

CHAPTER TEN

Motion Picture Ratings in the United States

Richard M. Mosk

INTRODUCTION

The motion picture is a major art form and a significant United States industry. Millions of Americans go to motion picture theaters regularly. Motion pictures are also seen on television and on videocassettes. They are one of America's major exports and are regarded as portraying, and even having an influence on, culture, morals, and behavior. As a result, motion pictures are widely discussed and critiqued.

The voluntary system of rating motion pictures for the benefit of American parents has become a widely used component of the American movie scene. Nevertheless, it engenders criticism in certain academic and entertainment circles.¹ As chairman of the Classification and Rating Administration (CARA),² which administers the motion picture ratings, I believe that much of this criticism is unjustified. Although the system is not perfect—what is?—it is far preferable to the alternatives. I shall briefly discuss the origins and operation of the ratings system and address some of the issues concerning it.³

HISTORY

From as early as 1911, city and state governments had established censorship boards. By the 1960s there were many such boards, each applying its own set of standards. There were also private evaluators, such as religious groups, that recommended that certain pictures not be viewed due to content.⁴ Thus, it was difficult for the motion picture creator to determine if the film would meet all of the various criteria for acceptability. In addition,

many of the boards imposed significant economic burdens on the industry by ordering cuts in motion pictures.

In the early years, to deal with these problems and to provide guidance to motion picture makers, the motion picture industry published a list of scenes ordered by censor boards to be deleted. The Motion Picture Producers and Distributors Association—formed in 1922 and now called the Motion Picture Association of America (MPAA)—promulgated a “production code,” which set forth forbidden elements. Only in the absence of the forbidden elements would a movie obtain a production code seal of approval. For several decades, motion pictures produced by major studios were not exhibited in theaters in the United States without a seal. The code was known as the Hays Office Production Code—named after Will Hays, the first president of the MPAA. The code was influential because the MPAA member studios produced and exhibited many motion pictures. Many thought that the code stifled creativity.⁵

In 1966, Jack Valenti, a highly regarded assistant to President Lyndon Johnson, became the third president of the MPAA and recognized that adherence to the Production Code was disintegrating. Motion picture makers began circumventing the code. Theaters were no longer controlled by the moviemakers. Social and cultural mores were changing, and motion pictures had to compete against other forms of entertainment, such as television. Consequently, in 1967, Mr. Valenti essentially eliminated the Hays Office Production Code.

After numerous meetings with producers, distributors, theater owners, religious leaders, and other members of the public, Mr. Valenti began to formulate a voluntary film rating system. The concept was not to approve or disapprove a motion picture based on content, but to give advance guidance to parents so that they could make an informed decision about the movie viewing of their children.⁶

As a result, in November 1968 the MPAA, the National Association of Theatre Owners (“NATO”), and the International Film Importers and Distributors of America (IFIDA), announced the creation of a new voluntary film rating system. This new system led to the breakdown of the former censorship board system, and eventually, the last local censorship board disbanded. Other private systems either disappeared or became less significant.

THE RATING SYSTEM

Under the voluntary rating system, a submitted film would receive a rating based on a determination of what most American parents would consider appropriate for viewing by children.⁷ The factors to be considered included theme, language, nudity and sex, violence, and drugs. Initially, the ratings used were G for all ages; M for parental guidance suggested; R for children under a certain age not admitted without an accompanying parent or adult guardian; and X for no one under seventeen admitted.

The current system has modified the earlier symbols. The present rating symbols are the following:

- G General Audiences—all ages admitted. Nothing that would offend parents for viewing by children.

- PG Parental Guidance Suggested. Some material may not be suitable for children. Parents urged to give “parental guidance.” May contain some material parents might not like for their young children.
- PG-13 Parents Strongly Cautioned. Some material may be inappropriate for children under 13. Parents are urged to be cautious. Some material may be inappropriate for pre-teenagers.
- R Restricted. Under 17 requires accompanying parent or adult guardian. Contains some adult material. Parents are urged to learn more about the film before taking their young children with them.
- NC-17 No one 17 and under admitted. Patently adult. Children are not admitted.

The rating symbols are trademarked. The X designation is not trademarked. Pictures that are labeled X no longer receive that rating from the MPAA. Rather, an X rating is now self-imposed. Generally, X pictures are not submitted for rating.⁸

For all submitted films, the ratings appear on all advertising, videocassette packages and the cassettes themselves, and at the theaters. The ratings are generally included in newspaper reviews and listings. When a rating is given, it is accompanied by a short explanation for the rating; the explanation is not generally used in advertising. Nevertheless, the reasons for the ratings are often reported by the media and available to the public from various sources, including theaters, Moviefone, and the Internet.⁹

Motion picture makers can choose whether or not to submit their films for rating. Member companies of the MPAA have pledged to submit all of their films for classification; other distributors and producers are free to submit their films, but motion pictures can be, and are, released without ratings. Movie theaters may decline to comply with the rating system, but the majority of the theaters—approximately 85%—do utilize the ratings for information and admission policies.¹⁰

A movie’s rating is decided by a rating board located in Los Angeles. The members of the board work for CARA, which is funded by fees charged to the producers/distributors for the rating of their films. The MPAA president, after consultation with NATO and others, designates the chairman of the Rating Board.

The board is currently composed of a group of twelve people,¹¹ each with parenting experience and many of whom serve full-time. For most of the raters, the rating position is not a long-term career or job. Most of them have other careers, and their service is generally for a limited period. The current board includes a cabinetmaker, a homemaker, a teacher, a postal worker, a microbiologist, a hairdresser, a store owner, and a restaurant manager. Some have college degrees and some do not, and they come from various parts of the country. Considering all characteristics, they are a diverse group of people.

If dissatisfied with a rating, a producer/distributor may appeal the rating to the Rating Appeals Board, which is composed of fourteen to eighteen members designated by the MPAA, NATO, and the American Film Marketing Association (a group of independent movie producers and distributors). A rating can be changed only by a two-thirds vote of those Appeals Board members present at an appeal. The Appeals Board members vote to change a CARA rating only if they believe that the rating was

“clearly erroneous.” Reversals are not common. Aside from appealing the rating or editing the motion picture, there are no means to change a rating. There is also a Policy Review Committee, comprised of members of the MPAA and NATO. The Policy Review Committee can revise the basic rules and regulations administered by CARA and promulgate new regulations.

Advertisement of films is also part of the film industry’s self-regulatory mechanism. Advertising for all media is submitted to the Advertising Administration (not part of CARA, but within the MPAA) for approval with respect to rated motion pictures. For example, when trailers are approved for “all audiences” that means they may be shown with all feature films. Trailers rated for “restricted audiences” can only be shown with films rated R or NC-17.

OPERATION OF CARA

CARA board members view a submitted film and fill out preliminary ballots to record their impressions as to what most parents would consider the appropriate rating. After further reflection and discussion, the members complete a more detailed rating form to indicate the basis for their formal votes. The board members also discuss and formulate the reasons for the rating. The rating is communicated to the producer/distributor of the submitted film, and the producer/distributor can accept the rating or edit the film and resubmit it for a new round of viewing and rating. The producer/distributor can continue the editing and submittal process, but release commitments usually deter endless resubmissions. If the producer/distributor is still dissatisfied, it may appeal as described above.

COMPARISON WITH OTHER SYSTEMS

In most other countries, there are government classification authorities or “censors”¹²—just as there once were in this country. Their edicts have the force of law. The premise of those systems is that the classifiers are qualified by training and education to determine what is appropriate for children to see at various age levels.¹³

The CARA system has an entirely different focus. CARA does not purport to determine what is or is not appropriate for children. Rather, CARA seeks to determine how parents would consider the picture and what they would want to know about the picture. CARA informs parents of the rating, leaving it up to the parents to determine whether their children should see the picture. Thus, CARA raters are not trained to determine what is best for, or potentially harmful to, children. The system assumes that parents, given a certain indication as to the nature of the picture, will seek to learn more about the picture before deciding whether to take their children to see it.

Many aspects of our legal system are premised on the principle that parents have certain responsibilities toward their children.¹⁴ Thus, it is not unreasonable to assume that parents will exercise this responsibility in connection with their children’s movie viewing. If we do not recognize and act upon what we consider parental responsibility, we risk erosion of parental accountability.

NO INFLUENCES ON CARA

The chairman of CARA oversees the rating system and ensures that no outside or improper sources influence the CARA board. The CARA rating system is not subject to outside pressures or influences. There is no favoritism of MPAA members or studios over independent producers. Aside from the appeal process, no one outside of CARA has any power to affect CARA Rating Board decisions. Except for senior raters, who communicate ratings to the producer/distributor, members of the CARA board are anonymous. This anonymity, which is sometimes criticized,¹⁵ immunizes the board from attempts to influence its members.¹⁶

While CARA board members are paid by the MPAA, there are no incentives for a board member to favor any particular producer or distributor. No member of the board has any connection with the motion picture industry. Neither the status nor the future of a board member can be affected by any particular producer/distributor, any class of producers/distributors, or by how the rater votes.

I have never felt or observed any pressure to favor MPAA members or larger producers/distributors over independent or smaller producers/distributors. The industry itself has an incentive to maintain a rating system with probity. The last thing any studio would want is multiple rating systems or a reversion to government censors.¹⁷

Everything possible has been, and is being done by CARA to ensure fair and equal treatment to every person or entity that submits a film for classification by it. Although there are bound to be disagreements over ratings, the process is conducted in good faith and with integrity. The fact that some producers/distributors are able to edit to achieve a desired rating, while others may lack the time, inclination, or ability to undertake the editing process, has nothing to do with the integrity or fairness of the rating system.

NOT CENSORSHIP

Some have contended that the rating system contains elements of censorship.¹⁸ Such a position relates in large part to the NC-17 rating because that classification, if enforced by theaters, would preclude minors from seeing a motion picture.

It has been suggested that there are impediments to the exhibition of a picture with an NC-17 rating, and, in effect, an NC-17 label is tantamount to a prior restraint.¹⁹ It may be true that NC-17 movies face some hurdles in obtaining places of exhibition and advertising.²⁰ That, however, is generally based on the choice made by the theaters and advertisers. Some theaters will not even show movies rated R,²¹ while some theaters will generally show so-called art pictures and foreign films—often unrated.²² Thus, what is shown and by whom remains a matter of freedom of choice. A moviemaker that creates a patently adult motion picture should expect that the audiences will be composed of adults. The moviemaker has a choice of what type of picture it will make and for which audiences.

It is important to recognize that an NC-17 rating does not suggest that the picture is obscene or pornographic in the legal sense.²³ It simply means that most parents would consider the film off-limits for viewing by their children.²⁴ While the United States Supreme Court, invoking the First Amendment of the Constitution, restricted government censorship

of motion pictures,²⁵ it also provided more leeway for classifying films as suitable or unsuitable for minors.²⁶ In 1968, the Court upheld the constitutional power of states and cities to preclude minors from access to books and films that could not be denied adults.²⁷

An NC-17 rating should only be considered as indicating that the picture is not appropriate for minors. A number of pictures with NC-17 ratings have achieved financial and critical success.²⁸ Also, it must be remembered that aside from MPAA members, producers and distributors are not required to submit a picture for rating. They are free to distribute a film without any rating.

FACTORS IN RATINGS

Ratings do not purport to be judgments or evaluations of the merits of films.²⁹ Ratings deal only with certain elements that would affect parental decisions concerning children's movie viewing. These elements continue to include theme, language, nudity, violence, sex, drugs, and other relevant matters.

There are generally no hard and fast rules for ratings. The exception is that certain numbers of usages of the harder sexually derived words require certain ratings, unless the Rating Board, by a two-thirds vote, decides that a less restrictive rating would more likely reflect the opinion of American parents. The Policy Committee promulgated this explicit rule concerning language because language has always seemed to be of great concern to American parents.³⁰

Some people, comparing the ratings of different pictures, have criticized one picture's rating as being inconsistent with a rating for another picture.³¹ There is often the criticism that CARA is more strict about sex than violence,³² or more concerned with male nudity than female nudity.³³ These observations and comparisons are not accurate.

Films change from period to period, as does the social milieu in which they are seen. Ratings adapt and evolve in response to parental attitudes and concerns. Although consistency is a factor, context is also important. No two films are identical. For example, some violence may be more acceptable in one setting than in another. The rating must be based on the entire film, even if one scene may appear to be decisive. Every rating is a matter of discretion and judgment. But it is important to recognize that a number of raters see each film, observe it carefully, take notes, have discussions, and fill out extensive forms. Thus, the ratings are chosen carefully and methodically. The raters, as a diverse group of Americans having parenting experience, are as capable as anyone of predicting the views of parents throughout America—not just those from Los Angeles and New York.

Although there is no binding precedent or *stare decisis* in rating pictures,³⁴ patterns and consistencies in ratings can be discerned. Moreover, ratings reflect common sense. The published factors and years of ratings do provide adequate notice to moviemakers. Indeed, moviemakers who call CARA are provided help and guidance on ratings. A particular rating should rarely surprise a producer/distributor.

Violence is a difficult area to rate because there is an infinite number of variations in type and intensity of such violence, but generally, films with significant violence receive restricted ratings.³⁵ A picture may receive a strict rating for violence and then be edited to obtain a less severe rating. The public is not aware of rating decisions that

precede editing and the final rating. Some people complain about violence in restricted pictures.³⁶ But once a picture is restricted, it is then up to parents to determine if the film is appropriate or inappropriate for their children. While people may deplore violence in films, that does not mean that films are not rated properly.

Of course, as long as the public continues to pay to see pictures containing significant amounts of sex and violence, Hollywood will continue to make them. But it should be noted that the highest grossing and most successful films generally have been unrestricted and so-called family films.³⁷

CHANGE IN THE RATING SYSTEM

The ratings have changed over the years to meet new circumstances. Not only have the classifications changed, but rating reasons have been added. Efforts are made to disseminate the ratings and reasons as widely as possible.

CARA invites and welcomes comments and suggestions. I have met, and am willing to meet, with religious, educational, and industry groups about the rating process. For example, Dr. James Wall, president of the Christian Century Foundation, and Henry Herx, a director of the United States Catholic Conference Department of Communications, have long provided invaluable input. Jack Valenti and William Kartoizian, president of NATO, often publicly discuss the rating system and receive input. They continue to consider suggestions for improvement in the system in order to provide better service to parents and to promote creativity on the screen. Mr. Valenti, as father of the rating system, has the historical perspective that is particularly helpful in the evaluation of proposals for changes in the system.

While some may suggest additional rating classifications, it must be remembered that if the ratings become too complicated or confusing, they will be less useful. If the system is working, there is an understandable reluctance to tamper with it.

THE IMPACT OF THE RATINGS SYSTEM

If there were no rating system, there would still be some other mechanism, and that mechanism would likely include censors or censorship boards. The creation of the rating system has fostered creativity in the movie industry, while assuring that parents are receiving information to guide them in supervising what their children see at the theaters or on videos.

Public opinion polls demonstrate overwhelming public use and acceptance of the rating system.³⁸ Many have pointed to the CARA rating system as an example to be emulated by the television industry.³⁹

Every year, CARA rates more and more pictures. This reflects increases in production and made-for-video pictures. In addition, pictures made for television are sometimes submitted for rating, not only for television exhibition, but also for release on video. The rating symbols are widely known and accepted as a part of the American lexicon. The system has prevailed whenever there has been a legal challenge.⁴⁰

The CARA rating system appears to be performing the function for which it was

designed. It is occasionally criticized by those in the motion picture industry unhappy with a rating or ratings, by certain commentators who deplore any perceived restrictions and who can find fault with a particular aspect of the rating system or a specific rating, and by those who demand more restrictions and even censorship. CARA generally lets the ratings speak for themselves and does not publicly attempt to defend any specific rating.

The rating system has survived for almost thirty years and continues to be widely used. Few institutions would have such longevity unless they provided a valuable public service. The rating system does.

Notes

1. See Jane M. Friedman, *The Motion Picture Rating System of 1968: A Constitutional Analysis of Self-Regulation by the Film Industry*, 73 COLUM. L. REV. 185 (1973); see also Bill Broadway, *Hollywood as Babylon: Not Satisfied with Movie Industry's Rating System, Christian Groups Offer Their Own Warning Guides For Parents*, WASH. POST, Aug. 24, 1996, at D6; Timothy M. Gray, *The Movie Ratings Codes: Grade it C for Confusing*, CHI. SUN-TIMES, Jan. 23, 1994, at 1NC; Joanna Connors, *Industry's Movie Rating Is Labeled a Farce*, PLAIN DEALER, Aug. 18, 1990, at 1E.
2. The Classification and Rating Administration ("CARA") is a part of the Motion Picture Association of America.
3. For a detailed description of the history and workings of the ratings system, see JACK VALENTI, MOTION PICTURE ASSOCIATION OF AMERICA, *THE VOLUNTARY MOVIE RATING SYSTEM, HOW IT BEGAN; ITS PURPOSE; THE PUBLIC REACTION* (1996).
4. See generally F. WALSH, *SIN AND CENSORSHIP: THE CATHOLIC CHURCH AND THE MOTION PICTURE INDUSTRY* (1996).
5. See, e.g., Alexandra Marks, *Who Should Rate TV Shows, Laymen v. Experts*, CHRISTIAN SCI. MONITOR, Mar. 13, 1996, at 1.
6. VALENTI, *supra* note 3, at 4–5.
7. VALENTI, *supra* note 3, at 11.
8. *Id.* at 3.
9. The Internet address is <<http://www.mpa.org>>.
10. VALENTI, *supra* note 3, at 11.
11. The number of board members can range from eight to thirteen.
12. See generally JONATHAN GREEN, *THE ENCYCLOPEDIA OF CENSORSHIP* (1990) (detailing government censorship in many countries).
13. *Id.*
14. See 3 J.D. LEE & BARRY A. LINDAHL, *MODERN TORT LAW LIABILITY & LITIGATION* §§ 29.35, 29.39 (rev. ed. 1996) (discussing parental liability for a child's torts and parental obligation to control a child).
15. See Hal Hinson, *Twenty Years of G and R Ratings; Plus X, PG, PG-13, and Don't Forget M*, CHI. SUN-TIMES, Nov. 27, 1988, at G01; see also Jonathan Wacks, *Just Who Are the People Who Censor Our Films?*, L.A. TIMES, Oct. 7, 1991, at F3.
16. See Marks, *supra* note 5.
17. See Friedman, *supra* note 1, at 199.
18. See, e.g., Mark Caro, *The Heat is On: Will NC-17 Go Legit*, CHI. TRIB., Sept. 10, 1995, at C1; Hal Hinson, *Smash the Ratings System!; If This Isn't Censorship, Then Why Does It Feel Like It?*, WASH. POST, Apr. 21, 1990, at G1, G19.
19. See Bob Strauss, *Debate on "Basic Instinct"; Film Thriller's Trials Illustrate Problems of NC-17 Rating*, CHI. SUN-TIMES, Feb. 23, 1992, at Show-5.
20. *Id.*
21. See Jack Mathews, *A System Rated NC-17*, NEWSDAY, Nov. 22, 1992, at Fanfare-5.
22. See Stephen Schaefer, *Explicit "Kids" to Hit Screen Unrated*, BOSTON HERALD, July 24, 1995, at Entertainment-27.
23. For a discussion of court cases dealing with obscenity in movies, see Friedman, *supra* note 1, at 206–21.
24. VALENTI, *supra* note 3, at 9.

25. See, e.g., *Erzonik v. City of Jacksonville*, 422 U.S. 205 (1975) (invalidating local ordinance that forbade the showing at drive-in theaters of movies that included nudity).
26. *Ginsberg v. New York*, 390 U.S. 629 (1968); see Friedman, *supra* note 1, at 190.
27. *Ginsberg*, 390 U.S. 629.
28. See John Hartl, *NC-17 Ratings Can Stir Up Controversy—As Well as the Box Office*, SEATTLE TIMES, Jan. 17, 1993, at L4.
29. VALENTI, *supra* note 3, at 4–5.
30. See, e.g., Kathy Boccella, *Too Foul for Words/Adults are Fed Up with Crass Language from the Mouths of Teens*, BUFF. NEWS, Aug. 23, 1995, at B9; Harriet Webster, *Experts Swear by Clean Language/Parents Can Control, Not Eliminate, Kids' Bad Words*, ARIZ. REPUBLIC, June 16, 1996, at A2.
31. See, e.g., Connors, *supra* note 1; Wacks, *supra* note 15.
32. See, e.g., Gray, *supra* note 1.
33. See Mathews, *supra* note 21.
34. See Friedman, *supra* note 1, at 195.
35. See VALENTI, *supra* note 3, at 5.
36. See Connors, *supra* note 1.
37. See Joyce Price, *Clean Movies Cleaned Up at the Box Office in 1995; Some See "Sleaze Doesn't Sell" Trend*, WASH. TIMES, Dec. 29, 1995, at A2.
38. See VALENTI, *supra* note 3, at 11 (explaining that there is 76% approval of the current rating system among parents with children under 13 years of age). The most recent poll released by the MPAA on November 14, 1996 shows that 80% of parents with children under the age of 17 found the rating system useful.
39. See, e.g., 139 CONG. REC. E 1847 (1993) ("The federal government could attempt to regulate violence on TV programs the way it regulates indecency, with fines and revocation of licenses. . . . Or networks could impose stronger standards. Such measures might include showing violent programs at later hours, perhaps after 10 pm, or establishing a ratings system for TV shows similar to that used for the movie industry.").
40. See, e.g., *Miramax Films Corp. v. Motion Picture Ass'n of America*, 560 N.Y.S.2d 730 (Sup. Ct. 1990) (dismissing Article 78 proceeding that challenged "X" rating system as discriminatory and arbitrary); *Tropic Film Corp. v. Paramount Pictures Corp.*, 319 F. Supp. 1247 (S.D.N.Y. 1970) (rejecting antitrust challenge to rating system).

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