ECONOMICS, LEGISLATION AND PIRACY

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Economics

The erotic video market is currently depressed on a worldwide basis, except perhaps in Europe with the opening of the Eastern bloc countries. The reason for this depression is due to the proliferation of titles being produced mainly in the United States of America. Consequently there has been massive price cutting by suppliers and producers to move their titles into legitimate territories. To buy a title now, the rights will cost anything from $500 to $2,000 for a feature film, according usually to production costs and quality. Most low budget videos are shot in one or two days for the X-rated market and cost from $10,000 to $15,000 to make.

However, in the last two years a new market has emerged that is demanding a higher quality product. This is the cable television market. The cable—or Pay Television—market in the main, transmits only R-rated or soft erotica. Consequently, production houses are spending more on production quality so as to produce both soft and hard versions to cover both the X market and cable television. Cable television sales in the USA are worth from $15,000 to over $50,000 per title over a period of thirty-six months, depending on what channels agree to accept the title. We are currently selling our Australian titles to approximately eighteen cable television stations in the USA. As yet, European cable has not been sold but this is only a matter of time.

To compete with the better quality erotic video being screened on cable television, a company would need a minimum production budget of $50,000. However, this could return the company two to three times the investment when selling the video and cable television rights worldwide.

Video rights are sold by territories in the USA, Canada, South America, England, and so on. Seldom in this industry are world rights sold to one outlet. Europe is divided into countries, as is Asia, and films are edited to fit their local classification criteria. A master copy of the film is shipped to a particular territory for local duplication. Books are shipped, where possible, in their printed form to countries that will allow importation.

Because of the world recession and the limited access to cash funds, major companies worldwide trade within each other. That is to say they make available to other companies
their range of products in exchange for whatever the company has to offer. For example one video produced in Australia will be sold to an American company for USA rights in exchange for four or five of the American companies titles for Australian or New Zealand rights. This gives both companies additional titles to market within their own territories without cash changing hands. Bookkeeping of transactions is done by journal entry. We are currently negotiating to sell our films in Europe in exchange for printed books from Germany.

On the local front, the state revenue franchise fee of 40 per cent imposed in the Australian Capital Territory (ACT) has caused a number of X-rated video distributors to close. This has also enabled an illegal market to flourish outside of the ACT, due to illegal operators being able to advertise in national magazines. These illegal operators use an ACT Post Office box address from where all mail is redirected to their place of operation. It is estimated that the illegal operators interstate would be trading as much if not more than the licensed operators. Until cooperation is achieved between publishers of these national magazines, Australia Post authorities, revenue departments and local law enforcement agencies, this practice will continue.

Revenue is often lost because copyright is not paid. In Australia, people actually give tapes away free just to build up a mail-order list. We currently have a list of approximately 200,000 names built up over many years. The average purchase is two to three tapes per order and transactions are currently 1,000 to 1,500 per week with an average retail price of $15 to $20 per tape. This has a retail value of three to four million dollars per year.

Three years ago our average retail price was closer to $30 per tape and transactions were only 25 per cent less, from a list then only half the size. The reason for this is that the availability decreases demand and introduces competition (in whatever form) and reduces prices. The theory of mass production comes into operation as in the case of the general video sell through market. In most cases where legislation of erotica is introduced, local demand drops (for example, children's cartoons). The more restrictive the censorship, the higher the demand, and the higher the retail price.

One of the most valuable assets our company has is the mailing list, and from time to time this has been brokered to major institutions for the target marketing of their specific product with great success. Obviously, we are selective as to whom we broker our list. As of our last survey, our list comprised 60 per cent married couples, 10 per cent de facto couples and 30 per cent single persons. The average age is approximately thirty-five years and average income is approximately $25,000 to $30,000 per annum. It is estimated that about 7.5 per cent of our clientele may be homosexual.

The exact size of the hard-core erotic industry within Australia is hard to judge because of a lack of accurate information available to authorities from people trading both legally and illegally. Based on our assumptions, it is without doubt at a retail level of over $50 million per year—including both video and Category 2 books. Many millions of this total is paid in taxes of one form or another and, because of the many idiosyncrasies in our system, many millions are not.

**Legislation**

Legislation in Australia and worldwide in the forms of administration, penalties, policing and censorship vary dramatically from place to place. What is viewed as pornography in some eyes is not pornography in others. For example—*Playboy* in China is more extreme to the authorities than *Private* is in Amsterdam (*Private Magazine*—published in Sweden—is the largest-selling, hard-core, full-colour magazine in the world). Another example is New Zealand legislation which is completely the opposite to Australia concerning the publication of erotica. In New Zealand our Category 2 books are banned but X-rated videos are legal. Most states of Australia classify Category 2 books, but not X-rated videos.
The lack of uniformity in legislation in Australia makes administration and policing difficult, frustrating and expensive, and causes community standards to change. Consequently legislation needs to be constantly updated and streamlined. The best way to accomplish this is to confer with the industry itself. No one knows their business better than the people who work in it and own businesses. Twenty years ago full-frontal male genitalia had to be airbrushed out in any of the books that were published. In 1991, that same book could be sold beside Woman's Weekly. Our guidelines of censorship are set down by the Commonwealth Censorship Department and the guidelines for the X-category of censorship have been changed approximately five times since their introduction in February 1984. In Australia millions of X-rated videos have been distributed since the introduction of classification in 1984. Consequently, it would be physically impossible to stop the trading of these tapes if the X-rated materials were banned nationally. However, it is equally futile to introduce legislation that cannot be enforced by the law. People will always try means of testing legislation or at least applying their interpretation. As an example, X-rated videos cannot be sold on newsstand retail points in Italy. To avoid prosecution, retailers give the video away with a book purchase and apparently that is acceptable and legal.

The aspect of being able to sell by mail order from the ACT to a national market within the framework of legislation was most appealing and occurred to video producers in 1984 when all other states of Australia reversed their legislation. The industry worldwide is run mostly by legitimate business people and not, as widely published, by the mafia. The mafia are not interested in legal business with normal profit margins that pay taxes.

Sex is a way of life and modern society views it very differently from twenty years ago. The crusaders on both sides of the industry will always exist. Somewhere in the middle is the balance and this is where the legislators should aim. Our laws are more in line with the European system than that of the USA, and business counterparts in the USA only wish that they could operate under similar circumstances without legal harassment due to undefined laws in their territories.

It is interesting to note that with the repeal of X-rated laws in 1984, the X-rated sales were replaced by R-rated. People will always purchase the extreme in erotica or pornography as to what legislation will allow. Beside being properly licensed—as are most businesses that sell only to people over the age of eighteen—the industry should be used also to educate with the transmission of messages and information on AIDS, sexually transmitted diseases, and possibly even domestic violence and drug abuse. Millions of X-tapes are viewed every year and the life-span of a video is extensive. The total audience is looking for a message in one form or the other.

Prohibition only creates an illegal industry that in some cases can cause more problems to society, as was the case in the USA in the 1930s over the availability of alcohol.

One of the problems with our legislation is perhaps the ignorance of law or classification by many people. Most people still associate X-rating as violence when in fact the opposite is the case. The suggestion of a new category, 'Non Violent Erotica' (NVE) to replace 'X' was a good one as it aptly described the product. Restricted premises or discreet non public displays are commonsense aspects of merchandising and if all such areas were licensed they would be far easier to police if necessary.

Most legislation should be commonsense, no-one wants to see unsolicited hard-core erotic material on open sale. The explicit sex product is sought out and sold on request in Australia. In some countries in Europe the product is more freely available from a newsagent with discreet packaging. Some of our legislation in this country has been quite archaic (for example, the recently disbanded Queensland Censorship Board where a book was banned because its title had sexual connotations). It is interesting to note that Queensland has always had the largest pro-rata sales of mail-order video in this country. This may be because of the restrictive legislation in that state.
Piracy

One of the major problems in this industry, more so with videos than books, is piracy. The position taken by those operating outside of the legislation is that if the video or book is illegal then there is no copyright. Obviously printing a complete colour book is expensive and difficult to hide or store, whereas videos are easily copied. Duplicating plants are easily transportable and contact by mobile phone makes it difficult to find the duplicating location. A video pirate operating 100 machines can close down and reopen within 48 hours whether it be next door or 100 kilometres away. A plant this size could easily duplicate 1,000 tapes a day and operate out of the bedroom of a house in any area without causing too much disturbance. To date, no copyright case on X-rated has been won in this country. Most cases never get to court as the illegal trader moves on when he is exposed, and financially it costs more to pursue the case than what the matter is worth. Because of the sensitivity of X-rated material, most legal authorities avoid legislation regarding piracy.

In Germany measures are taken to control piracy and royalty is paid on screening of X-rated films in booths, adult shops or theatres. Funds are paid yearly from a fund administered by an industry body similar to APRA in the music industry in Australia. This body polices and administers the rights on all videos of all classifications. The body, GUFA, originated in Germany, and is now expanding into other European countries. To date, no such organisation exists in Australia. The Australian Film and Video Security Office is funded mainly by the major American studios and their charter does not cover the sex industry, as this industry is not officially recognised in the USA. In Europe proof of original and copyright ownership are supplied when films are registered for classification. This helps stop the release of non-copyright material in the marketplace and reduces the amount of copyright actions.

The majority of cable/satellite transmitters are very conscious of ownership. They usually have a very large investment in their business and obviously work well within legislation. However, a cable company in the USA recently had their satellite turned off as they were breaching the transmission regulations.

In 1991 in Australia, anyone can place an advertisement in a number of national magazines and advertise X-tapes. They then take a post office box in Canberra, redirect the mail, and supply the consumer, using a small bank of recorders in one room of a house. It would take months for anyone outside of the industry to know that this person existed.

Through our legal system, piracy abounds in the X-rated industry. A recent illegal operator in Australia took millions of dollars off-shore by transacting purchases on major credit cards in Vanuatu. We were able to persuade the publishers to withdraw the illegal advertising of our copyright product but not before two issues of the magazine were circulated and considerable expenses incurred on both sides. This scenario will occur again in this environment until X-rated or Category 2 advertising is restricted to X-rated or Category 2 publications.

Most X-rated videos distributed in Australia originate from the USA and consequently these are the most pirated. European films usually need translation so obviously the pirates do not bother with these, as translation is an expensive exercise. Until copyright on X-rated videos is legally recognised in all states of Australia, most producers are hesitant to carry out legal action.

The future of the sex publishing industry lies in electronics. This being so, how do you copyright a laser image? In the not too distant future you will be able to transmit a holograph of a live sex show from one side of the world to the other, as it is performed, by fibre optic or satellite. How, can and will law enforcement authorities police this?

X-rated compact disks are being pressed overseas but they have a limited market at present. However, because you cannot copy a CD, piracy does not exist in that format.
Almost all piracy of books ceased in 1984 when Category 2 books were allowed to be imported. It was far cheaper to import small quantities from the publisher than to reprint the books in Australia. Piracy will always abound where legislation is loose and much legal revenue will be lost.

International copyright laws are starting to be represented by most countries. However, law enforcement is usually another problem. In Australia's case, clear uniform legislation is the only answer. The financial penalties seem adequate, but are worthless if they are unenforceable.

Worldwide, this is a multi-billion dollar industry and, consequently, the problems cannot be ignored. Many of the problems are uniform, and only by the sharing of ideas and gaining from experience—both nationally and internationally—will we slowly start to resolve some of the dilemmas that currently exist.