

A Patchwork Approach or a Common Solution?

Different views on the question of cooperation in the field of film classification in Europe

The well-known problems of the New Market have also slowed the process of globalisation in the media industry. While the Internet has always operated internationally — and, as such, is becoming increasingly difficult to regulate via national child protection legislation — its importance is limited compared to television, which remains the major medium. And although there are now very good DVD copies of major cinema films, downloaded by specialists from the net, the law is incapable of regulating such grey areas anyway. Finally, thanks to satellite TV, it's long been possible to watch programmes from other countries. Yet given the language differences in Europe, this still remains very much a side issue. In other words, the pressure to harmonise legislation to protect minors from potentially harmful media content appears to have waned.

Self-Regulation

The differences in this field are enormous. Although each European country has its own body to classify and release cinema films according to viewer age, that is really where the similarities end. The video market, for example, is regulated in only a few countries, and television is more often than not subject to voluntary control on the part of the broadcasters themselves. In the Netherlands, for example, state control was abolished in 2000 and replaced with a system of self-regulation in the authentic sense of the word. The view of the government of the time was that any attempts by the state to restrict freedom of expression in the media would amount to an act of censure, even in areas concerning the protection of children and young persons. Today, Dutch film companies are allowed to rate their own products in line with certain predetermined parameters, and the same is true for video and the Internet. The function of the *Nederlands Instituut voor de Classificatie van Audiovisuele Media* (NICAM), a watchdog created to supervise the classification of audiovisual content, is to ensure the application of comparable release criteria and provide a channel of communication between producers and the public. A film classification in the Netherlands has no legal function. Rather, it serves to inform young consumers and/or their parents. On the other hand, a complaints procedure does exist to modify any self-assessments that are considered to be too generous. It is too soon to say whether this most radical system of self-regulation will gain acceptance. In the meantime, it is still the subject of much heated debate. The United Kingdom employs a system that can also be described as self-regulatory but which functions in a quite different manner. Here, there is no national law governing the protection of minors against harmful cinema films. Instead, this is the responsibility of local authorities, as a function of their duty to maintain public order. Given the highly unpredictable nature of such a set-up, the film industry moved to create a unified national rating system and established the British Board of Film Classification (BBFC). Following a few teething troubles, this body now functions well. The BBFC is a kind of private limited company, headed by a president who is an independent figure from public life. The board itself is run by a director and a deputy director. In turn, they are responsible for ca. 40 full-time examiners, who watch new films in pairs and then rate them in separate assessments. If a rating appears consistent and plausible to the director or the deputy director, the film is classified and released accordingly. If there is any doubt about an assessment, however, or

should the two examiners have come to different conclusions, other examiners are called in. Films that are likely to generate controversy anyway are automatically rated by a larger committee of examiners. The responsibility for classification and release is organised on a hierarchical basis. In cases of dispute, the ultimate decision therefore lies with the president. The success of the BBFC is based on the fact that it has managed to achieve a balance of interests acceptable to all concerned. The British public takes an active part in questions concerning the protection of minors. This is another reason why the classifications issued by the BBFC are generally very strict in comparison with those in other European countries. At the same time, however, the needs of the industry are also taken into account — for example, by the imposition of editing changes as a way of achieving a classification acceptable to the producer. Similarly, adjustment to the age groupings and the introduction of the PG category, which allows children from the ages of six to 12 to see certain films in the company of their parents, were both measures ultimately designed to balance the need for child protection against the interests of the industry. Whereas in the UK, *Harry Potter and the Chamber of Secrets* was released uncut with a PG classification, editing changes were imposed before the same film was deemed suitable for release in Germany for children of six years and over. Legislation introduced in the 1980s gave the Home Office responsibility for classifying videos according to viewer age. The actual business of assessment was then handed over to the BBFC — which, although now responsible for both cinema and video, rates videos separately from cinema films and occasionally gives a video release a different classification to that of the corresponding cinema film. The underlying concern here is that the copycat impact of videos is greater on account of the fact that scenes featuring criminal acts can be viewed repeatedly.

On occasion, TV programmes are also submitted to the BBFC, when the broadcaster wishes guidance on when an item should be shown. However, this is voluntary. In the UK, classified films may only be shown after certain watershed times: no '12' films before 8:00 p.m., no '16' films before 9:00 p.m., and no '18' films before 10:00 p.m. The BBC has an internal supervisory board, which, as a rule, voluntarily consults with the BBFC whenever there is deviation from the restrictions on transmission times. The private broadcasters are supervised by the Independent Television Commission (ITC).

Regulated Self-Regulation

In Germany, the consultation process that preceded the introduction of the new *Jugendschutzgesetz* (Protection of Children and Young Persons Act), which became law in April 2003, likewise featured a discussion as to whether children in the age group directly below that of the actual classification should be allowed to view the film when accompanied by a parent or legal guardian. In the event, it was decided that this should only apply to the over-sixes when accompanied by their parents for films with a '12' rating. Unlike in the UK, where 'PG' is a separate classification, the provision in Germany applies to all films with the '12' rating.

As most readers are likely to be acquainted with the German system, it is presented here in only summary form. As far as television and the Internet are concerned, the new legislation contained in the *Jugendschutzgesetz* introduces a system of regulated self-regulation. In turn, the *Jugendmedienschutzstaatsvertrag* (JMStV — Interstate Treaty on the Protection of Children and Young Persons in the Media) comprises far-reaching regulations, compliance with which is supervised by the federally appointed *Kommission für Jugendmedienschutz* (KJM — Commission for the Protection of Children and Young Persons in the Media). At the same time, the industry has been given the opportunity to implement the regulations largely on its own account through the establishment of a system of self-regulation employing

independent expert examiners. However, the KJM may itself intervene and regulate in cases where self-regulation has been incomplete or not conducted within acceptable parameters. With respect to cinema films, the *Freiwillige Selbstkontrolle der Filmwirtschaft* (FSK — Voluntary Self-Regulator of the Film Industry) has been successfully operating for over 50 years. However, its legal status remains uncertain and is based on an interstate agreement between the *Länder* (federal states), on the one hand, and a treaty between the supreme authorities at the *Länder* level (which were legally responsible for this issue) and the film industry, on the other. A more appropriate legal framework is now being created. In a further development, computer games must now also be classified according to age if they are intended for distribution to minors. As yet, it is unclear whether the *Unterhaltungssoftware Selbstkontrolle* (USK — Self-Regulator of the Entertainment Software Industry), which in the past has issued age recommendations on a voluntary basis, will undertake this task in the future. At present, the supreme authorities at the *Länder* level are legally responsible for this issue, and corresponding negotiations with the USK are still under way, with the outcome as yet uncertain. Regrettably, the present legal position means that the original plan to establish a common self-classification system for computer games at the European level is no longer feasible — at least not with the inclusion of Germany. As such, the first attempt to develop a European-wide system is now likely to be delayed for some considerable time.

State-Appointed Commissions

In France, it is the responsibility of the *Commission de Classification des Œuvres Cinématographiques* to classify cinema films according to viewer age. This body lies under the control of the Ministry of Culture. Its president, who is a government official from the *Conseil d'Etat*, must be a trained lawyer and is nominated by the ministry. The examiners are drawn from various social groups, and industry representatives also participate. A rating committee must number at least 14 members before it is competent to classify a film. However, the social background of the examiners is of no relevance. As a rule, between 20 and 35 examiners are in attendance. In order to be able to process a volume of around 400 films a year, subcommittees of five persons are also employed. Such subcommittees, however, may only release films deemed suitable for viewing without any age restrictions — and then only when the decision is unanimous. Otherwise, the full committee must decide. In France, all films destined to be shown in the cinema must be submitted for classification, even those for which a release for minors is not intended. Although this appears very strict at first sight, classification in France is in fact decidedly liberal. Moreover, distributors have the right to lodge a complaint with the acting minister should they feel a film has been awarded an unjustifiably restrictive rating. While this is infrequent, the chances are good of achieving a more favourable decision when such cases do occur. The age restriction applied to a cinema film must also be printed on the corresponding videocassette, but there are no regulations governing films that are first released on video. On the other hand, there has been a law in existence for several years now regulating the video trade, although this only relates to complaints from the public. When broadcast on TV, cinema films with a '12' or '16' classification may only be shown after 10:30 p.m. Once again, this sounds fairly strict. However, as ca. 70 percent of all films are released without any age restriction whatsoever, there are in fact few limitations imposed on the broadcast of films. Besides, relatively few feature films are actually shown on French TV. This is because France imposes a quota on non-European films, which is primarily intended to restrict the market share of productions from the U.S. As a result, French broadcasters tend to employ attractive films sparingly in the schedules, broadcasting them only at strategically important times.

Information Not Prohibition

At the suggestion of the *Conseil Supérieur de l'Audiovisuel* (CSA), the French supervisory body responsible for television, broadcasters have developed a warning system for parents. As a rule, mothers automatically rate TV programmes according to the degree of harm they pose to children. Correspondingly, in the eyes of the French, it is primarily the responsibility of the family to protect the young against potentially harmful TV content. At the same time, however, the state looks to inform parents about problem programmes, so that they can then act accordingly.

Other State-Appointed Bodies

In other European countries, films are classified by bodies linked to a ministry of state. In such cases, the actual work of classification is undertaken by employees of that body. In other words, the practice in other countries of involving examiners from various social backgrounds does not apply here. One example of such a body is the *Statens Biografbyrå* in Sweden. Of interest here is the fact that once this body has passed a film for release, the distributor is automatically protected against any liability to criminal prosecution. As a result, and although the Swedish law only applies to cinema films, many video distributors also submit their films for classification, particularly in borderline cases, in order to safeguard themselves against the possibility of criminal charges.

In Spain, film classification is undertaken by an institution that is primarily responsible for promoting film and which lies under the control of the Ministry of Culture. All ratings for the cinema are of merely an advisory nature. Indeed, it is only in particularly serious cases of potential harm to the young that a special 'adults-only' classification with legal force is applied. In Portugal, no restrictions apply when children are accompanied by their parents. In Denmark, age restrictions are decided upon by a media council made up of seven members appointed by the Ministry of Culture. However, children of seven years and over may view any film when accompanied by an adult.

Classification and the Underlying Criteria

Given the many different classification procedures for films in Europe, it is of no surprise that the age restrictions imposed are also highly varied. However, the question of whether there is a system of self-regulation in place or a state-appointed body plays a relatively minor role. Of much greater importance is the image that a society has of its youth, the role played by the family (and the responsibilities for education and upbringing that it is expected to undertake), and the traditions and values that a society wishes to defend. In other words, the ratings produced by the classificatory bodies depend much more on the culture, religion and social conditions of the country in question rather than their actual legal status or organisational form.

In the UK and Germany, the media are ascribed a major significance in the sphere of education and upbringing. For example, they automatically feature in any social debate about the causes of crime. Age restrictions on cinema films, although issued in neither country by a state-controlled body, are correspondingly strict in both cases. The French, by contrast, look upon film as a work of art and, as such, are only prepared to restrict its distribution on serious grounds. Hence the French system of classification is essentially liberal, despite the fact that a government ministry is responsible for it. Indeed, the French public would be unlikely to place much trust in a system of self-regulation. In France, children and young persons are credited with being able to recognise the fictionality even of brutal action scenes. On the other

hand, highly realistic representations of violence set in French cities are generally classified as more harmful. In Sweden, the approach towards violence tends to be strict, whereas sex scenes are treated very freely. Meanwhile, an item that would run on daytime TV in Denmark under the category of 'educational' might well be classed as pornography in the UK or Ireland, where it would even be withheld from adults.

Most countries adopt a generous approach towards action comedies, as it is felt that the violence involved is not being presented as a serious model for imitation. In Norway, on the other hand, mock representations of violence are considered unacceptable, and such films are classified accordingly.

While the Germans in particular focus on the actual impact and influence of the medium itself, most other countries tend to define what can and can't be shown on the basis of cultural criteria. Similarly, the age categories applied to films also vary widely. In Austria, for example, even the individual *Länder* have different rules. The highest age category also varies from country to country: 15 in Sweden; 16 in France, most of the Austrian *Länder*, and many European countries; and 18 in the UK and Germany. In some countries — the UK, for example — the classificatory body has the power to ban films completely, whereas in others only the public prosecutor's office may do so. Moreover, some countries apply no restrictions whatsoever above a certain age, e.g. 15 in Denmark and 16 in the Netherlands, for instance. Finally, some countries allow editing changes to be made, while in others no use is made of this possibility — or such changes are forbidden.

Hurdles in the Way of Harmonisation

In the light of such differences, proposals to harmonise classification procedures or even to introduce a common system for all EU member states are seen by many as neither feasible nor desirable. Countries tend to look upon their own way of classifying films as part of their national identity. France, for example, rejects harmonisation because of fears of losing its traditionally liberal approach towards film. The UK and Germany, by contrast, are frightened that such a move would bring about a relaxation of standards. To this extent, one might well argue that the proponents of harmonisation are being unrealistic.

Sooner or later, however, we will see a common identity emerging from the media and the content they carry. Indeed, it is already the case today that the same films enjoy success throughout Europe. And yet, the key question is how the media themselves will develop. If one day we are to see genuinely European television— i.e. broadcasters that have been designed and created for several member states and which transmit programmes in different languages — then we will also see a need for harmonisation, at least in this area. For, in the absence of a level playing field, countries with tighter regulations will suffer a competitive disadvantage, and that in turn will increase the pressure for harmonisation all the more.

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