

Lights, Camera, Action! How Hollywood Avoided Eternal Federal Censorship

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ABSTRACT: *This article captures the legal history of censorship in film. In an effort to prevent an American governmental body from regulating the movie industry, Hollywood created their own agencies to police film production companies. While this moral and ethical policing may be considered censorship, this article will explain why the industry's approach made perfect sense. Although production companies had to abide by a code, it was only for America's three most modest decades in the 1900s. If the government created legislation about film content requirements, it would be an incredibly difficult process to modernize the requirements with the times. This article will explain how the movie industry's censorship evolved from the production code to the rating system, ultimately proving that America is better off for Hollywood's creation of malleable content expectations.*

Introduction

Censorship is the antithesis of liberty and freedom. The First Amendment of the United States Constitution protects Americans' right to freedom of speech.²⁷ As an iconic aspect of American culture, freedom of speech aims to increase democratic ideals by allowing everyone to speak without fear of retribution from the government. In an environment where open discussion is encouraged, individuals feel safer, and thus more inclined to voice their opinions. The first amendment helps America evolve into a country in which more voices than those at the top of the social and financial ladder are heard.

The platform in which voices travel has a large effect on perception and impact of what is being discussed. Film is a powerful vehicle of thought and has the capacity to captivate audiences within the first minute of rolling. Because film has the potential to mesmerize people, the messages and motifs portrayed onscreen were glaring concerns to those in power immediately after the birth of the motion picture in the early 20th century.

This article will address the genius of the American film industry's avoidance of federal censorship through the development of a self-regulating agency. This system was highly censorial and adapted to modernizing legal views of free speech to keep film relevant to the American public. Nevertheless, the adaptation of the state censorship board's regulations to the Motion Picture Association (MPA) rating system was the best method of removing this censorship from the film industry.

Historical Context

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²⁷ U.S. Constitution, amend. 1.



In the early 1900s, there were a plethora of different legal codes and standards for the development of film. State, city and town authorities maintained their own moral and ethical guidelines for which films were allowed to be featured in their region.²⁸ This obvious inconsistency created confusion and frustration among the film production industry. If there is no standard to abide by, how will producers know whether or not their film would be allowed to be shown throughout the United States?

In 1907, theater operators sued Chicago for their institutional censorship of film. Chicago police chiefs would watch and review the movie before the general public, making the ultimate decision as to whether or not the movie was morally acceptable for release. In this case, theater owners believed the ordinance improperly delegated discretionary and judicial powers, deprived film owners of property without due process, and made the judgement void due to the lack of standards that led the chief to his decision.²⁹ The court sided with Chicago's censorship system, and held that "an average person of healthy and wholesome mind knows well enough what the words 'immoral' and 'obscene' mean and can intelligently apply the test to any picture presented."³⁰ The court, not accounting for the possibility of human error or a difference in understanding, ushered in a wave of state censorship of the film industry. In 1911, the Pennsylvania State Board of Censors was created. In 1913, the Ohio Censorship Law passed, creating another board of film censors, and Kansas and Maryland followed a couple years later with the development of their own film censorship boards.³¹ Within the next ten years, New York, Virginia, Atlanta, Memphis, and other states and cities developed censorship bodies to regulate the moral righteousness of the film industry.³²

The lack of uniformity and clear guidelines diminished profits in the movie industry. Film producers make money by selling their film to cinemas, so if a large number of theaters are banned from buying a film because it fails to meet their region's censorship expectations, then a film will not make a significant profit. Although film makers did not necessarily want to adhere to the strict moral standards being imposed on them, they were forced to for the sake of market access. Hence, the film industry realized that they needed to create their own set of guidelines to protect their business. The National Association for the Motion Picture Industry created the first loose set of expectations for the industry's producers; film was not allowed to arouse "bawdy emotions" or pander to a "salacious curiosity." Sex appeal, white slavery and improper attitudes were widely condemned, yet "artistic expression" was still encouraged.³³ With

²⁸Laura Wittern-Keller, *Governmental Censorship, the Production Code and the Ratings System*, in *Hollywood and the Law* 130, (Paul McDonald et al. eds., 2015), 130.

²⁹*Block v. City of Chicago*, 87 N.E. 1011, 1013, 1015 (Ill. 1909).

³⁰*Ibid.*, 1015.

³¹ Wittern-Keller, 131.

³²*Ibid.*, 132.

³³ Donald Young, *Motion Pictures: A Study in Social Legislation* 13 (1922).



industry-controlled restrictions, film production companies were able to self-regulate Hollywood instead of the state governments and prevent it from ever becoming a federal government issue. If film content control ventured into the hands of the government, the industry risked the creation of legislation that would have the potential to last centuries, while this code ended after a few decades.

Hay's Code

Will H. Hays was the first president of the Motion Picture Producers and Distributors of America Incorporated (MPPDA), now known as the Motion Picture Association of America Incorporated (MPAA). This organization was established to counter the increased censorship efforts by states and other agencies.³⁴ The MPPDA reviewed scripts in hopes of guiding against possible immorality charges brought on by state censorship boards. Hays manifested a list of “don’ts” and “be carefals” to give movie creators a clear set of guidelines to follow.

Figure 1: The “Don’ts and Be Carefals”³⁵

Subjects not to appear in pictures produced by member firms of the MPPDA:	Subjects to be treated with special care to eliminate vulgarity and emphasize good taste by the MPPDA:
Pointed profanity, including the words “God,” “Lord,” “Jesus,” “Christ,” (unless used with proper religious reverence), and all other profanities	Use of the flag
Illegal traffic of drugs	International relations
Nudity, licentious or suggestive; and any lecherous notice of nudity by characters	Theft, robbery, safe-cracking, and dynamiting of trains, mines, buildings (due to the effect which a too-detailed description may have upon the moron)
White slavery; miscegenation	Brutality, possible gruesomeness
Any inference of sexual perversion	The technique of committing murder
Scenes of actual childbirth, in fact or in silhouette	Actual hangings or electrocutions as legal punishment for a crime
Sex hygiene and venereal diseases	Sympathy for criminals

³⁴ Michael Conant, *Antitrust in the Motion Picture Industry*. New York: Arno Press, 1978, 240.

³⁵ For the full list of the “Don’ts and the Be-Carefals” please refer to MPPDA’s Digital Archive <https://mppda.flinders.edu.au/records/341>.



Willful offense to any nation, race or creed	Attitude to public characters and institutions; sedition
Children's sex organs	Apparent cruelty to children and animals; branding of people or animals
Ridicule of the clergy	The sale of women or a woman selling her virtue
	Rape or attempted rape
	Man and woman in bed together
	The institution of marriage
	The use of drugs
	Surgical operations
	Excessive or lustful kissing, particularly when one character or the other is a "heavy"
	Scenes involving law enforcement or law-enforcing officers

Although the creation of this list was meant to eliminate the encroaching censorial threat of state agencies, it failed to stop the state powers because the movie industry largely ignored the MPPDA's guidelines. In 1929, producers submitted only 21 percent of scripts for review by the MPPDA.³⁶ By ignoring the moral standards for film, movie companies became the target for censorship beyond state power. President Hoover debated antitrust action against the industry, civic organizations fought for federal control, and censorship legislation was introduced in both Congress and state legislatures.³⁷ It was not until the start of the Catholic National Legion of Decency's campaign against immoral films that a formalized code was accepted by the industry. Father Daniel A. Lord, a Catholic priest and St. Louis University professor, along with Hays, developed the Motion Picture Production Code in 1930.³⁸ This final version of the Motion Picture Production Code became better known as *Hay's Code*.

Breen Administration

³⁶ Leonard J. Jeff & Jerold L. Simmons, *The Dame in the Kimono: Hollywood, Censorship, and the Production Code 8* (Univ. Press of Ky. 2d ed. 2001).

³⁷ *Ibid.*, 8-9.

³⁸ *Ibid.*, 9-10.



The MPPDA dedicated a branch of their services, the Production Code Administration (PCA), to the upkeep of the moral and ethical standards of Hay's Code. Joseph I. Breen, a staunch Catholic, was placed as the head of this administration. Under the Breen administration, the Code followed three primary principles:

“No picture shall be produced which will lower standards of those who see it. Hence the sympathy of the audience shall never be thrown to the side of crime, wrongdoing, evil or sin. Correct standards of life, subject only to the requirements of drama and entertainment, shall be presented. Law, natural or human, shall not be ridiculed, nor shall sympathy be created for its violation.”³⁹

The larger principles were divided into twelve broader subject headings of prohibition: crimes against the law, sex, vulgarity, obscenity, profanity, costume, dances, religion, locations (bedrooms), national feelings, titles, and repellent subjects.⁴⁰ Increased limits on film content consequently decreased film producers' freedom to produce free-speech film material. While film producers could ignore the standards, as they did in years prior, those who did would be forgotten by the industry. The incentive to comply with the movie standards exponentially grew because the banking industry put value in the moral policing of the PCA. If a film's script, advertising, wardrobe, or acting did not have Breen's seal of approval, the producer's were unable to receive loans from banks.⁴¹ Without money, films could not be produced. From 1934-1948, 95 percent of all American-made films—and a large number of foreign films—were made with the clearance of the PCA.⁴²

Twentieth Century Fox, RKO Pictures, Paramount Pictures, Warner Brothers, and Metro-Goldwyn-Mayer were known as the “Big Five” production and distribution firms in the 1950s. The PCA and the Big Five had an agreement to only show films that received PCA approval within their theaters. The Big Five owned and operated 70 percent of first-run theaters in the nation's major cities.⁴³ For a film to make money, it had to be seen. If films did not have PCA approval there was limited opportunity for profit due to the theaters' agreement to only purchase PCA approved films.

There are two clear impacts of the tightly held restriction on the movie industry. First, the Code minimized the artistic liberties of film creators. Creativity is the exploration of thought and the willingness to be different and make something new. Regimented rules limit creativity, but if the rules were not followed producers would not have been able to create their art. Second, the

³⁹ Motion Picture Producers and Distributors of America, Inc., Record #2254, MPPDA Digital Archive 1, 1 (1931) <https://mppda.flinders.edu.au/records/2254>

⁴⁰ Ibid.

⁴¹ Gregory D. Black, "Hollywood Censored: The Production Code Administration and the Hollywood Film Industry, 1930-1940." *Film History* 3, no. 3 (1989), 173.

⁴² Conant, 41.

⁴³ Ibid.



PCA became the governing body of the movie industry. Through their close connections with the Big Five, the PCA attempted to establish a moral America through film. Although the PCA liked to consider themselves “regulators,” they were undeniably censorship enforcers.

Nevertheless, the creation of the PCA was imperative for the longevity of American film. When an organization creates regulations, it has the ability to evolve and adapt with the changing needs of the time. In surveying the general public, the organization’s leaders can easily alter their thinking to continue to be well regarded by society. Since the PCA is merely a service of the MPPDA, it can be changed or even destroyed without much commotion. If the PCA did not exist, the federal government would have passed legislation to censor film. This would have been catastrophic for the development of the industry. The law is notoriously set in stone and does not modernize well, so changing censorship laws from the 1930s would have taken decades of litigation and debate. Additionally, the change would involve far more entities, press, and possible disagreement. If censorship of film existed on the federal level, it could easily divide the country; just as any other bipartisan issue fought on the federal level has done before. When America becomes divided over an issue, it rarely resolves quickly. Admittedly, the PCA censored the artistic freedom of movie producers for decades. However, without this self-regulating body within the film industry, the movies we have come to love today might not have been produced. The lack of federal involvement allowed for the industry to advance with the changing progressive thought of society.

However, it was not until the late 1950s that obscenity laws were called into question.⁴⁴ With wobbling conceptions of what is considered obscene, it was only a matter of time before film’s moral standards were readjusted. It was in 1965 when *Freedman v. Maryland* held that government-operated rating boards were to be terminated after a majority decision that a government rating board could only approve films and no longer ban them.⁴⁵ Due to this, the MPAA revised their role as an enforcer of a strict moral code to that of mere advisor. After *Freedman v. Maryland*, the only power states had to regulate film production was regarding the dissemination of objectionable material to children.⁴⁶ Unwilling to relinquish power to state authorities, the MPAA created the Code and Rating Administration (CARA) who generated the current rating system.

MPAA Rating System

The MPAA rating system maintains a multitude of categories aimed to advise the viewer of the level of explicit material within the film. The original ratings categories consisted of G

⁴⁴ *Roth v. United States*, 354 U.S. 476, 479 (1957).

⁴⁵ *Freedman v. Maryland*, 380 U.S. 51 (1965).

⁴⁶ *Interstate Circuit, Inc. v. Dall.*, 390 U.S. 676, 680 (1968) (defining “young persons” as those under the age of sixteen).



(general audiences), M (mature audiences), R (restricted, no one under the age of sixteen admitted without parent or guardian), and X (not suitable for anyone under sixteen due to sex, violence, or language).⁴⁷ Eventually, the M rating split into PG (parental guidance suggested) and PG-13 (parents strongly cautioned); and the previous age minimums shifted from sixteen to seventeen.⁴⁸ The X rating is the only non trademarked category. It is available for independent filmmakers to self-designate, over time, it became synonymous with pornographic material. In light of this, the MPAA created the NC-17 rating (no one seventeen and under admitted) in 1996 to signal that although not illicitly pornographic, the film contains explicit material.⁴⁹ Notice that this system does prohibit the creation of film through monetary restraints. Rather it encourages audiences to watch the film believed to be most appropriate for them. Nevertheless, viewer discretion is what dictates what films an individual can see. The greatest difference between the Code and the Rating system is just that: one would not be able to see a film that did not abide by the Code, because it would not exist.

Conclusion

Although it took decades for the power of choice to be restored to film audiences, the MPAA rating system successfully eliminated the lasting remnants of self-regulated censorship of the film industry. In avoiding possible abuses of federal censorship, the MPPDA developed a tightly managed moral code in hopes of preserving Hollywood's independence. By restricting the liberties of the film-makers then, the filmmakers now can enjoy the freedom and creativity those in the past may not have known came with the job.

⁴⁷ Wittern-Keller, 144.

⁴⁸ Ibid.

⁴⁹ Ibid.



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