measures which would, in any way, add to our already intolerably repressive censorship restrictions.

We believe the Video Recordings Bill is not simply just such a measure, but one of outrageously authoritarian proportions which will erode individual freedom and the freedom of expression in a way, the likes of which are unprecedented in this country in modern times.

For the first time, the U.K. will become subject to statutory pre-censorship and the Home Secretary will be appointed to the newly created post of official State Censor, with ominously Orwellian, draconian powers to dictate what video recordings may or may not be shown, even in the privacy of one's own home.

There is, thus, only one possible attitude we can take towards this Bill. We reject it outright and recommend that it be scrapped and replaced by a voluntary code of video classification.

It is extremely significant, we feel, that, on the 8th November, Mr. John Patten, M.P., Parliamentary Under Secretary of State for Health, announced that a voluntary code of practice restricting the sale of solvents to children is to be introduced by manufacturers and retailers, in consultation with the Department of Health, to combat the dangerous practice of glue sniffing. During the past eighteen months, ninety-four children have actually been killed as a result of sniffing glue. Apparently the Government is quite satisfied, however, that, in this case, where the free availability of a product which causes known, incontrovertible, proven harm to children - that is it kills them, and you can't get much more harmful than that! -, voluntary control by its purveyors is deemed adequate. The purveyors of video recordings, however, products which, even if grossly offensive to many, are of no proven harm even, to children, let alone kill them, are not to be allowed such voluntary discretion, but are to be subjected to massive and ruthless statutory controls, which will, in any case be cumbersome and unworkable, and will also impose intolerable restrictions on the freedom of the individual adult in the process. The Bill is, in short, a sledgehammer to crack a nut.

However, even if the Home Office and Mr. Bright insist on statutory 'protection' for children, unlike the Department of Health and Mr. Patten, all that is required is a Bill simply making it an offence to sell, let or hire horrific or violently explicit videos to children. A Statute very much on the lines of the Children and Young Person's (Harmful Publications) Acts of 1955, which was introduced to control the spread of so-called 'horror comics' amongst children, could then be enacted.

Although the N.C.R.O.P.A. believes the Bill to be ill-conceived, ill-considered and wholly unnecessary, it has prepared some detailed comments on its various

Sections and these now follow.

DETAILED OBSERVATIONS ON THE BILL

1. TITLE (Page A(i))

The title of the Bill is a misnomer, or, at the very least, ambiguous. We suspect that this is deliberate to disguise the Bill's real purpose. It should properly be entitled the "Video Censorship Bill".

2. EXPLANATORY AND FINANCIAL MEMORANDUM (Pages A(i) & (ii))

This states that the Bill "regulates, subject to certain exceptions, the supply of video recordings ......" etc. The Bill does not "regulate", it restricts and prohibits. Therefore these two words should be substituted.

3. FINANCIAL AND MANPOWER IMPLICATIONS (Page A(ii))

It states that "The Bill is not expected to have any significant financial implications and will have no effect on public service manpower". We dispute this. The bureaucratic machinery required for the setting up and day-to-day running of the "designated authority", or, more honestly, State Censor's Office, will be cumbersome and costly and, although video producers will (monstrously) be charged fees for certification, or even refusal of certification, this charge will undoubtedly be passed on to the consumers. It will certainly have "significant financial implications" for them. (Incidentally, we believe it to be shameful that the fees to be charged by the "designated authority" are not specified in the Bill).

4. PREAMBLE TO THE BILL (Page 1)

The preamble is dishonest. It should be amended to read thus:- "A Bill to make provision for censoring and regulating the distribution of video recordings and for connected purposes."

5. SECTION 2 (Page 2) EXEMPTED WORKS

The inclusion of this Section destroys the whole moral basis of the Bill. The Bill is based on the purported need to prevent minors, and sometimes adults, from having access to certain types of video recordings in order to 'protect' them. If this need is genuine (which we dispute), publications of all kinds should also be subject to the same pre-censorship, classification and certification criteria, including films, books, pictures, magazines and newspapers. The very fact that the measure only applies to video recordings, and not even to all of them, completely destroys the Bill's credibility. We repeat what we said in our earlier observations on the initial proposals for the Bill. If a classification and prohibition system is imposed on us, it must apply to all kinds of material, right across the board. An equal dose of this unnecessary and expensive 'medicine' should be administered to all, objectively and without unfair selectivity.

6. SECTION 2, CLAUSE (1)(a) - (Page 2)

A video recording designed to provide sex education must, or may, necessarily 'depict'or otherwise deal with' human sexual activity 'to some extent'. In any case there is nothing wrong with that most natural of interests or pursuits, human sexual activity, or in depicting it.

7. SECTION 2, CLAUSE (2)(a) - (Page 2)

"Acts of force or restraint associated with such (human sexual) activity",

which are carried out in reality against a person's will, where coercion is employed and/or where actual physical harm is inflicted are certainly wrong and should not be permitted. However, where consenting parties are involved and such criteria are applied, any video recording of any such activity, even if a classification certificate is insisted upon, should not be prohibited for adults.

8. SECTION 2, CLAUSE (2)(b) - (Page 2)

Video recordings depicting "mutilation, torture or other acts of gross violence", even if subject to classification, similarly should not be banned for adults, again unless actual physical harm has been inflicted on the participants or they have been coerced into participating. There are already quite sufficient Acts on the Statute Book to cover such eventualities. The Bill must here recognise and accommodate for the difference between real acts and simulated or represented acts, and it does not. Even then the Bill will still be in trouble over news film. Presumably news video recordings which show real "acts of gross violence" will require certificating and consequently, in some instances, will be prohibited altogether. This will surely pose a most serious danger that news could easily be manipulated or suppressed by the State Censor. For example, scenes of acts of atrocity could be censored for political reasons, to the possible great advantage of the perpetrators and huge detriment of their victims.

This clause will, of course, also mean that all violent 'sports', like boxing will not be exempt from classification. The aim in boxing is to render one's opponent unconscious with as hefty a blow as one can muster - an undoubted "act of gross violence". If the Bill is going to be consistent and logical, all boxing videos will have to be banned completely for children and probably for adults as well.

9. SECTION 2, CLAUSE (2)(c) - (Page 2)

There is nothing shameful about "human genital organs" or their functions, or about "human urinary or excretory functions". It may certainly be necessary to 'depict or otherwise deal' to a very considerable extent with such matters in an educational, medical, informative or instructive video work. Why, therefore, should such subjects require to be certificated? Not only could this be an impertinent intrusion into professional judgement, but could well obstruct the free and essential dissemination of knowledge and impede learning.

Furthermore, in this Section, what is to be the measure of 'stimulation or encouragement' of "human sexual activity or acts of force or restraint associated with such activity", or of "mutilation, torture or other acts of gross violence"? Is the State Censor going to recruit a representative panel of the public who will register and record the level of sexual arousal which each submitted video provokes? Are we to see the introduction of Home Office approved blush recorders, heavy-breathing monitors and erection meters? The Bill does not say. In any case, the multiplicity and diversity of phenomena which "stimulate or encourage" particular reactions in different people - which 'turn people on' - is virtually limitless. Besides, what is to be the determining factor which rules that a particular video has been"designed" to "stimulate and encourage" in the ways indicated in the Bill? Above all, what is so improper with the stimulation of human sexual activity anyway? Human sexual activity is a natural, wholesome, thoroughly desirable and delightfully pleasurable pursuit. Why discourage it? What right has anyone to discourage it, unless it is indulged in without the mutual consent of the participants? In a free society, no right whatsoever.

10. SECTION 3 - EXEMPTED SUPPLIES - (Page 2)

Again, and for the same reasons put forward against Section 2, the inclusion of this Section demonstrates the fultility of the Bill and destroys its moral basis. If it is necessary to'protect' minors and even adults from certain types of video recordings,

the need to include a provision for "exempted supplies" should not arise. Such an inclusion proves that the Bill is not necessary.

11. SECTION 3, CLAUSE (3) - (Page 2)

This clause deals with the supply of video recordings on business/premises and again, as already referred to in our paragraph 8 (Section 2, Clause (2)(b) - (Page 2)), news recordings, which are in the normal course of events produced by professionals, are not exempted supplies.

12. SECTION 3, CLAUSE (5)(b) & (c) - (Page 3)

The inclusion of these sub-clauses is quite unacceptable, for the same reasons given in our paragraphs 7, 8 and 9 (Section 2, Clause (2) sub-clauses (a), (b) and (c)). This is an outrageous curtailment of individual freedom in the privacy of one's own home - freedom to make video recordings of one's own choice of subject matter - and subsequently show them to one's own family or friends without official permission to do so from State Censors. However, the notion that anyone making such do-it-yourself video recordings would voluntarily subject him or herself to the humiliation of submitting them to the "designated authority", paying the appointed fee for the censor's certificated approval, is as naive as it is absurd. In any case, again, if the Bill is to be consistent, and its whole raison d'etre to be unchallenged, all home-made video recordings should be subject to the same approval and classification of the Censor. It may come as something of a surprise to the Home Office puritans and the sponsors of the Bill to discover that even wedding ceremonies are not always all white brocade, morning suits and virginal innocence!

13. SECTION 3, CLAUSE (6) - (Page 3)

This clause, which deals with exemption for exhibitions of video works in cinemas, is astonishing. The Cinematograph Acts specifically impose controls on exhibitions in cinemas on the basis that they are public, not private places. Yet this Bill categorically excludes dwelling houses from the exemption applying to cinemas. This is a gross, unwarranted and unprecedented invasion of private rights in a supposedly free society. It will mean, in effect, that almost certainly, it will be illegal to show some films in the privacy of one's own home, whereas these same films will be able to be shown quite legally in a public cinema. This is an outrageous situation and, surely, only one step away from a Government inspector in one's bedroom.

14. SECTION 3, CLAUSE (7) - (Page 3)

Certain cinemas are already experimenting with using video recordings in place of films. It is obviously logical to have the same system applying to video recordings as to films, especially since many video recordings contain material which is already on film. Although this Clause defines cinema and allied premises, it is not sufficient to create such a correlation. It merely excludes cinemas from the provisions of the Bill but does nothing to bring the classification system for films shown in cinemas into line with the proposed one for video recordings. The result will be utter confusion with different classifications for films and video recordings containing the same material. The Home Office Report on Obscenity and Film Censorship (the Williams Report) recommended that the mass of conflicting laws relating to so-called 'obscenity' and film censorship should be replaced by one comprehensive law and clearly warned of the dangers of further piecemeal legislation which would make the already chaotic situation even worse. This Bill is being introduced in direct contradiction of the unanimous recommendations of the Williams Committee.

15. SECTION 3, CLAUSE (8) - (Page 3)

Although this clause exempts video recordings supplied to the licensed broadcasting

organisations, it gives no exemption from certification to video recordings of news items in general, nor, for example, to medical material. The dissemination of information of this kind is not confined, or atleast should not be confined, to the public service broadcasting organisations. The supply of such video recordings may, for instance, be required by law reform groups, political parties, medical bodies etc., in connection with their activities.

Moreover, the B.B.C. and I.B.A. are subject to the constraints of the various broadcasting Acts and do have to exercise censorship to meet the requirements of these Acts. This system is often claimed to work well, but whether that is so or not, in some circles public television censorship (often euphemistically referred to as editing) will inevitably be thought to be improperly applied and news or information thus tampered with or even suppressed. An extension of the exemption from certification defined in this Clause to all news and information video recordings, irrespective of content, would provide a necessary safeguard against such possible manipulation and we believe the Bill should be so amended.

There is, however, another anomaly regarding this Clause. Because the BBC and the IBA are exempted from the requirements of classification and certification under this Bill, they can, and often do, transmit films which have received 'adult' certification by the British Board of Film Censors, e.g. a film given an '18' category. Assuming that the "designated authority" uses the same categories as the B.B.F.C., and it has already been indicated that they will, such a film, if this Bill becomes law, would not be allowed to be supplied to anyone under 18 years in video form. However, anyone under 18 could quite legitimately record that same film direct from the broadcast transmission of it, and subsequently show it quite freely. It could thus be legal for an 'under 18' to watch an 'over 18' film when screened by the BBCTV or ITV, but illegal if purchased or hired on video. This is quite ludicrous, and shows, once again, what a nonsense the Bill is.

16. SECTION 4, CLAUSE (1) - (Page 4)

We believe the implications of this Clause are the most ominous of the entire Bill. For the first time in the United Kingdom, pre-State Censorship is to be given statutory authority and the Home Secretary is, effectively, to be appointed official, State Censor. The wording of the Bill appears to have been purposely chosen in an attempt to disguise the reality of this and give the impression that the Home Secretary, and thus the Government, are in no way involved in this unmentioned and detestable censorship, and that the "designated authority" will be nothing to do with them. This is a most devious and cowardly device but it will fool no-one.

A single person, the Home Secretary, is to be invested with completely dictatorial power over this most important and most rapidly expanding means of communication in this country. '1984' and 'Big Brother' have already, well and truly arrived.

The Home Secretary will not simply be able to dictate the classification of videos, but, under sub-clause (a), impose a complete pre-publication ban. This is quite intolerable. It is significant that such a thing could not possibly happen in a country like the United States, for example. The American Constitution expressly forbids it. No more will British criticisms of so-called, undemocratic, totalitarian regimes of Eastern Bloc countries be valid if this viciously repressive piece of legislation is enacted.

We also deplore the lack of detail the Bill gives about the precise nature and constitution of the "designated authority" and that its appointment is to be by statutory instrument. Its terms of reference and the guide lines under which it will operate are not specified. Such vagueness is dangerously unsatisfactory and gives rise to considerable concern.

17. SECTION 4, CLAUSE (3) - (Page 4)

The provisions for appeals against decisions of the "designated authority" are,

likewise, totally inadequate and totally unsatisfactory. No details of the form any appeal will take are given, nor by whom appeals will be heard. Does the appeal procedure include recourse to the ordinary Courts? The Bill gives the impression that it does not. We believe that the Secretary of State should not have the power to exclude the jurisdiction of the Courts. No-one should be above the law.

18. SECTION 4, CLAUSE (5) - (Page 5)

We consider the imposition of the payment of fees for classification certificates from the "designated authority", or, even worse, the refusal of certificates, is quite unfair, unjust and unacceptable. The Bill should certainly contain a restriction preventing the Secretary of State from fixing fees which will be prohibitively or unrealistically high.

19. SECTION 4, CLAUSE (7) - (Page 5)

The type of notices to be published in the London, Edinburgh and Belfast Gazettes should be specified. Are they to be notices of the members of the "designated authority", the level of approved classification fees - or of the titles of each video recording granted a certificate?

20. SECTION 5 - CLASSIFICATION CERTIFICATES - (Page 5)

This Section is unsatisfactory and unacceptable for a number of reasons, including those criticisms we have already put forward of Section 2 of the Bill. Although the exact terms of reference of the "designated authority" have not been included in the Bill, it is fair to assume from the very restrictive criteria already laid down in other Sections of the Bill, that many video recordings are going to be refused any kind of a certificate. This means prohibition, even for consenting adults in the privacy of their own homes. We cannot accept any system of classification which also includes blanket prohibition.

Even so, videos which are given certificates are still not going to be immune from possible subsequent prosecution under other existing laws, such as the Obscene Publications Acts. This 'double jeopardy', in which the video suppliers will be placed, is absolutely iniquitous and will result in the absurd situation whereby a Government, statutory body's ruling is in direct conflict with another statutory body in the shape of the judiciary. At least films with British Board of Film Censors' certificates shown in public cinemas have a little more protection, albeit non-statutory, inasmuch as the Director of Public Prosecutions, whose consent is required for prosecutions of films under the Obscene Publications Acts, as amended by the 1977 Criminal Justice Act, has let it be known, unofficially, that he would not give such consent where films certificated by the B.B.F.C. were involved. If virtual immunity from prosecution is promised on the 'say-so' of a voluntary, self-appointed, non-accountable certification body like the B.B.F.C., how much greater the need for such immunity when the certification body is a statutory one.

21. SECTION 6, CLAUSE (3) -(Page 6)

Again, the regulations for labelling, etc. are not defined in the Bill, but left to the discretion of the Secretary of State and introduced by statutory instrument. This is too imprecise and gives the Secretary of State too wide powers. Precise regulations should be incorporated in the Statute.

22. SECTION 7, CLAUSE (2) - (Page 6)

Under this clause, the defendant charged with commiting an offence of supplying a video recording of unclassified work should not be required to prove "reasonable grounds". The onus of proof should be on the Prosecution to show such grounds.

23. SECTION 8, CLAUSE (1) - (Page 6)

The Bill is aimed at preventing commercial supply. Therefore the offence of possession of a video recording of an unclassified work should be restricted to "for gain", as under the Obscene Publications Acts.

24. SECTION 8, CLAUSE (2) - (Page 6)

Under the provisions of this clause, it should not be for the defendant to have to prove anything. The onus of proof should be on the prosecution.

25. SECTION 9, CLAUSE (2) - (Page 7)

Again, it should not bere be for the defendant to prove anything. The onus of proof should be on the prosecution.

26. SECTION 10, CLAUSE (1) - (Page 7)

This Section makes it an offence to supply or have possession of a video recording which has been classified under a specific age limitation, on premises to which persons under that age are admitted. By confining the supply of such adult video recordings to 'adults only' premises, the Bill will effectively restrict such material to sex shops licensed under the terms of the Local Government (Miscellaneous Provisions) Act 1982. Like this Video Recordings Bill, this Act is yet another piece of monstrously repressive censorship legislation and, as a consequence of which, very few sex shop licences are being granted by local authorities. In many areas, no licences have been granted at all. This will inevitably mean that there will be very few legal retail outlets for adult-certificated videos and in many areas this will be tantamount to their prohibition.

The provision of this Section 10 is, in any case, quite unnecessary. The Bill already makes it an offence for a person to supply a video classified as suitable for adults only to a minor, or other specified age below that. The additional restriction on the type of premises in which the supply takes place is superfluous.

27. SECTION 10, CLAUSE (2) - (Page 8)

Again, it should not here be for the defendant to prove anything. The onus of proof should be on the prosecution.

28. SECTION 11, CLAUSE (1) - (Page 8)

This Section is unnecessary. The situation is covered by the Trade Descriptions Act.

29. SECTION 11, CLAUSE (2) - (Page 8)

Again, it should not here be for the defendant to prove anything. The onus of proof should be on the prosecution.

30. SECTION 12, CLAUSE (1) - (Page 8)

As with Section 11, this is unnecessary since the situation is covered by the Trade Descriptions Act.

31. SECTION 12, CLAUSE (2) - (Page 8)

Again, it should not here be for the defendant to prove anything. The onus of proof should be on the prosecution.

32. SECTION 12, CLAUSE (4) - (Page 9)

Again, it should not here be for the defendant to prove anything. The onus of proof should be on the prosecution.

33. SECTION 13, CLAUSE (1) - PENALTIES - (Page 9)

The penalty limit of a fine not exceeding £10,000 is absurdly high for being convicted of offences which are, in reality, minor and harmless. Offences under the Bill can only be heard in Magistrates' Courts. With such swingeing penalties, it is disgraceful that a defendant has no right to trial by jury. It is imperative that the Bill is amended accordingly.

34. SECTION 13, CLAUSE (2) - (Page 9)

Empowering the Secretary of State to raise the level of fines in this way is unprecedented. Such a power should be confined to the legislature or included by amendment to Section 75 of the Criminal Justice Act 1982, which deals with statutory maximum fines.

35. SECTION 13, CLAUSE (3) - (Page 10)

The penalty limit of a fine not exceeding the current level 5 on the standard scale, at present £1,000, for other offences under the Bill, which, again are very minor and harmless, is also far too high.

36. SECTION 14, CLAUSE (2) - OFFENCES BY BODIES CORPORATE - (Page 10)

The inclusion of this clause is unwarranted because it makes members liable for the activities of the corporate body. The whole basis of company law is that Directors should alone be responsible. If anyone else commits an offence, then that person can be prosecuted as an individual. There is no justification in this Bill for arbitrarily lifting the "corporate veil".

37. SECTION 15 - POLICE POWERS OF ENTRY, SEARCH & SEIZURE - (Page 10)

The police in this country already have more power than in any other Western country and, in any event, these powers are to be given statutory definition in the Police and Criminal Evidence Bill. It is therefore wrong for the Video Recordings Bill to extend these powers on a piecemeal basis.

38. SECTION 16 - (Page 11)

Since this Bill only provides for the imposition of fines and not for custodial sentences, it is unacceptable that the power of arrest without a warrant should be extended to offences under this Bill.

39. SECTION 17 - (Page 11)

The authorisation of evidence by certificate on behalf of the State Censor in any proceedings for an offence under this Bill sets a dangerous precedent and is quite obviously designed to assist in securing convictions. Since the Bill imposes unprecedented and arbitrary powers over the supply of video recordings, it should not also facilitate the obtaining of easy convictions thereunder by the introduction of totally new laws of evidence to favour the prosecution.

40. SECTION 19, CLAUSE (1) - FORFEITURE - (Page 13)

There should be no power of any court to order forfeiture under this Bill. There is already that power under the Obscene Publications Act 1959.

41. SECTION 19, CLAUSE (2) - (Page 13)

This clause is also unacceptable since, again, it switches the onus of proof onto the Defence. It should be for the prosecution to show cause why the video recording should be forfeited and not for the defendant to show cause why it should not be.

42. SECTION 20, CLAUSE (3) - (Page 14)

This clause states that "alteration" includes "addition", but it does not make clear whether it also includes "deletion". A certificated video recording should not be technically in breach of the Act if deletions are made which would, however, still make it differ from the original video examined by the "designated authority", viz. the Censor. Such circumstances should be accommodated in the Bill.

43. SECTION 21, CLAUSE (1) - TITLE - (Page 14)

Again, the title "Video Recordings Act" is dishonest. It should be retitled the Video Censorship Act 1984. How chillingly real has Orwell's prophecy already become.

44. SECTION 21, CLAUSE (2) - COMMENCEMENT - (Page 14)

The Secretary of State should not be given the power to decide when the Act should come into force, nor empower him to allow different sections to come into force at different times. This will be a recipe for producing chaos. The Act should specify that it should not come into force until one year after it receives the Royal Assent, so as to afford video producers and retailers sufficient time to absorb its implications fully and obtain such guidance as they can from the "designated authority", before they become vulnerable to its frightening provisions.

Prepared by the NATIONAL CAMPAIGN FOR THE REFORM OF THE OBSCENE PUBLICATIONS ACTS

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